A CITIZENS' GUIDE
TO THE
KENTUCKY CONSTITUTION

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FOREWORD

This publication was first printed in August, 1977, in response to a directive by the Legislative Research Commission to provide information on the Kentucky Constitution. The question of calling a constitutional convention was on the ballot in November, 1977, and the purpose of this study was to present the substance of the Constitution, the historical background of the present Constitution, and the court decisions and proposed revisions which have occurred since 1891.

Requests for this publication have continued steadily, prompting the preparation of revised editions. This fourth edition incorporates into the previous information court decisions and constitutional changes since 1891, including the broad form deed and lottery amendments adopted in 1988, the religious properties amendment adopted in 1990, and the charitable gaming and the executive branch and election reform amendments adopted in 1992. Additional changes have been made in the text of the Constitution and in the text of the chapters of this publication to incorporate the provisions of the local government amendment adopted in 1994 and the amendment adopted in 1996 which deleted the requirement for segregated public schools and the authority to levy a poll tax.

Many people in state government, the academic community, and professional life were consulted in the gathering of information for this publication in its first printing, and these contributions are greatly appreciated and acknowledged.

The project director for compiling this information has been Rob Williams, Committee Staff Administrator, Elections and Constitutional Amendments Committee. Contributing LRC staff members for the revised edition are Joyce Crofts, C. Gilmore Dutton, Jamie Jo Franklin, Pat Hopkins, Ann Zimmer and Donna Weaver.

Robert Sherman
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The Capitol
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CHAPTER I

INTRODUCTION

By Anita Esham-Taylor

Kentucky became a state in June, 1792. In preparation for statehood, a convention was held in April, 1792, to prepare the final draft of a constitution, which would establish the framework of state government and guarantee certain rights to the citizens. This first Constitution was revised by a constitutional convention in 1799, again in 1849, and again in 1890-91. The present Constitution is the one which was revised in 1891. Thirty-two amendments have been approved by the voters since then.

A constitution is drafted by delegates who are elected, and such a document usually reflects the attitudes of the people toward their government at the time. The 1792 Constitution provided for few elective positions and for the appointment of judges for terms of good behavior, which generally meant life terms. It was a relatively brief document, and quite general in tone.

The people wanted a more direct voice in their government, however, so the second Constitution increased the number of elective offices. The authority of the Governor was increased, but the Governor was elected directly by the people. Previously, the Governor had been elected by the Senate, in part because it was believed that the voters might not be capable of making an informed choice at the polls. The Governor continued to appoint most officials, including local ones. In 1849, the people clearly wanted more control over their government. The new Constitution substantially increased the number of elected officials and placed a limitation on state indebtedness.

The Constitutional Convention of 1890-91 was held in an unsettled time. There had been many changes in society since the last Constitution had been adopted in 1850. The Civil War had threatened the nation; corporations had become a new and powerful entity; the railroads had brought drastic changes in business; the General Assembly had frequently passed legislation which was applicable to only a particular area or situation; and the State Treasurer had absconded with virtually all the money in the State Treasury.

It was in this atmosphere that the delegates gathered in Frankfort on September 8, 1890, to revise Kentucky's Constitution. Their resolve to prevent past abuses resulted in a Constitution that is much longer and contains more specific restrictions than any of the previous Constitutions. It is not unique, however, in comparison with other state constitutions written or revised in that era. The distrust of the legislature and the desire to elect most officials are reflected in constitutions written in the late 1800s but not generally in constitutions written earlier and later.

A constitution is generally considered to be a technical and complex document, beyond the understanding and interest of the average citizen. The following report should help the interested student and citizen better understand the framework of government in Kentucky, the limitations and strengths of government, and how the Constitution relates to the individual.

CHAPTER II

PREAMBLE OF THE CONSTITUTION OF KENTUCKY

Mary Helen Miller

> We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution.

This preamble to Kentucky's present Constitution is the first one of the four adopted in Kentucky to use the term "Commonwealth of Kentucky." It is also the first one to make reference to Almighty God.

The preambles to the three previous Kentucky Constitutions are printed below. The references to securing the enjoyment of life, liberty, and property and the pursuit of happiness, which are in the preambles to the second and third Constitutions, are incorporated in Section 1 of the Bill of Rights in the fourth Constitution.

(1792)

> We, the representatives of the people of the State of Kentucky, in Convention assembled, do ordain and establish this Constitution for its government.

(1799)

> We, the representatives of the people of the State of Kentucky, in convention assembled, to secure to all the citizens thereof the enjoyment of the right of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

(1850)

> We, the representatives of the people of the State of Kentucky, in convention assembled, to secure to all the citizens thereof the enjoyment of the rights of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

CHAPTER III

BILL OF RIGHTS OF THE CONSTITUTION OF KENTUCKY

Mary Helen Miller

The Bill of Rights has changed very little through the four Constitutions of Kentucky. With few exceptions, the provisions printed below are the same ones which were included in the 1792 Constitution of Kentucky.

Section 1 of the 1891 Constitution is phrased differently, but the provisions are much the same as appeared in the preambles and other sections of the 1792, 1799, and 1850 Constitutions.

Section 2 was first placed in the Bill of Rights in 1850. Note the use of the word "freemen," which reflects the issue of slavery so hotly debated in 1850.

The intensity of the pro-slavery efforts in 1850 is reflected in a provision which was placed in the 1850 Bill of Rights and removed in 1891. The section reads as follows:

> The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to such slave, and its increase, is the same, and as inviolable as the right of the owner of any property whatever.

This section was replaced in 1891 by Section 25, which reads as follows:

> Slavery and involuntary servitude in this State are forbidden, except as a punishment for crime, whereof the party shall have been duly convicted.

The present Section 3 was Section 1 in the three previous Constitutions. The latter part of Section 3, which specifies no exemption of property from taxation and the right of revocation of grants of privilege, was added in 1891. These provisions reflect the desire of the convention delegates to prevent the abuses of special legislation which had occurred prior to 1891. See the chapter on the legislature for further details of this issue.

The first part of Section 5 has been essentially the same in all four Constitutions. In 1891, after the common school system was established in Kentucky, the provisions were included which state that no man can be forced to send his child to any school to which he may be conscientiously opposed and which guarantee the protection of civil rights from religious discrimination.

All other sections of the Bill of Rights remain basically the same as they were in 1792, when Kentucky became a state and adopted its first Constitution, except Section 19, which was amended in 1988.

In November of that year, the voters approved the "broad form deed amendment," which provided that any broad form deed which severs surface and mineral estates shall be interpreted to reflect an intent of the parties to only allow use of extraction methods

commonly used in the area at the time the deed was executed, unless evidence supports the contention that the parties intended otherwise. The goal of proponents of the broad form deed amendment was to protect the rights of landowners from the detrimental effects of strip mining, a method of coal extraction which was generally not in use at the time many of these deeds were executed.

Bill of Rights

The Bill of Rights contained in the 1891 Constitution is as follows:

That the great and essential principles of liberty and free government may be recognized and established, we declare that:

Section 1. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First: The right of enjoying and defending their lives and liberties.

Second: The right of worshipping Almighty God according to the dictates of their consciences.

Third: The right of seeking and pursuing their safety and happiness.

Fourth: The right of freely communicating their thoughts and opinions.

Fifth: The right of acquiring and protecting property.

Sixth: The right of assembling together in a peaceable manner for their common good, and of applying to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.

Section 2. Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

Section 3. All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services; but no property shall be exempt from taxation except as provided in this Constitution, and every grant of a franchise, privilege or exemption, shall remain subject to revocation, alteration or amendment.

Section 4. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, happiness and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may deem proper.

Section 5. No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall

any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.

Section 6. All elections shall be free and equal.

Section 7. The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.

Section 8. Printing presses shall be free to every person who undertakes to examine the proceedings of the General Assembly or any branch of government, and no law shall ever be made to restrain the right thereof. Every person may freely and fully speak, write and print on any subject, being responsible for the abuse of that liberty.

Section 9. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libel the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Section 10. The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

Section 11. In all criminal prosecutions the accused has the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor. He cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land; and in prosecutions by indictment or information, he shall have a speedy public trial by an impartial jury of the vicinage; but the General Assembly may provide by a general law for a change of venue in such prosecutions for both the defendant and the Commonwealth, the change to be made to the most convenient county in which a fair trial can be obtained.

Section 12. No person, for an indictable offense, shall be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of court for oppression or misdemeanor in office.

Section 13. No person shall, for the same offense, be twice put in jeopardy of his life or limb, nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

Section 14. All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

Section 15. No power to suspend laws shall be exercised unless by the General Assembly or its authority.

Section 16. All prisoners shall be bailable by sufficient securities, unless for capital offenses when the proof is evident or the presumption great: and the privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it.

Section 17. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted.

Section 18. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

Section 19. (1) No ex post facto law, nor any law impairing the obligation of contracts, shall be enacted.

(2) In any instrument heretofore or hereafter executed purporting to sever the surface and mineral estates or to grant a mineral estate or to grant a right to extract minerals, which fails to state or describe in express and specific terms the method of coal extraction to be employed, or where said instrument contains language subordinating the surface estate to the mineral estate, it shall be held, in the absence of clear and convincing evidence to the contrary, that the intention of the parties to the instrument was that the coal be extracted only by the method or methods of commercial coal extraction commonly known to be in use in Kentucky in the area affected at the time the instrument was executed, and that the mineral estate be dominant to the surface estate for the purposes of coal extraction by only the method or methods of commercial coal extraction commonly known to be in use in Kentucky in the area affected at the time the instrument was executed.

Section 20. No person shall be attainted of treason or felony by the General Assembly, and no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

Section 21. The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Section 22. No standing army shall, in time of peace, be maintained without the consent of the General Assembly; and the military shall, in all cases and at all times, be in strict subordination to the civil power; nor shall any soldier, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in a manner prescribed by law.

Section 23. The General Assembly shall not grant any title of nobility or hereditary distinction, nor create any office the appointment of which shall be for a longer time than a term of years.

Section 24. Emigration from the State shall not be prohibited.

Section 25. Slavery and involuntary servitude in this State are forbidden, except as a punishment for crime, whereof the party shall have been duly convicted.

Section 26. To guard against transgression of the high powers which we have delegated, We Declare that every thing in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

CHAPTER IV

DISTRIBUTION OF POWERS

Anita Esham-Taylors

The Kentucky Constitution divides governmental authority among the three branches of government as follows:

> Section 27. The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.
>
> Section 28. No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

These sections have been a part of Kentucky's Constitution since 1792. The only changes in these sections have been the inclusion of the words "Commonwealth of Kentucky" and the use of the word "judicial" instead of "Judiciary" in Section 27. Although these sections seem to be quite clear, they have been the subject of heated debate and litigation through the years. Three recent cases define the limitations of power of the Governor and legislature and address the issue of separation and balance of power among the three branches of state government.

In the first case, *Ex parte Auditor of Public Accounts*, 609 S.W.2d 682 (Ky. 1980), the Auditor claimed the right to audit fees collected from State Bar Association members. The Supreme Court ruled that he had no right to audit these funds.

The Court included in its opinion a discussion of the constitutional and statutory duties of, and limitation upon, certain executive officers. The Justices emphasized the authority of the legislature to empower the executive branch with authority not expressly or necessarily implied by the Constitution. The Court specifically noted the constitutional provisions applicable to the legislature in establishing such duties, such as Section 91 which provides that the duties of the Auditor shall be established by the legislature. However, the General Assembly must not violate the constitutional principle of separation of powers, as established by Sections 27 and 28, by improperly assigning to the Auditor authority which is rightfully within the jurisdiction of the judicial branch.

The Court also specifically discussed the separation of powers and stated that the legislative branch has all authority not prohibited by the Constitution and not delegated to another branch.

The discussion of the Court relative to the limitations on the authority of the General Assembly and the duties of lesser executive elected officials may have encouraged action by Governor John Y. Brown, Jr., which resulted in a suit brought against the Governor by the

Commissioner of Agriculture. Certain broad language of the Court concerning legislative authority may have precipitated legislative action in the 1982 General Assembly which resulted in a "friendly" suit between the Legislative Research Commission and Governor Brown.

The second case, *Brown v. Barkley*, 628 S.W.2d 616 (Ky. 1982), concerned the authority of the Governor to reorganize a department which was established by statute but headed by a constitutional elected officer. The Court held that when the General Assembly enacted a statute permitting the Governor to reorganize executive agencies, it did not intend for the Governor to reorganize departments headed by elected constitutional officers.

The third case, *Legislative Research Commission ex rel. Prather v. Brown*, 664 S.W.2d 907 (Ky. 1984), resulted from action taken by the 1982 General Assembly to expand its authority. The suit centered on the principle of separation of powers, as established by Sections 27 and 28 of the Constitution, and upon whether the Legislative Research Commission (LRC), consisting of legislative leaders, could exercise lawmaking power when the legislature was not meeting. Specific issues included questions of whether certain legislative leaders could appoint members of executive agencies, whether the Governor could be required to make certain appointments from a list provided by the legislature, whether the LRC could be empowered to approve executive appointments, and whether legislators could serve on boards of executive agencies. The suit also addressed the authority of the LRC to veto administrative regulations; to control certain budgeting matters, including budget specifications and restrictions; and to approve certain grant applications. Finally, the suit addressed the issue of a statute passed in 1982 which empowered the LRC to approve reorganizations made by the Governor.

The Supreme Court held that implementation of certain statutory action of the 1982 General Assembly would violate the constitutional principle of separation of powers. These statutes empowered the LRC to act as the legislature when the legislature was not in session. The Court also noted that a portion of the legislative membership, the LRC, was attempting to act for the entire body.

The Court strictly interpreted the separation of powers clause of Sections 27 and 28, when it cited the constitutional limitation upon the duration of legislative sessions and the requirement that the legislature consist of two chambers. Thus, any type of legislative action, whether undertaken by the full body, or by the LRC on behalf of the General Assembly, was prohibited.

More specifically, the Court ruled that, in order to preserve the separation of powers, specific legislative leaders could not appoint members of executive agencies, the Governor could not be required to make appointments from names submitted by certain members of the General Assembly, and legislators could not serve on boards of executive agencies. The Court held that to permit the LRC to approve executive appointments or reorganization orders, to veto administrative regulations, or to hold authority to reject certain grant applications would violate constitutional provisions relative to establishment of a bicameral legislature and the specified time during which the legislature may act.

The Court did uphold the statute permitting the General Assembly to enact a spending reduction plan to respond to a drop in anticipated revenue of less than five percent. The Governor must merely report to the LRC all plans to modify the budget

when anticipated revenue drops more than five percent. The Court also permitted changes requiring that the executive budget be given to the General Assembly early in the session but did not uphold the statute requiring that the budget be in the form of a resolution. The Court held that the Constitution requires that the budget be in bill form.

CHAPTER V

THE LEGISLATIVE BRANCH AND THE KENTUCKY CONSTITUTION

Anita Esham-Taylor

> One of the most distinguished men of my acquaintance . . . said to me after my election to this body: "I do not care what you do; every reform you attempt will turn to ashes in your hands unless you do something to reform the Legislative Department."[1]

The Kentucky General Assembly of the late nineteenth century, like the legislatures of many states, had lost much of the prestige and public trust it had enjoyed during the early years of statehood. In comparison with preceding Kentucky Constitutions, and particularly those of 1792 and 1799, the document drafted in 1890-91 reflects this loss of public favor in its extensive treatment of the composition, organization, procedures, and powers of the legislative branch of state government. According to the 1890-91 Constitutional Convention's Committee on Address, "the General Assembly of 1889-90 sat 149 days and passed local laws, including index, covering 4,893 pages . . . ."[2] The Convention responded in kind by proposing a Constitution of 263 sections, approximately 140 of which directly name the General Assembly, its chambers, or members.

The General Assembly

The legislative powers of Kentucky's government are vested in a bicameral, or two-chamber, legislature called the General Assembly, consisting of a House of Representatives and a Senate. (Section 29.) Despite substantial debate on a proposal to reduce the size of both chambers of the General Assembly in the interest of economy, the 1890-91 Constitutional Convention retained the number of members prescribed by the 1850 Constitution: one hundred House members and thirty-eight Senators. (Sections 31 and 35.)

Kentucky's General Assembly and its component House of Representatives and Senate have retained these same names throughout the Commonwealth's constitutional history. Kentucky is one of nineteen states whose legislatures are styled a General Assembly, while a plurality of the fifty states, twenty-seven, officially use the name "Legislature." All of the upper chambers of the bicameral state legislatures in the United States are titled "Senate," and "House of Representatives" is the most popular name of the lower chambers of state legislatures, with forty-one of those Houses in the forty-nine bicameral legislative bodies so named.[3]

Kentucky's General Assembly has also retained its bicameral form since 1792, as no proposals for a unicameral, or one-chamber, legislature were considered by the 1890-91 Constitutional Convention or presented to Kentucky voters in subsequent years. The concept of a unicameral legislature was considered by the 1964-66 Constitutional Revision Assembly, but it was the "overwhelming sentiment" of the Assembly members, and of the 1966 General Assembly as well, to preserve the bicameral form.[4]

The Legislators

A person seeking the office of state Senator must have been a citizen and resident of the state during the preceding six years, be at least thirty years of age by the date of the

election, and have been a resident of the Senate district for the preceding year before the election. In order to serve in the Kentucky House of Representatives, a person must, at the time of election, have been a Kentucky citizen and resident for the last two years, be at least twenty-four years old, and have resided for the past year in the "county, town or city" from which he may be elected. (Section 32.) The Kentucky Court of Appeals has ruled that Section 32 of the Constitution requires a Representative to reside in the district represented, not merely the county or city in which that district, and others, may be located.[5]

Representatives are elected for terms of two years, while Senators serve a four-year term of office. (Section 31.) Legislators' terms begin on January 1 of the year following their elections. Constitutional amendments ratified in November, 1979, establish their election in even-numbered years. (Section 30.) In order to allow for the transition from odd-numbered year to even-numbered year elections, Representatives elected in 1981 served three-year terms and Senators elected in 1981 and 1983 were elected to serve five-year terms. (Sections 30 and 31.) Under both the 1850 and the current Constitutions, the terms of Senators are staggered so that one-half of the Senate members are elected every two years. All one hundred House members are elected every two years. (Section 31.) Vacancies in the General Assembly may be filled by special as well as regular elections but may not be filled by appointment. (Section 152.)

Prior to 1979, the Constitution established legislative compensation of $15 per day during legislative sessions, with $.15 per mile granted each member for traveling to and from each legislative session. The General Assembly was permitted to change these pay provisions, but no change could take effect during the session at which it was enacted or during the current terms of the members enacting the change. (Sections 42 and 235.) A constitutional amendment approved in 1979 deleted the specific per diem and mileage allowance figures from Section 42, but the restrictions on the compensation changes remain in effect. Since 1891 the compensation of Kentucky General Assembly members has been periodically increased by law, in both amount and methods of payment.

During sessions of the General Assembly, legislators receive the following compensation: (1) a per diem expense allowance, $75 per day; (2) a fixed sum for stationery, $50 per session; (3) a per diem salary, $100 per day; and (4) an allowance for legislators to travel to and from their home districts each week, equal to the maximum mileage allowance permitted by the federal government. For their interim work, legislators are compensated through a monthly expense allowance, $950 per month when not in session. In addition, legislators receive per diem pay of $100 and a travel allowance for attending interim committee meetings. Legislative leaders and committee chairmen receive additional compensation in varying amounts. (KRS 6.190-6.225 and KRS 7.090-7.110.) Members of the General Assembly are eligible for membership in the legislators' retirement plan established by the 1980 General Assembly. (KRS 6.500-6.535.) The 1980 General Assembly created the Legislative Compensation Commission to advise the legislature on matters relating to the compensation of legislators. (KRS 6.226-6.229.)

As public officers whose "jurisdiction and duties are coextensive with the Commonwealth," the members of the General Assembly appear to come under the constitutional limit on maximum compensation of $12,000 per year. (Section 246.) In 1962, the Kentucky Court of

Appeals ruled, however, that the maximum salary limits set by Section 246 could be interpreted and salaries accordingly increased, in light of the purchasing power of the dollar in 1949.[6] Under this "rubber dollar" theory, the salaries of many constitutional officers have been increased above the maximum levels set by Section 246 in accordance with changes in the cost of living. The salary adjusts to $84,059 for the Governor and $71,462 for other officers in 1993.

Kentucky House and Senate members are elected from single-member districts. (Section 31.) The Constitution instructs the General Assembly to divide the state into one hundred representative and thirty-eight senatorial districts every ten years. (Section 33.) In so dividing the state, the General Assembly is directed to follow several potentially-conflicting standards: districts are to be as nearly equal in population as possible; are to be formed without dividing any county, except those counties that would include more than one district; and are to be composed of contiguous, or neighboring, counties. In addition, no more than two counties are to be joined to form a representative district. If inequality of population proves impossible to avoid, the Constitution instructs the General Assembly to assign any advantage, that is, greater representation per person, to districts containing the largest territory. (Section 33.)

In addition to failure to meet age and residency requirements, several factors may disqualify a person from serving in the Kentucky General Assembly. The Constitution divides the power of Kentucky government among three separate branches and it prohibits any person in one branch of the state government from exercising any powers properly belonging to one of the other branches. (Sections 27 and 28.) Hence, a person may not be a legislator and at the same time a state executive branch officer or a judge. During his term, and for one year after his term ends, a General Assembly member may not accept any office created or one to which a pay increase has been assigned during his term, unless the office is one filled by popular election. (Section 44.) Membership in the General Assembly is also constitutionally incompatible with being an officer or employee of a county, city or other municipality, and with holding an office under another state, the United States government, or a foreign power. (Sections 165 and 237.)

A person who has challenged another to a duel, or served as a second or assistant in a duel, is excluded from state legislative office and from other public offices, unless pardoned by the Governor. (Sections 239 and 240.) A collector or assistant collector of public money or taxes for the Commonwealth or a political subdivision is not eligible to serve in the General Assembly unless he has settled his accounts at least six months before election. (Section 45.) Additional actions that disqualify a person from holding or continuing in public offices, including those of Senator and Representative, are conviction of a felony or high misdemeanor, unless pardoned; use of money or any other thing of value to secure or influence his or her election; profiting from public funds; and accepting a free pass or transportation at a reduced rate not available to the general public from a railroad or other common carrier. (Sections 150, 151, 173, and 197.)

The direct election of both Kentucky's House and Senate members has been prescribed by Kentucky's Constitution since 1799. The 1792 system of indirect election of Senators by a popularly-elected electoral college, and the filling of Senate vacancies by vote of the incumbent Senators, was abandoned in 1799 amidst general dissatisfaction with the state Senate. In fact,

eliminating a Senate altogether was considered, but not successfully pursued, prior to both the 1792 and 1799 conventions.[7]

The length of state legislators' terms has been the subject of unsuccessful constitutional revision efforts in Kentucky. The 1890-91 Constitutional Convention considered both lengthening and shortening the terms of the members of the General Assembly, weighing the goal of providing more experienced legislators against assuring more frequent electorate review of the members' performances. The Convention ultimately retained the four-year senatorial and two-year representative terms specified in the 1850 Constitution. Both the Constitution Review Commission of the 1950s and the Constitution Revision Assembly of 1964-66 proposed six-year terms for Senators and four-year terms for Representatives, with approximately one-third of the Senate members and one-half of the House members to be elected every two years. Both bodies offered their proposals with the goal of providing Kentucky with more experienced legislators, and the Revision Assembly expressed the additional aim of establishing greater legislative continuity.[8] The Special Commission on Constitutional Review, created in 1987, recommended no change in legislators' terms.

The Size of the Legislature

In contrast to the 1850 and 1891 Constitutions, those of 1792 and 1799 established a minimum and maximum, rather than a fixed number, of House and Senate members. Apparently in anticipation of increases in the population and number of qualified voters to be represented, the 1792 Constitution prescribed from forty to one hundred Representatives, while Kentucky's second Constitution required no fewer than fifty-eight and no more than one hundred. In both early Constitutions the minimum number of Senators, eleven in 1792 and twenty-four in 1799, was established, with the actual membership of the Senate to be increased in proportion to the number of Representatives added to the House.

While state Senates are traditionally smaller than state Houses, there is considerable variation among the states in the size of each chamber. The National Municipal League's Model State Constitution permits each state to specify the number of legislators it desires; however, the League recommends that state Constitutions, like Kentucky's first two, establish a minimum and maximum number of members.[9]

The average size of current American state legislatures is about 150, somewhat larger than Kentucky's 138-member General Assembly. The smallest state legislature is Nebraska's 49-member unicameral body, and the largest is New Hampshire's, with 424 members. State Senates range in size from twenty in Alaska to Minnesota's sixty-seven members. The smallest state House is that of Alaska, with forty members, while New Hampshire elects four hundred Representatives.[10]

A state's determination of the proper size of its legislature and of each chamber requires a balancing of the greater efficiency and economy attributed to small bodies with the closer legislator-constituent contact that larger bodies may permit. States vary substantially in the size of the constituency each legislator serves, with the variation partly due to differences in state populations and to the existence of multi-member legislative districts in one or both chambers of twenty-three states.

Legislative Districts

The 1891 Constitution was the first of Kentucky's four Constitutions to base legislative districts on population, as opposed to a state enumeration of qualified voters; and, to a greater extent than the preceding constitutions, it emphasizes equality of population over the representation of political subdivisions and territory. The use of population was apparently a response to the difficulty of accurately counting the number of qualified voters, since voters were not registered, compared to the availability of U. S. Census of Population data. In contrast, the current Constitution's compromised emphasis on the criterion of equality in district populations was the result of sometimes heated debate among the delegates.[11]

The 1890-91 Convention considered, but ultimately rejected, proposals to provide an alternative method of reapportioning legislative districts should the General Assembly continue to fail to redistrict the state at the intervals specified in the state Constitution. Those non-legislative officers or bodies proposed to perform this duty included a committee composed of the Governor, Attorney General, Secretary of State, Auditor of Public Accounts, and Commissioner of Agriculture, Labor and Statistics; or a Board of Apportionment composed of five persons appointed by the Governor; or the Judges of the Court of Appeals. The argument that reapportionment was properly a legislative function triumphed, however.[12]

The issue of state legislative reapportionment, which generated such extensive debate in 1890-91, continued to be a controversial subject in state legislative and judicial chambers after the Constitution was adopted and, more recently, has been an issue in federal courtrooms.

The pre-1890 pattern of Kentucky's General Assembly failing to reapportion the state at the required intervals continued into the twentieth century, although new reapportionment plans were developed in both the 1960s and 1970s. Between 1891 and 1955, the General Assembly passed only five of the seven constitutionally prescribed redistricting laws, of which those of 1906 and 1930 were invalidated by the state Court of Appeals on constitutional grounds. Only those passed immediately after adoption of the Constitution and in 1918 and 1930 became effective.[13]

The competing criteria for legislative districts debated by the 1890-91 Convention delegates of population versus political subdivisions and territory also extended into the present century. The Kentucky Court of Appeals, in invalidating the 1906 redistricting plan, held that the constitutional prohibition against joining more than two counties in a representative district was secondary to the equal population requirement.[14] However, the prohibition against splitting counties in forming legislative districts continued to be followed in forming legislative districts through the 1963 reapportionment act. Partly as a result, substantial population inequalities continued to exist in the 1960s. For example, the largest Senate and House districts contained approximately twice the population of the smallest districts in their respective chambers.[15]

In 1971 and 1972, when the General Assembly again wrestled with the reapportionment issue, both the players and the rules of the game had changed. In 1962 the United States Supreme Court had ruled that the Equal Protection Clause of the federal Constitution and federal court jurisdiction extended to state legislative reapportionment controversies.[16] In subsequent decisions

during the 1960s, the Court had established and elaborated upon the supremacy of the one person, one vote standard over other considerations in forming state legislative districts. Based on these decisions, in 1971, a U. S. District Court declared Kentucky legislative districts to be malapportioned and further ruled that those provisions of Kentucky Constitution Section 33 prohibiting the division of counties violated the Fourteenth Amendment to the U. S. Constitution.[17] A 1971 Extraordinary Session reapportionment act was later declared unconstitutional because efforts to preserve county boundaries by splitting a few counties had resulted in violations of the one man, one vote standard.[18] The 1972 General Assembly enacted redistricting plans that divided even more counties. (KRS 6.011 and 6.031.) The findings of the 1980 and 1990 federal censuses resulted in further reapportionment of Kentucky's legislative districts.

The Kentucky General Assembly is responsible for legislative reapportionment. In some other states, by constitution, statute, or court decision, the most recent reapportionment of state legislative districts has been completed by non-legislative officers or bodies, including state and federal courts.[19] Constitutional revision efforts of the 1950s and of 1964-66 both retained the concept of reapportionment as a legislative function, but each proposed creating an advisory body to prepare reapportionment plans to be submitted to the General Assembly.[20] The sixth edition of the National Municipal League's model constitution, prepared and revised during the one man, one vote controversies of the 1960s, would vest principal redistricting authority in the Governor and an advisory board, subject to state judicial review; and, if the Governor should fail to act, the state Supreme Court would reapportion legislative districts. The League bases its proposal on the failure of many state legislatures "to establish equitable systems of legislative representation," and on what it considers to be an "illogical system in which legislators are the judges and juries in a matter of highest importance to themselves."[21]

Legislative Organization and Procedure

While state legislatures have the inherent power to govern their own proceedings, this power and the organization of the legislative branches of state governments are subject to constitutional restrictions and prohibitions.[22]

Section 36 of the Constitution limits the General Assembly to one organizational session, not to exceed ten legislative days, in January of odd-numbered years beginning in 1983, and one sixty-day regular session to convene in January of even-numbered years. The sixty days of the regular session are to be calendar days, excluding Sundays, legal holidays, and days when neither the House nor the Senate meets. No regular session may extend beyond April 15 of the year in which it is convened. (Sections 36 and 42.) Because the General Assembly is given flexibility in scheduling its meeting days between January and mid-April, it can recess while the Governor considers whether to veto bills it has passed and then reconvene to consider whether to override or sustain the Governor's vetoes.

Extraordinary, commonly called special, legislative sessions may be called by the Governor. While in special session, the General Assembly is prohibited from considering any subject that is not included in the Governor's special session proclamation. No limit is placed upon the length of special sessions, however; and the Governor may not adjourn an extraordinary session unless the two chambers of the legislature fail to agree on an adjournment time. (Section 80.)

Each chamber of the General Assembly may determine its own rules of procedure, within the limits established by the Constitution. (Section 39.) No fewer than a majority of the members of each chamber, fifty-one Representatives and twenty Senators, is necessary to conduct legislative business; but fewer members in each chamber may adjourn each day and compel absent members to attend. (Section 37.) Neither chamber of the General Assembly may adjourn for more than three days without the consent of the other chamber. (Section 41.)

The House of Representatives and Senate choose their own officers. (Section 34.) The presiding officer of the House of Representatives, the Speaker of the House, is a Representative selected by the members of the House. Under the second, third, and fourth Constitutions, the Lieutenant Governor presided over the Senate. However, an amendment approved in 1992 removed the Lieutenant Governor from that role and required the Senate to elect a President of the Senate from its membership. That was first done in 1993.

The President of the Senate both presides over the Senate and becomes acting Governor if both the Governor and Lieutenant Governor die, are disabled, are removed, or if they resign. (Section 85.) The President of the Senate receives for this service the same compensation the Speaker of the House receives as presiding officer of that chamber. (Section 86.)

The Constitution prohibits the House of Representatives from electing, appointing, employing, or paying for more than one chief clerk, one assistant clerk, one enrolling clerk, one sergeant at arms, one doorkeeper, one janitor, two cloakroom keepers, and four pages. The Senate is limited to a chief clerk, assistant clerk, enrolling clerk, sergeant at arms, doorkeeper, janitor, cloakroom keeper, and three pages. The per diem compensation or salary of these employees is established by general law. (Section 249.)

The Kentucky General Assembly, like nearly all other state legislatures, has created a legislative service agency. The Kentucky Legislative Research Commission (LRC), composed of the members of the House and Senate in leadership positions, organizes and authorizes legislative study of policy issues during the eighteen months between regular legislative sessions. (KRS Chapter 7.) The Commission is authorized to hire a director and other staff to draft bills and perform policy research for the General Assembly. By House and Senate rules, the LRC supplies staff assistance to the General Assembly during sessions, at the request and under the supervision of the Committee on Committees of each chamber.[23]

An interim body to assist the legislative branch was first established in Kentucky in 1936 and has gone through several significant changes in form and structure since that time.[24] In 1968, by House and Senate rules, the parallel standing committees of the two chambers were constituted as joint interim subcommittees of the LRC upon final adjournment. Since that time, the direct involvement of members of the General Assembly in the study and preparation of legislation has increased substantially. During the 1990-91 interim, 143 LRC committees and subcommittees, including 16 joint interim committees and task forces, their subcommittees, 21 interim special committees, their subcommittees, and four statutory committees together conducted a total of more than 785 meetings.[25]

Bills in the General Assembly

The Constitution establishes several requirements concerning the form of laws enacted by the Kentucky General Assembly. Each bill must contain an enacting clause reading, "Be it enacted by the General Assembly of the Commonwealth of Kentucky." (Section 62.) Bills passed without this clause have been ruled void.[26] However, a slight difference in the words prescribed for the enacting clause, such as substituting Legislature for General Assembly, will not necessarily invalidate a law.[27]

In addition to the enacting clause, each piece of legislation must contain a title, indicating the subject of all matters in the bill or resolution. No bill may relate to more than one subject, as expressed by its title. (Section 51.) If a bill proposes to change an existing law, it must contain the text of that law and not simply the title of the act to be amended. (Section 51.) The purpose of the constitutional requirements concerning the contents of legislation, which are also found in other state constitutions, is to give both legislators and the public adequate information about the matters actually being considered by the General Assembly.

In addition to the constitutional requirements of an enacting clause, an appropriate title, single subject matter, and the full text of any new or revised law, certain taxation and revenue measures must meet additional constitutional mandates. Indicative of 1890-91 concerns over taxation and the management of public funds, all laws authorizing the state or its political subdivisions to borrow money must state the purpose for which the funds are to be used. (Section 178.) Every act of the General Assembly that levies a tax must state the purpose for which the tax is imposed. (Section 180.)

The process of lawmaking is governed by constitutional requirements, as well as the rules of each chamber of the General Assembly. In order to be considered for final passage, a bill must first be reported by a committee and printed for the legislators' use. To assure adequate time for consideration and notice of bill contents, each piece of legislation is to be read in full on three different days in each chamber of the General Assembly. However, a majority of the members elected to the chamber considering the measure may waive the second and third readings of the entire bill and order it read only by its title. (Section 46.) Because modern printing techniques permit each legislator to have a copy of a bill soon after it is introduced, bills are not actually read in full to the entire General Assembly.

If the committee to which a bill is referred fails or refuses to report the measure within a reasonable amount of time, it may be called from the committee and considered as though it had been reported. (Section 46.) Under the 1993 House and Senate rules of procedure, one of the thirty-eight senators and twenty-five of the one hundred representatives may petition their respective chambers to discharge a bill from a committee; however, the consent of a majority of the members elected to the appropriate chamber must be obtained in order to consider a discharged bill as though it had been reported by the committee.[28] As a practical matter, discharge petitions are infrequently filed in the Kentucky General Assembly and, when filed, are rarely successful.

In order to become law, all bills must be passed by a majority of the members who vote on the question of passing them, but no fewer than two-fifths of each chamber (Section 46), subject,

of course, to the requirement that no fewer than fifty-one House members or twenty Senators be present. (Section 37.) Three types of bills require the favorable vote of a majority of the members elected to each chamber of the General Assembly: those appropriating money or creating a debt (Section 46), those proposing to call a constitutional convention (Section 258), and emergency measures that need to become effective immediately. (Section 55.) Any bill which contains an emergency clause must provide adequate reasons for the emergency. Such bill then becomes effective upon its passage and being signed by the Governor. Under Section 55, bills do not become law until 90 days following adjournment of the session at which they are enacted unless they contain an emergency clause or have a specified effective date.

The Constitution requires each chamber of the General Assembly to keep and publish a daily journal of its proceedings. (Section 40.) The journals must contain all votes on the final passage of bills, on proposals to override the Governor's veto, and on proposals to amend the Constitution or to call a convention for that purpose. (Sections 46, 88, 256, and 258.) Other matters that must be recorded in the journals include the presiding officer's signing of bills and the reasons justifying enactment of an emergency measure. (Sections 55 and 56.) Any two members may require that the vote on any question be placed in the journal. (Section 40.)

The authority of each member of the General Assembly to vote on matters before his or her chamber is limited by one provision of the Constitution. In recognition of the fact that Kentucky legislators are part-time officials who may have private interests that conflict with those of the general public, the Constitution requires a member with a personal or private interest in any measure proposed or pending before the General Assembly to disclose that fact to the other members of his or her chamber and abstain from voting on the measure. (Section 57.) The penalty prescribed by the Constitution for failing to disqualify oneself in such instances is the threat of temporary expulsion. Each chamber of the General Assembly has the power to expel a member by a two-thirds vote, but only once for the same reason. (Section 39.)

Once a bill has been passed by each chamber of the General Assembly, it must be reproduced in its final form and read to determine that it is accurate, a process called enrollment. The bill is then signed by the presiding officer in each chamber as certification of its accuracy and passage. The clerk of the chamber whose presiding officer first signs the bill must then deliver it to the Governor. (Section 56.) Most bills and resolutions which require the concurrence of both houses are subject to review and approval by the Governor. Exceptions are proposed state constitutional amendments (Section 256), tax measures referred to the voters under Constitution Section 171, adjournment resolutions, and resolutions approving a proposed amendment to the United States Constitution.

Once a bill has been delivered to him, one of the constitutional legislative powers of the Governor commences. He is given ten days, excluding Sundays, in which to sign a bill, allow it to become law without his signature, or veto the bill. In most instances the Governor must either approve or veto the entire measure; however, he may veto any part of appropriation bills "embracing distinct items," a provision commonly called a line item veto. (Section 88.)

If the Governor vetoes a bill or part of an appropriation bill, and if the General Assembly is still in session, he must return it to the General Assembly with a statement of his objections. The

vetoed bill is returned to the chamber where it was introduced, and that chamber must record the Governor's objections in its journal and then proceed to reconsider the bill. A majority of the members of each chamber may vote to override the Governor's veto, in which case the bill becomes law. If the Governor vetoes a bill after the General Assembly adjourns, the bill is defeated, and the Governor's statement of objections, or "veto message," is to be placed in a register maintained by the Secretary of State. (Section 88.)

The majority of legislation proposed to the General Assembly may be introduced by either a Senator or a Representative. However, bills raising revenue may only originate in the House of Representatives, although the Senate may amend such bills, so long as the amendment relates to raising revenue. (Section 47.)

Powers of the Legislative Branch

In recent years, the concept of legislative power has gone through a remarkable evolutionary process. The General Assembly, which had traditionally been viewed as a relatively weak institution when compared to the extremely powerful Governor, has taken on a new identity shaped by a sense of independence and freedom. The journey toward legislative independence has been a deliberate one, characterized by conflict and controversy.

As a result of its new-found independence, the 1982 General Assembly enacted several statutes which altered the relationship between the legislative and executive branches, vesting a great deal of authority in the Legislative Research Commission. KRS 7.090 was amended to recognize the LRC as "an independent agency of state government . . . which is exempt from control by the executive branch and from reorganization by the Governor . . . ."[29] Specifically, the General Assembly enacted legislation which authorized the LRC to exercise veto power over administrative regulations issued by the executive branch; to provide pools of candidates from which the governor was to select appointees to executive agencies; to approve federal block grant applications; to effect reductions in the state budget during the interim; and to approve or disapprove executive reorganization orders issued by the Governor.[30]

Many of these statutes were vetoed by Governor Brown, but those vetoes were overridden by the legislature. This led to a declaratory judgment action filed by the LRC regarding the constitutionality of these statutes. The decision in *LRC v. Brown* basically reaffirmed the doctrine of separation of powers and clarified the role it deemed appropriate for the LRC within the parameters of that concept. (For a detailed discussion of *LRC v. Brown,* see Chapter IV.)

The Kentucky Constitution grants five types of powers to the General Assembly: lawmaking, judicial, executive, supervisory, and constitutional revision. The following summary of legislative powers follows the LRC Research Report No. 43,[31] except where revised to reflect later constitutional developments or otherwise indicated.

Lawmaking Powers

By virtue of being given the Commonwealth's legislative powers, the General Assembly is permitted to enact laws not otherwise prohibited by the federal or state Constitutions. (Section 29.) The General Assembly may not delegate this power by passing a law to take effect on approval of any other authority, with limited exceptions. (Section 60.)

The 1891 Constitution contains numerous restrictions on the lawmaking powers of the General Assembly. The most basic limits are those defined by the Bill of Rights (Sections 1-26), in keeping with the principle that "absolute and arbitrary powers over the lives, liberty and property of freemen exists nowhere in the republic, not even in the largest majority." (Section 2.) Legislative infringement of private rights is also prohibited by specifications that the General Assembly may not limit the amount to be recovered for injury or death or restrict the right to at least one appeal of a court decision, except a judgment dissolving a marriage. (Sections 54 and 115.) A second major category of constitutional limits on the lawmaking powers is the prohibitions against special and local legislation. (Sections 59 and 60.)

The Constitution assigns various specific duties to the General Assembly, subject again to restrictions on the way it exercises its powers. The primary constitutional duties of the General Assembly and limits on its powers concerning revenue and debt, public officers, judiciary, local government, elections, education, and others are included below.

Revenue and Debt. The General Assembly, by general law, is to provide for a tax to meet the Commonwealth's expenses. (Section 171.) No money may be taken from the State Treasury except under an appropriation of money made by law. (Section 230.) However, in exercising its control over the amount and use of state funds, the General Assembly may not:

1. Surrender or suspend the power to tax property (Section 175);

2. Give or lend the credit of the Commonwealth (Section 177);

3. Contract debts exceeding $500,000, except to repel invasion or suppress insurrection (Section 49);

4. Pass an act authorizing debt unless provision is made to discharge the debt in 30 years, and the act is approved by the voters (Section 50);

5. Release any debt owed to the Commonwealth or any county or city (Section 52);

6. Audit or allow any private claim against the Commonwealth, except for expenses incurred during the session at which the claim is allowed, but it may appropriate funds to pay claims audited and allowed by law (Section 58);

7. Tax the bonds of the state, local governments, or taxing districts (Section 171);

8. Provide taxes, except for public purposes (Section 171); or

9. Allow taxes that are not uniform on all property of the same class within the territorial limits of the authority levying the tax (Section 171).

Public Officers While the General Assembly may pass laws relating to the appointment, duties, terms, compensation, and bonds of public officers, it may not:

1. Change the salaries of public officers during their terms or provide compensation above specified limits (Sections 235 and 246);

2. Compensate state constitutional officers by any method except a salary (Section 96); or

3. Grant state officers terms exceeding four years (Section 93).

Judiciary. While the General Assembly has authority to review and determine the budget of the Court of Justice; the appellate jurisdiction of Circuit Courts and limited jurisdiction of District Courts; the composition of Supreme Court districts; the number of Court of Appeals, Circuit and District Judges; the compensation of justices and judges; and the terms of members of judicial nominating commissions (Sections 110-120), it may not:

1. Alter the number of Court of Appeals or Circuit Judges without certification of necessity from the Supreme Court (Sections 111 and 112);

2. Alter the number of District Judges, after it first sets the number, without Supreme Court certification of necessity (Section 113);

3. Reduce, increase or rearrange judicial circuits or districts unless the Supreme Court certifies a change is necessary (Sections 112 and 113); nor

4. Deprive any judicial district of a judge (Section 113).

Local Governments. While the General Assembly shall provide by law for the organization, government, and powers of cities; may permit local governments to levy taxes; and may create and abolish counties (Sections 63, 156, 166, and 181), it may not:

1. Enact laws concerning the powers and organization of cities that are not uniform for and within each constitutional class of cities (Section 156a);

2. Form counties containing fewer than 12,000 people and less than 400 square miles, or divide counties or strike territory from them (except to create a new county) unless approved by a majority of the county voters who vote on the question (Sections 63 and 64); nor

3. Impose taxes for the purposes of any political subdivision (Section 181).

Elections. While the General Assembly is to provide by general law for the conduct of elections (Section 153), it may not provide for holding elections more than once per year, except those specified in the Constitution (Section 148). Prior to the adoption of an amendment to Section 148 in 1992, no local officers, except members of municipal legislative boards, could be elected in the same year as U.S. Congressmen. However, the adopted amendment required all elections to be held in even-numbered years, except those for statewide-elected state officers, which will continue to be held in Kentucky in one odd-numbered year of a four-year election cycle, beginning in 1997.

Education. In providing for "an efficient system of common schools' (Section 183), the General Assembly may not:

1. Distinguish between "white and colored" children in distributing school funds, but must maintain separate schools for them (Section 187);

2. Use any fund or tax to aid any church, sectarian, or denominational school (Section 189); nor

3. Use School Fund money for anything but maintenance of the public schools (Section 186).

Other. In passing laws governing public and private activities in Kentucky, the General Assembly may not:

1. Permit any common carrier to contract for relief from its common law liability (Section 196);

2. Permit foreign corporations to transact business in Kentucky under more favorable conditions than corporations organized under Kentucky law (Section 202);

3. Provide for printing and binding of public documents other than by contract to the lowest responsible bidder (Section 247); nor

4. Allow the employment of convicts outside the penitentiary, except on state public works, roads, and bridges, and state farms (Section 253).

Many of the lawmaking powers and restrictions described above have been subject to federal and state court interpretation and modification. For example, the requirement to maintain separate schools for children of different races has been declared unconstitutional by a federal court,[32] and, as previously noted, the constitutional limit on public officers' compensation has been modified under a decision of the state's highest court.[33]

Other sections of the Constitution, not cited above, operate to restrict the lawmaking powers of the General Assembly by implication. For example, the General Assembly may not statutorily abolish an office established by the Constitution, nor may it strip a constitutional office of so many duties that it becomes only an "empty shell."[34]

Judicial Powers

The judicial power of Kentucky is vested in the Senate when it sits as a court of impeachment, one common constitutional exception to the separation of powers principle. (Section 109.) The Governor and all other civil officers are liable to impeachment by the House of Representatives for misdemeanors in office, but they may not be convicted and removed from office without the concurrence of two-thirds of the Senators present. (Sections 66-68.) When it sits as a court of impeachment, the Senate is not subject to the 60-day limit imposed on regular legislative sessions. (Section 42.)

The power to judge contested elections for Governor and Lieutenant Governor is also a quasi-judicial duty that the Constitution assigns to the legislative branch. (Section 90.)

Executive and Supervisory Powers

The power to grant pardons is traditionally an executive function, which the Kentucky Constitution generally vests in the Governor. However, only the General Assembly may grant a pardon for treason, although the Governor may give a temporary reprieve in such instances. (Section 77.) Treason against the Commonwealth is defined in Section 229, which paraphrases the federal Constitution. Although many state constitutions contain similar treason provisions, there have been few attempts at prosecution. Also, the question as to whether treason can be committed against an individual state without also being committed against the United States has been answered differently, depending to some degree upon how the state Constitution defines treason.[35]

The 1891 Constitution instructs the Governor to see that the laws are "faithfully executed," but it assigns certain supervisory duties to the legislative branch. The General Assembly must provide for monthly investigations of the accounts of the State Treasurer and Auditor of Public Accounts, and the Governor is to transmit reports of these investigations to the General Assembly "for scrutiny and appropriate action." (Section 53.) The Governor must, from time to time, give the General Assembly information on the state of the Commonwealth, which he traditionally does in an address to the General Assembly early in its regular sessions. (Section 79.) The Constitution directs the Secretary of State to register all the Governor's official acts and present the register and related documents to either chamber of the General Assembly on request. (Section 91.) The General Assembly is to provide by general law for depriving a person of office who is guilty of fraud, intimidation, bribery, or any other corrupt practices, and for deductions from public officers' salaries for neglect of their official duties. (Sections 151 and 235.)

The Constitution, Section 209, required the Governor to obtain the advice and consent of the Senate in appointing the first State Railroad Commissioners, who were subsequently to be elected. The 1792 and 1799 Kentucky Constitutions assigned the Senate general and continuing "advice and consent" powers over appointments by the Governor; and they directed the General Assembly to appoint the State Treasurer. With the advent of biennial legislative sessions, the usefulness of the advice and consent provisions declined, although they continued to appear in general state laws governing appointments into the twentieth century. The power of the General Assembly to require the Governor to seek the Senate's consent to appointments has been upheld by Kentucky courts and an amendment adopted in 1992 granted the Senate specific advice and consent powers over gubernatorial appointments;[36]but the General Assembly may not appoint executive branch officers directly.[37] Currently, members of the Board of Tax Appeals (KRS 131.315) are appointed subject to Senate confirmation. Appointees to the Lottery Board, the Energy Regulatory Commission, and the Utility Regulatory Commission must be confirmed by the Senate, or by the Interim Joint Committee on State Government, if the Senate is not in session. (KRS 278.050.) In November, 1980, Governor John Y. Brown, Jr., combined the Energy and Utility Regulatory Commissions into one Public Service Commission, subject to the General Assembly's approval.[38] The qualifications required of members of the new commission are the same as those prescribed by KRS 278.050. Appointees to the State Board for Elementary and Secondary Education must be confirmed by both the Senate and the House of Representatives, pursuant to KRS 156.029.

Constitutional Revision Powers

The amendment of Kentucky's Constitution requires both legislative action and approval by the voters. (Sections 256 and 258.) The power of the General Assembly to propose constitutional changes, by convention or amendments, is restricted, however, by the requirement that two succeeding sessions of the General Assembly agree to propose calling a convention and by the prohibition against proposing more than four amendments at one time.

Other chapters of this report discuss the effects of constitutional limits on the General Assembly's lawmaking authority in various subject areas. Examples of the way in which three constitutional provisions have affected Kentucky's laws on issues of recent interest may be helpful in weighing the pros and cons of constitutional revision.

One section of the Constitution that has had a substantial impact on the lawmaking process is Section 54, which prohibits the General Assembly from limiting the amount a person may recover for injury to himself or his property or for death. Although there is no extensive discussion of this provision in the *Debates of the 1890-1891 Constitutional Convention,* the delegates who delivered the report containing them explained that:

> The Legislature has, perhaps, in some cases, put a limit on the amount to be recovered for damages by railroad accidents to persons resulting in death or injury to person or property. This section forbids the General Assembly from putting any limit upon the amount of damages to be recovered, leaving it to the jury.[39]

The 1987 Special Commission on Constitutional Review recommended that Section 54 be amended to allow the General Assembly to limit the amount that may be recovered for "noneconomic loss, punitive damages and all other nonpecuniary damage" arising from injuries to one's person or property or leading to his death.[40]

It is at least partly due to Section 54 that Kentucky does not require employees to accept coverage of the state workers' compensation law, does permit citizens to reject no-fault insurance coverage, and places no limit on the amount that may be awarded in medical malpractice suits. The section was cited by the Kentucky Court of Appeals in ruling that the 1914 compulsory workers' compensation law was unconstitutional.[41] While other states have enacted compulsory no-fault insurance laws and have responded to the health care malpractice insurance problem by limiting the amount of awards in such cases, the Kentucky General Assembly has rejected these options, in part on constitutional grounds. A constitutional amendment allowing the legislature to enact a compulsory workers' compensation law was proposed in 1942, but defeated.[42] Both the Constitution Review Commission and the Constitution Revision Assembly proposed to amend Section 54 to permit enactment of a compulsory workers' compensation statute.[43] The work of these two groups preceded the growth of interest in no-fault insurance and the medical malpractice issue and did not address these subjects.

Section 253 of the Constitution, prohibiting the working of convicts outside of the penitentiary, except on certain public projects, was adopted in 1891 in the interest of protecting prisoners from exploitation and other laborers from competition of cheaper convict labor.[44] In 1899 the Court of Appeals held that Section 253 did not prohibit Kentucky from having a law

allowing prisoners to be paroled.[45] However, a 1972 work-release law, permitting voluntary employment of prisoners outside detention centers during the day, was held in violation of this section.[46] The Constitution Review Commission recommended repealing Section 253 as a matter which should be, and can be safely left to the General Assembly, and the Revision Assembly agreed that the section should be deleted.[47]

Section 226 of the Constitution, prohibiting lotteries and gift enterprises, was the basis for court invalidation of a 1970 state law allowing cities to license the game of bingo for charitable, educational, patriotic, and religious purposes.[48] Section 226 is also the basis for Attorney General's opinions that a 1980 law exempting certain types of charitable gaming activities from criminal penalties is unconstitutional. (Opinions of the Attorney General 80-408 and 80-409.) However, relying on the debates of the 1891 Constitutional Convention, the Court of Appeals ruled that parimutuel betting on horse racing is not a lottery within the meaning of Section 226.[49] The new Constitution proposed in 1967 would have retained the prohibition against lotteries and gift enterprises. Although most members of the Revision Assembly reportedly agreed that it was legislative in nature, "retention was based on the assumption that deletion might be viewed as favoring a state sweepstakes."[50]

The 1988 General Assembly passed legislation which placed before the people the following question:

> Shall Section 226 of the Constitution be amended to provide that the General Assembly may establish a Kentucky state lottery; may establish a state lottery to be conducted in cooperation with other states; and that any lottery so established shall be operated by or on behalf of the Commonwealth of Kentucky?[51]

The voters overwhelmingly approved the amendment in November, 1988, by a vote of 694,577 to 446,937, ending years of debate, and opening the door for the General Assembly to begin work on legislation to actually put the lottery into operation. In extraordinary session the next month, the General Assembly enacted legislation to establish a state lottery to be administered by a lottery corporation, the only entity of its kind in the United States.

The issue of whether charitable gaming was legal in Kentucky resurfaced in 1990, when the General Assembly enacted laws which came to be known as the "Charitable Gaming Act" (KRS 528.130 and KRS 528.140). These statutes supplemented an amendment passed in 1980 to KRS 528.010, the definitions section for the gambling laws, which had defined charitable gaming and provided that persons conducting charitable gaming would be exempt from prosecution for illegal gambling. The Charitable Gaming Act provided that persons conducting charitable gaming could use their charitable status as a defense to a gambling prosecution only if the organization they represented was registered with the county clerk and met other requirements of the law, including holding a tax exemption under federal law as a charitable, religious, or fraternal organization for at least five years prior to conducting charitable gaming, abiding by limitations on the frequency with which charitable gaming was offered, limiting the maximum prize to $5,000, and abiding by certain accounting and record keeping requirements.

In 1991, four persons conducting charitable gaming in Simpson County were charged with illegal gambling and asserted the charitable gaming defense that was allowed under the law to their prosecution. The Simpson Circuit Court dismissed the indictments against the charitable gaming operators, but ruled that the "Charitable Gaming Act" was unconstitutional, since it permitted charitable lotteries and gift enterprises to be conducted, but Section 226 of the Kentucky Constitution authorized only the operation of a state lottery and not other types of lotteries and gift enterprises.

In response, the General Assembly proposed an amendment to Section 226 in 1992 to authorize the enactment of laws which would permit charitable gaming. Further, the amendment provided that if the General Assembly enacted laws permitting charitable gaming, they must:

1. Define what constitutes a charity or charitable organization;

2. Define the types of charitable lotteries and charitable gift enterprises which may be engaged in;

3. Set standards for the conduct of charitable lotteries and charitable gift enterprises by charitable organizations;

4. Provide for means of accounting for the amount of money raised by lotteries and gift enterprises and for assuring its expenditure only for charitable purposes;

5. Provide suitable penalties for violation of statutes relating to charitable lotteries and charitable gift enterprises; and

6. Pass whatever other general laws the General Assembly deems necessary to assure the proper functioning, honesty, and integrity of charitable lotteries and charitable gift enterprises, and the charitable purposes for which the funds are expended.[52]

The voters overwhelmingly approved the amendment in November, 1992, by a vote of 777,373 to 324,824. A study of charitable gaming has been conducted by the LRC staff to ascertain the necessary regulatory controls which should be placed on permitted types of charitable gaming and a law to implement the provisions of the amendment will be considered at some future extraordinary or regular session of the General Assembly.

Historical Background of Legislative Procedure

Although somewhat more restrictive than those of Kentucky's third Constitution, the provisions of the 1891 Constitution governing the contents of laws and the procedures by which they are enacted are similar to those of prior Kentucky Constitutions and Constitutions of other states. Procedural and legal form requirements added in 1891 included the provisions for an enacting clause, for setting forth amended laws at length, and for enrollment of bills and the presiding officers' signatures on bills. The 1891 Constitution was Kentucky's first to allow the Governor to exercise the line item veto on appropriation measures. The 1850 Constitution did not specify that bills vetoed after legislative adjournment were defeated, probably because there was no absolute limit on the length of the General Assembly's biennial sessions.

The principal procedural and organizational changes in 1891 were those concerning the organization of the legislative branch and, in particular, the length of its regular sessions. The delegates to the 1890-91 Constitutional Convention said that the people of Kentucky felt that they were burdened by special legislation, laws written to apply only to specific individuals or localities. The special and local laws passed by recent legislative sessions were frequently criticized during the Convention proceedings and constituted the first item mentioned by the Convention Address transmitting the proposed new Constitution to the voters.

Because of the volume of special and local legislation, the General Assembly sessions prior to 1891 had been extended well beyond the basic sixty days prescribed in 1859, under the Legislature's authority to do so by two-thirds vote of each chamber. The 1889-90 General Assembly reportedly lasted 149 days, "with cost to the state in printing of $17,223.65, and in other respects $151,014.82."[53] In the interests of economy and the reduction of the number of state laws, the 1890-91 Convention proposed to curtail the flow of special and local laws. Having done so, the delegates concluded, there was no longer any need for the General Assembly to be able to extend its biennial sixty-day sessions; and the authority of the Governor to call extraordinary sessions should suffice in the event of an emergency.

A second change in the organization of the legislative branch adopted in 1891 was the limit on the number of employees that each chamber of the General Assembly might employ. Todd County delegate H. G. Petrie, in proposing current Constitution Section 249 to the Convention, characterized the legislative method of hiring clerks, doorkeepers, and other such officers as a burden to General Assembly members. In favor of a constitutional limit, he argued:

> When this Convention has fixed the number, they will be employed without the trouble of log-rolling for these minor positions, and they will save at least $10,000 or $15,000 a year. Do the economists say that is a trivial matter, not to be considered at all? If we are entering upon a system of economy, why not start right here? Here is a place where we can cut off and do no harm, and here we can save the members of the General Assembly from very unpleasant annoyance.[54]

Past Revision Efforts

The procedures of the General Assembly have not been a subject of active constitutional revision efforts in Kentucky, although the 1964-66 Constitution Revision Assembly proposed that the Constitution be revised to replace the required three readings of bills at length with a required three readings by number and title, and to require that amended sections of a law, rather than the "law" in its rather indefinite entirety, be set forth at length in bills.[55] In contrast, the organization of the General Assembly has been a matter of active revision efforts, none of which succeeded until 1979.

The constitutional limitation on the number of House and Senate employees generated substantial discussion during the debate over calling a constitutional convention in the late 1940s. One proponent of a convention labeled Section 249 "the most flagrant case of the

inclusion of minute detail in the Constitution," noting that the single-door chambers in the Old Capitol were replaced by five-door House and three-door Senate chambers in the present Capitol, outmoding the prohibition against hiring more than one doorkeeper for each chamber.[56] An opponent of calling a convention answered that the proponent's argument was hardly more than "a considerable contribution to the paper shortage," in that "all that is necessary is to interpret the Constitution in the light of 1947" and provide one doorkeeper for each door to the legislative chambers.[57]

A 1950 proposal by the Constitution Review Commission to permit employment of one doorkeeper per door was not presented to the voters.[58] The 1967 proposed Constitution, prepared by the Review Assembly, would have repealed Section 249 entirely. Without limiting the General Assembly's authority to employ other personnel, the 1967 proposal established a constitutional legislative auditor titled the "Inspector and Examiner."[59] The 1987 Special Commission on Constitutional Review recommended that the General Assembly be allowed to provide for the employment of "such personnel necessary for the operation of the General Assembly, whether in session or not."[60] It also proposed that the General Assembly be permitted to appoint an Inspector and Examiner.[61]

Prior to 1979, no constitutional amendment to alter the compensation of Kentucky legislators was proposed to Kentucky voters, although their maximum salary limit, like that of other public officers, was increased by an amendment to Section 246 of the Constitution, ratified in 1949. The proposed Constitution defeated in 1967, like the National Municipal League's Model State Constitution, would have substituted an annual salary, fixed by law, for the per diem method of compensating legislators.[62]

Three proposals to reestablish annual regular legislative sessions, provided by Kentucky's first two Constitutions, have been presented to the voters as constitutional amendments in 1969 and 1973, and as part of the proposed new Constitution in 1967 and have been defeated each time. While each was designed to permit greater flexibility and time in scheduling legislative business, the proposals differed in detail. The 1964-66 Review Assembly would have established sixty-day annual legislative sessions, excluding Saturdays, Sundays and legal holidays, but permitted two-thirds of the members of both chambers to elect to meet in an extended session of thirty days, subject to mandatory final adjournment by June 30. Sessions would have begun in January of each year, except that they would have convened in March in the year immediately following election of the Governor, in order to allow a newly-elected Governor additional time to prepare a budget and other proposals to the General Assembly. Special sessions were retained in the Constitution proposed by the Review Assembly; but the Governor would have been empowered to limit the length of, as well as the subjects considered during, a special session.[63] The proposed constitutional amendment of 1969 also prescribed sixty-day annual sessions but defined a legislative day as one on which at least one chamber was in session. The 1973 proposal called for forty-five-day annual sessions and permitted the General Assembly to spread the forty-five days over a five-month period, which could be extended to six months by two-thirds vote of each chamber. Special session provisions were not altered by the proposed amendments.[64] The Constitution Review Commission of the 1950s proposed to continue biennial sessions of sixty days but suggested that the General Assembly be authorized to extend a regular session to ninety days by a two-thirds vote.[65] The 1987 Review Commission did not recommend annual sessions.

Although, as of 1991, forty-three of the fifty state legislatures are permitted to meet annually,[66] the majority of Kentucky voters in the recent past have been persuaded by arguments against annual sessions of the General Assembly. The arguments for annual sessions in Kentucky have centered on potential improvements in the quality of legislation, resulting from a more manageable workload; increased competence of legislators, particularly first-term members; improved legislative capacity to evaluate and act upon proposed laws, independent of executive or special interest influence; and greater opportunities for citizen involvement in the legislative process. Opponents of annual sessions have contended that extended and more frequent sessions would increase the volume of legislation without guaranteeing improved quality, would result in more frequent changes in state laws, would lead to the development of professional lawmakers rather than representatives of the people by discouraging many persons from seeking seats in the General Assembly, and would cost more than biennial sessions.[67]

Following the 1973 defeat of the annual sessions proposal, an alternative to both annual sessions and the biennial session system was considered, proposed to the electorate in November, 1979, and adopted. Members of the General Assembly now meet in a brief organizational session in January immediately following their election and will serve during a one-year interim period prior to the convening of the sixty-day regular session. (Sections 30, 31, 36, and 42.) This amendment was a response to a major limitation of the legislative interim committee system in Kentucky. Many of the legislators studying and preparing policy proposals did not return to the session that considered those proposals, while those who replaced them were elected only two months before the regular session convened and were not involved in the interim deliberations. As one student of the interim committee system noted prior to the adoption of the 1979 amendment:

All 100 House members and one-half of the Senate members are serving in an interim system while not knowing whether they will be returning for the next legislative session. Kentucky, in effect, has a lame duck interim session. The sessional-interim order may be illogical, but it is constitutional.[68]

Proposals to alter the method of selecting House and Senate officers have received only limited attention in Kentucky constitutional revision efforts. Both the 1950 and 1964-66 revision groups would have retained the constitutional office of Lieutenant Governor and his function as President of the Senate.[69] In twenty-two of the fifty states, including Kentucky, as of 1993, the presiding officer in the Senate is a Senate member elected or confirmed by that body, an approach favored by the National Municipal League's Model Constitution. The Constitutions of the remaining twenty-eight states designate the elected Lieutenant Governor as President of the Senate.[70]

FOOTNOTES

1. *Debates of the 1890-91 Constitutional Convention,* p. 3821.

2. *Debates,* p. 5566.

3. Council of State Governments, *The Book of the States: 1992-93,* Volume 29 (Lexington: The Council of State Governments, 1992), p. 136.

4. James T. Fleming and John E. Reeves, *A Comparison: the Present, the Proposed Kentucky Constitutions,* Informational Bulletin No. 52 (Frankfort: Legislative Research Commission, September, 1986), p. 8.

5. *Grantz v. Grauman,* 302 S.W. 2d 364, 367 (Ky. 1957).

6. *Matthews v. Allen,* 360 S.W. 2d 135, 139 (Ky. 1962).

7. Joan Wells Coward,*The Kentucky Constitutions of 1792 and 1799: The Formation of a Political Tradition* (unpublished Ph.D. dissertation, Northwestern University, 1971), pp. 68-70, 232, and 272-73.

8. Constitution Review Commission, *Report of the Constitution Review Commission* (Frankfort: Constitution Review Commission, 1950), pp. 17-18; Fleming, pp. 8-9.

9. National Municipal League, *Model State Constitution*, Sixth Edition (Revised) (New York: National Municipal League, 1968), p. 4.

10. Council of State Governments, p. 141.

11. *Debates,* pp. 3807-39, 3962-89, 4384-4430, 4445-52, and 4609-30.

12. *Debates,* pp. 4412-19.

13. Patton Galloway, *The Legislative Process in Kentucky,* Research Publication No. 43 (Frankfort: Legislative Research Commission, 1955), p. 51.

14. *Ragland v. Anderson,* 125 Ky. 141, 30 K.L.R. 1199, 100 S.W. 865 (1907).

15. Malcolm E. Jewell, Kentucky Reapportionment, *Apportionment in the Nineteen Sixties,* Revised (New York: National Municipal League, 1970), p. 2.

16. *Baker v. Carr,* 396 U.S. 186 (1962).

17.*Upton v. Begley,* No. 364 (E.D. Ky. January 13, 1971) unpublished opinion.

18. *Hensley v. Wood,* 329 F. Supp. 787 (1971).

19. *Council of State Governments,* pp. 126-128.

20. Constitution Review Commission, pp. 18-19; Fleming, pp. 10-11.

21. National Municipal League, pp. 45-49.

22. Paul Mason, *Manual of Legislative Procedure for Legislatures and Other Governmental Bodies* (Sacramento: Senate of the California Legislature, 1970), p. 31.

23. Kentucky General Assembly, House of Representatives, *Rules and Committees for the 1986 Regular Session* (Frankfort: Legislative Research Commission, 1986), Rule 36; Kentucky

General Assembly, Senate, *Rules and Committees for the 1986 Regular Session* (Frankfort: Legislative Research Commission, 1986), Rule 36.

24. Galloway, pp. 220-44.

25. Kentucky Legislative Research Commission, *Final Reports of Interim, Joint, Special, and Statutory Committees, 1990-91*, Informational Bulletin No. 181 (Frankfort: Legislative Research Commission, December, 1991), pp. iii, iv.

26. *Commonwealth v. Illinois Central R. Co*., 160 Ky. 745, 170 S.W. 171 (1914).

27. *Louisville Trust Co. v. Morgan,* 180 Ky. 609, 203 S.W. 55 (1918).

28. Kentucky General Assembly, 1993 House Rule 48 and Senate Rule 48.

29. 1986 Kentucky Acts, Chapter 443, §1.

30. *Legislative Research Commission v. Brown*, 664 S.W. 2d 907, 910 (Ky. 1984).

31. Galloway, pp. 8-17.

32. *Willis v. Walker,* DC Ky., 136 F. Supp. 177 (1955).

33. *Matthews v. Allen*, 360 S.W. 2d 135 (Ky. 1962). *Commonwealth v. Hesch*, 395 S.W. 2d 362 (Ky. 1965).

34. *Johnson v. Commonwealth*, 165 S.W. 2d 820 (Ky. 1942).

35. 70 Am Jur 2d, §110.

36. *Sewell v. Bennett*, 187 Ky. 626, 220 S.W. 517 (1920).

37. *Sibert v. Garrett*, 197 Ky. 17, 246 S.W. 455 (1922).

38. Executive Order 80-1010.

39. *Debates*, p. 3793.

40. Special Commission on Constitutional Review, *Report of the Special Commission on Constitutional Review*, Research Report No. 226 (Frankfort: Legislative Research Commission, September, 1987), p. 19.

41. *Kentucky State Journal Co. v. Workman's Compensation Board,* 161 Ky. 562, 170 S.W. 1166 (1914).

42. Mary Helen Wilson, *A Perspective on Constitutional Revision in Kentucky*, Informational Bulletin No. 119 (Frankfort: Legislative Research Commission, November, 1976), p. 44.

43. Constitution Review Commission, p. 21; Fleming, p. 19.

44. *Debates*, pp. 5386-5408.

45. *George v. Lilliard*, 106 Ky. 820, 21 K.L.R. 438, 51 S.W. 793 (1889).

46. *Commonwealth ex rel Hancock v. Holmes*, 509 S.W. 2d 258 (Ky. 1974).

47. Constitution Review Commission, p. 52; Fleming, pp. 87-88.

48. *Otto v. Kosofsky,* 476 S.W. 2d 626 (Ky. 1971).

49. *Commonwealth v. Kentucky Jockey Club,* 238 Ky. 739, 38 S.W. 2d 626 (1971).

50. Fleming, p. 95.

51. 1988 Kentucky Acts, Chapter 116.

52. 1992 Kentucky Acts, Chapter 113.

53. *Debates,* p. 5566.

54. *Debates,* pp. 4921-22.

55. Fleming, pp. 16 and 18.

56. Amry Vandenbosch, "The Constitution as Basic Law," *The Constitution of Kentucky: Suggestions for Revision,* ed. Vandenbosch (Lexington: University of Kentucky, Bureau of Government Research, 1948), p. 10.

57. Virgil Burns, *A Defense of Kentucky's Constitution: A Study in Democracy* (New York: Vantage Press, Inc., 1952), p. 53.

58. Constitution Review Commission, p. 51.

59. Fleming, pp. iii and 18-19.

60. Special Commission on Constitutional Review, p. 20.

61. Special Commission on Constitutional Review, p. 13.

62. Fleming, p. 14; National Municipal League, pp. 47-48.

63. Fleming, pp. 11-12 and 27-28.

64. Wilson, p. 45.

65. Constitution Review Commission, pp. 17-20.

66. Council of State Governments, pp. 137-140.

67. Joyce S. Honaker, *Annual Legislature: The Debate in Perspective,* Informational Bulletin No. 100 (Frankfort: Legislative Research Commission, 1973), pp. 5-8.

68. Gary S. Cox, The Kentucky Legislative Interim Committee System 1968-1974 (unpublished Ph.D. dissertation, University of Kentucky, 1975), p. 12.

69. Constitution Review Commission, pp. 20-30; Fleming, p. 29.

70. Council of State Governments, pp. 145-146; National Municipal League, p. 51.

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CHAPTER VI

THE EXECUTIVE BRANCH AND THE KENTUCKY CONSTITUTION

Joyce N. Crofts

> The Governor of the State is an Officer at the head of the Executive Department. He exercises no powers, except such as have been delegated to him. Now, the question is, what are the powers, and to what extent shall they be delegated in this new Constitution?[1]

The Present Constitution

Kentucky's fourth and present Constitution, that of 1891, is a typical late nineteenth-century charter. Unlike more recent documents of other states, it is quite lengthy, with approximately thirty sections relating to the executive branch.

The Governor

Section 69 of the Constitution provides that "The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the 'Governor of the Commonwealth of Kentucky'." Under a 1992 amendment, beginning in 1995, the Governor will be elected jointly with the Lieutenant Governor by popular vote of the people for a term of four years; both will be eligible to serve a second consecutive term. (Sections 70, 71, and 82.) Contested elections for the office of Governor are resolved by the General Assembly. (Section 90.) The qualifications of the office are enumerated in Section 72: the Governor must be at least thirty years of age and a citizen and resident of Kentucky for the six years immediately preceding his election. Under Section 74, the compensation of the Governor is to be set by the General Assembly.

The Governor possesses a number of specifically enumerated constitutional powers. Under Section 75 the Governor is the commander-in-chief of the army, navy, and militia of the Commonwealth. He may fill vacancies in public offices not otherwise provided for under the Constitution. (Section 76.) He may remit fines and forfeitures imposed in judicial proceedings and has the power to grant reprieves and pardons. (Section 77.) The Governor may require information from executive officers pursuant to Section 78 and must inform the General Assembly as to the state of the Commonwealth, recommending to them "such measures as he may deem expedient" under Section 79. The Governor also has the power to call extraordinary or "special" sessions of the General Assembly, which otherwise meets in regular session in even-numbered years. (Section 80.) Under the authority of this section, the Governor must state the subjects to be considered in extraordinary session and no others may be considered. Most importantly, the Governor has the duty to "take care that the laws be faithfully executed." (Section 81.)

Another gubernatorial power enumerated in the Constitution is the veto power of Section 88. The Governor is given ten days to veto or sign any bill which has passed both chambers of the General Assembly. If he vetoes a bill, it is returned to the General Assembly with his written objections, contained in a veto message. If it passes a second time, with a majority of the members elected to each house voting in favor of it, the bill becomes law without the signature of

the Governor. Should the Governor neither sign nor veto a bill within ten days, it becomes law ninety days after final adjournment of the General Assembly unless a special effective date is included in the bill. (Section 88.) In the case of appropriations bills, those which spend state monies, the Governor has the power of the line-item veto. That is, he can veto specific sections rather than the bill in its entirety. (Section 88.) Only a vote to adjourn the General Assembly, a state constitutional amendment, approval of a proposed United States constitutional amendment, and a tax referendum under Section 171 are immune from the gubernatorial veto. (Sections 89, 256, and 171.) The votes of at least two-fifths of the members elected to each chamber and a majority of the members voting are required for passage of most bills.

The Lieutenant Governor

The Constitution also establishes the Office of Lieutenant Governor. Under a 1992 constitutional amendment, the Lieutenant Governor is elected jointly with the Governor to a term of four years and is eligible to serve a second consecutive term. (Sections 70 and 82.) The Lieutenant Governor performs the duties prescribed by law and those assigned by the Governor. (Section 72.) The Lieutenant Governor exercises the power of the Governor when the Governor is removed from office, dies, resigns or is unable to discharge the duties of the office. (Section 84.) If the office of Governor is vacant and the Lieutenant Governor is removed from office, dies or resigns, the President of the Senate administers the government. (Section 85.) If the offices of Governor, Lieutentant Governor, and President of the Senate are all vacant, the Attorney General convenes the Senate to choose a President, who then administers the government. If there is no Attorney General, the Senate is convened by the Auditor of Public Accounts. (Section 87.)

Other Constitutional Officers

In addition to the Governor and Lieutenant Governor, the Constitution provides at Section 91 for a number of other officers to be elected on a statewide basis: Treasurer; Auditor of Public Accounts; Commissioner of Agriculture, Labor and Statistics (This officer is usually referred to as the Commissioner of Agriculture; the Commissioner of Labor is a statutory office.); Secretary of State and Attorney General. These officers are elected at the same time as the Governor and Lieutenant Governor, and all serve four-year terms. Like the Governor and Lieutenant Governor, they are eligible to serve a second consecutive term, beginning with the officers elected in 1995. (Section 93.) The duties of each office are prescribed by the General Assembly. The Constitution also requires the election from special districts of a three-member Railroad Commission, whose duties are established statutorily. Like other elected state officers, members of this Commission serve for four years and are elected at the same time as the Governor. (Section 209.) Additionally, the 1891 Constitution provided for the election of a Register of the Land Office. However, pursuant to Section 94 of the Constitution, this office was abolished by the General Assembly in 1898 and its duties were assigned to the Auditor of Public Accounts. In 1934 these duties were transferred to the office of the Secretary of State. A 1992 amendment abolished the office of Superintendent of Public Instruction and removed references to the Register of the Land Office from the Constitution. Another statewide officer, the Adjutant-General, is in direct command of the state's armed forces, subject to the Governor's powers as commander-in-chief. The Adjutant-General is appointed directly by the Governor. (Section 222.)

The Constitutional Evolution of the Executive Branch

Changes in the executive branch through the four Constitutions of 1792, 1799, 1850, and 1891 generally parallel state constitutional developments in the rest of the nation.

Gubernatorial Provisions

Under the first Constitution, the Governor was elected for a four-year term by the electors of the Senate, who were elected by the people. The subsequent Constitutions have provided for popular election of the chief executive, retaining the four-year term. While the Constitution of 1792 placed no limitation on the number of terms which a Governor could serve, every Constitution since 1799 has prohibited a Governor from succeeding himself. However, in 1992, voters ratified a constitutional amendment to permit the Governor to serve two consecutive terms, beginning with the Governor elected in 1995. Minimum age requirements for the Governor have changed from age 30 in 1792 to age 35 in 1799 and 1850, and back to age 30 in 1891. The framers of the fourth Constitution cited, in lowering the limit, such notable Kentuckians as Henry Clay and John C. Breckinridge, who had achieved greatness by age 30. While the Constitution of 1792 required the Governor to have resided in Kentucky for only two years prior to election, a logically low requirement in a pioneer state, each subsequent Constitution has placed the minimum at six years.

Gubernatorial succession has varied. The first Constitution, which did not provide for a Lieutenant Governor, specified only that the Speaker of the Senate, as the presiding officer of that body was then called, would succeed to the governorship upon a vacancy in that office. The Constitution of 1799 provided for a Lieutenant Governor to be first in the line of succession, followed by the Speaker of the Senate. This pattern was repeated in 1850. The order of succession in the 1891 Constitution mentioned above was apparently dictated by consideration of economy. The Office of President Pro Tempore was created to avoid the expense of convening the Senate to elect a presiding officer in the event of a vacancy in the Office of Lieutenant Governor, who was the Senate President. A 1992 amendment removed the Lieutenant Governor as President of the Senate, allowing the Senate to elect its own President.

The Constitution of 1891 removed a somewhat unusual prohibition of the Constitutions of 1799 and 1850, whereby clergymen could not be elected Governor nor serve in the General Assembly. The proponents of the removal of this prohibition argued successfully that the section was discriminatory and deprived the Commonwealth of the services of a particularly gifted segment of society. The opponents maintained that ministers occupy a position so superior to any public office that to become Governor would be a step down; they were also horrified by the prospect of men of the cloth engaging in the rough and tumble life of late nineteenth-century Kentucky politics.

The formal, constitutionally-enumerated powers of the Governor have remained largely unchanged throughout the four Constitutions. The Governor has always constituted the supreme executive power, has always been commander-in-chief of the military forces of the Commonwealth, and has always possessed pardoning power, although Section 77 of the Constitution of 1891 added the refinement of requiring that a public statement of reasons for granting pardons be filed. Similarly, the Governor has always had the authority to obtain

information on matters of state from the executive officers. The power of the Governor to call the General Assembly into extraordinary, or special, session is likewise included in each of Kentucky's Constitutions. The Governor's hand in this regard was strengthened by the present Constitution, which permits limiting the agenda of special sessions, to prevent the General Assembly from becoming bogged down in extraneous matters. Each Constitution has accorded broad appointive powers to the Governor, although the present document limits this authority by requiring the election of a number of other state officers. The gubernatorial veto has also been an ongoing constitutional feature in this state, although the majority needed to override a veto has shifted from two-thirds in 1792 to a simple majority of the members elected in the subsequent charters. In addition, the 1891 Constitution gives the Governor a line-item veto on appropriations bills. The chief executive has always had the duty to report on the state of the Commonwealth to the General Assembly and to recommend legislation, and, of course, to faithfully execute the laws. The Governor's salary has always been fixed by law.

Provisions Concerning the Lieutenant Governor and Other Elected, Executive, Constitutional Officers

The second, third, and present Kentucky Constitutions have provided for a Lieutenant Governor. Until 1992, the constitutional duties of the office have remained the same under each succeeding document: to serve as President of the Senate and to act as Governor when the Governor is absent from the state, resigns, dies in office, is impeached, or for any other reason is unable to discharge the duties of the Office of Governor. In 1992, an amendment removed the Lieutenant Governor as President of the Senate and allowed the Governor to retain the powers of the office when absent from the state. The same amendment required the Lieutenant Governor's duties to consist of those prescribed by law and those delegated by the Governor.

The number of elected, constitutional, executive officers has increased with each succeeding Constitution. Under the 1792 charter, provision was made for the election of a Governor by the electors of the Senate. Two other officers, a Secretary of State and an Attorney General, were to be appointed by the Governor. In addition, a Treasurer was to be appointed by the General Assembly. The 1799 Constitution provided for the popular election of a Governor and Lieutenant Governor. An Attorney General and Secretary of State were appointed by the Governor, with the advice and consent of the Senate. The 1850 Constitution provided for the election of six executive state officers: the Governor, Lieutenant Governor, Attorney General, Auditor, and Register of the Land Office were elected for four-year terms; a Treasurer was elected for a two-year term. Under the present Constitution, as amended in 1992, ten state executive officers are elected by popular vote: the Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; and three Railroad Commissioners. The Adjutant General is appointed by the Governor.

The rather large number of elective, executive state offices called for in the Constitution of 1891 reflects a basic philosophical premise of the convention delegates who drafted it: the people are fully competent to choose their own officials and should be given every opportunity to do so. Prior to the Constitution of 1891, only the Governor was prohibited from serving successive terms in office; however, the 1891 Constitution extended this prohibition to all constitutional state officers who were elected statewide. This change was a response to the career of James W.

"Honest Dick" Tate. Lionized in the 1885 history of Kentucky as a "genial gentleman, of varied information, and of fine business capacity and integrity,"[2] Tate had served nine terms as state treasurer when, in 1888, he absconded, making off for parts unknown. Gone with him was $247,028.50 and, for some time, the credit of the Commonwealth.

"Honest Dick" Tate was very much in the minds of the drafters of the 1891 Constitution when they decided to forbid successive terms. The arguments of Delegate Thomas W. Hanks of Anderson County in speaking of a one-term limitation for the Treasurer, are typical:

> I have no doubt that our present Governor has selected an efficient man for Treasurer (to replace Tate). I have no doubt the people can and will elect such a one. If we had an appointive system, I am not certain (if the Governor had had the appointive power) he would not have selected that very man (I mean James W. Tate). By his record, he was at one time a very capable officer; but the trouble was, that Tate was elected too much. He was elected too often; and we propose now not to elect the same man Treasurer quite so often or keep him in quite so long. They cannot learn the tricks so well in a short time.[3]

In 1992, voters ratified an amendment which permits statewide elected constitutional officers to serve two consecutive terms.

Another significant change made in the Executive Branch by the Constitution of 1891 was a limitation on salaries paid to state officers. Motivated as they were throughout by considerations of expense, the framers specified in Section 246 of the Constitution that: "No public officer, except the Governor, shall receive more than five thousand dollars per annum, as compensation for official services . . . ." A 1949 amendment raised this ceiling to $12,000 annually for statewide officers and lesser amounts for others. Delegate W. M. Beckner of Clark County expressed the philosophy behind the salary limitation as follows:

> We have regulated officeholding and its compensation, until those who seek high places will be animated hereafter by a laudable ambition to worthily wear their honors, rather than by a mean, sordid desire merely to receive the fees or salary of their positions, and will, at the same time, know that they are servants of the sovereign people, and not members of an aristocratic class whose term of service may, by the tricks and wiles of politics, be indefinitely prolonged.[4]

The Executive Branch in the Courts: Judicial Interpretation

Almost 150 years ago, the French observer, Alexis de Tocqueville, remarked on the litigious nature of the Americans and the unique power of constitutional interpretation possessed by their judges. This is the so-called power of judicial review implied from the separation of powers doctrine under the federal and state Constitutions. First articulated by Chief Justice Marshall of the United States Supreme Court in *Marbury v. Madison*, 5 U.S. 137 (1803), this power of the judiciary to interpret the provisions of the federal and state Constitutions virtually assures that

the various provisions of the Kentucky Constitution will be subjected to continuous scrutiny by the courts. Thus, it is quite apparent that the Constitution is far from being a static document. Not surprisingly, in the one hundred years following the adoption of the present Constitution, a number of cases involving interpretation of constitutional provisions relating to the Executive Branch of government have arisen. A few of the more significant court cases follow.

The Goebel Election Case

Perhaps the most interesting of these cases involved the disputed gubernatorial election of November, 1899, and Section 90 of the Constitution, which empowers the General Assembly to decide contested elections for Governor and Lieutenant Governor. Democrat William Goebel, the apparent loser, alleged fraud on the part of William Taylor, his Republican opponent, who was inaugurated on December 12, 1899. Amid an incredibly chaotic atmosphere of general confusion and violence, Goebel was shot in front of the old State House on January 30, 1900. The following day, Governor Taylor proclaimed a state of insurrection and attempted to adjourn the General Assembly. Prevented from meeting at the State House by armed men loyal to Taylor, the General Assembly met in the old Capitol Hotel and on February 2 decided the election in the favor of Goebel, who was sworn in on his deathbed the same day. Goebel died February 3, and Democratic Lieutenant Governor J. C. W. Beckham assumed the governorship. Taylor fled the state, and the matter was taken to court. The Court of Appeals, now the Supreme Court, in *Taylor v. Beckham*, 108 Ky. 278, 56 S.W. 177 (Ky. 1900), app. dism. 178 U.S. 348 (1900), upheld the General Assembly's determination that Goebel was the actual winner in the general election of 1899 and that Beckham thus rightfully held the governorship following the death of Goebel. Section 90 is silent as to the manner in which the General Assembly is to determine the outcome of a contested election and this was an important issue in the case. The Court of Appeals held that it had no right to look behind the motives of the General Assembly:

> Whether the Legislature was right or wrong in its decision is not our province to determine. If the action of the Legislature can be invaded by the Courts, then it is no longer an equal and independent branch of the Government. Judicial tyranny is no less tyranny, because couched in the forms of law.[5]

The Governor as Commander-in-Chief

The state's highest court has taken a similar stand of more or less non-reviewability with regard to the powers of the Governor as commander-in-chief. It has held that his authority to call out the militia is not conditioned on a request to do so by local civil authorities, and that his reasons for doing so may not be questioned by the courts.[6]

The Governor's Pardoning Power

The Governor's power to remit fines and forfeitures and to grant pardons and reprieves under Section 77 has engendered a surprising amount of litigation. The then Court of Appeals held in *Commonwealth ex rel. Meredith v. Hall,* 126 S.W. 2d 1056 (Ky. 1939), that the Governor, in granting a pardon, may attach any conditions to it that are not illegal, immoral, or impossible, and that he may revoke the pardon on failure to meet the conditions. The Court has

also held that the judiciary does not have the power to review the action of the Governor in granting a pardon.[7]

Special Sessions of the General Assembly

Regarding the Governor's power to call the General Assembly into special session, the Court has held that the purpose of the Governor's list of items to be considered is to inform the public of the nature of matters which the General Assembly may consider, and that a statute dealing with a subject outside the call is void even though approved and signed by the Governor.[8] The Court has also held, however, that the Governor may amend his call by adding, but not deleting, subjects to be considered.[9] The Court has held that the Lieutenant Governor may call a special session in the absence of the Governor.[10]

The Lieutenant Governor's Duty to Sign Bills

As President of the Senate under Section 83, the Lieutenant Governor was bound by Section 56 of the Constitution, dealing with the legislative branch, which provides that "No bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session . . . . The Court was faced with construing this section in the case of *Kavanaugh v. Chandler*, 72 S.W. 2d 1003 (Ky. 1934). In that instance, Lieutenant Governor A. B. Chandler had refused to sign a bill in his capacity as presiding officer of the Senate. The bill proceeded as if he had done so and was eventually signed by the Governor. The Court held that the law was invalid in that it lacked the Lieutenant Governor's signature, refusing to uphold the act in the face of the clearly mandatory requirements of Section 56. The Court pointed out that the proper remedy for the Lieutenant Governor's refusal to sign the bill would have been to sue the Lieutenant Governor in a mandamus action to compel his signature. However, since the General Assembly had adjourned, this remedy was no longer possible. Since the Lieutenant Governor no longer presides over the Senate, the President of the Senate must sign bills which have passed.

The Veto

The Court has had occasion to invalidate a gubernatorial veto, and thus to revive a seemingly dead bill, when the Governor failed to accompany his veto with the veto message required by Section 88. In *Arnett v. Meredith* 121 S.W. 2d 36 (Ky. 1938), the court pointed out that the Constitution requires a veto message by the Governor so that both the General Assembly and the people might know whether or not he was motivated by conscientious convictions in recording his disapproval. When so restrained, a chief executive would hesitate to base his veto upon apparently unfounded reasons, but would endeavor to furnish and set forth reasons and grounds of apparent substance of his opposition . . . .[11]

The Scope of Constitutional Offices

In *Johnson v. Commonwealth ex rel. Meredith*, 165 S.W. 2d 820 (Ky. 1940), the Court of Appeals was faced with a statute allowing individual state agencies to hire attorneys to perform duties previously borne by the Attorney General. The Court upheld the statute, holding that the General Assembly has the power to restrict or add to the traditional duties of the Attorney General, so long as he is not rendered ineffective thereby, or his office reduced to an empty shell. This reasoning, followed in the subsequent case of *Commonwealth ex rel. Hancock v. Paxton*,

516 S.W. 2d 86 (Ky. 1974), is significant since it deals with the General Assembly's authority to limit or transfer the powers of constitutional officers.

In *Brown v. Barkley*, 628 S.W. 2d 616 (Ky. 1982), the Kentucky Supreme Court held that the Governor has no inherent power to reorganize a department headed by a constitutional officer. The Court also held that constitutional officers have only those powers delegated to them by the General Assembly. (See Chapter IV.)

The Rubber Dollar Case

While a number of sections of the present Constitution relate to the compensation of state constitutional officers, none has presented the difficulties of Section 246. This section, limiting officers to specific dollar amounts in salary, could have been particularly harsh had it not been for the then Court of Appeals' imaginative construction of Section 246 in *Matthews v. Allen*, 360 S.W. 2d 135 (Ky. 1962), the famous "rubber dollar case." There the Court held that the salary limitations imposed by this section may be interpreted and applied in terms which will equate current salaries with the purchasing power of the dollar in 1949, when the section was amended. In other words, the General Assembly may call for the dollar maximums to be stretched to reflect the declining purchasing power of the dollar since 1949. This approach, of course, can result in a great increase in the allowable maximum. According to a recent opinion of the Attorney General, the Governor's 1993 salary is $84,059, based on the current Consumer Price Index and the 1993 Budget (KRS 64.480).

Limiting the Governor's Powers

The Governor's powers are limited by three cases which delineate the powers of the three branches of government: *Ex parte Auditor of Public Accounts*, 609 S.W. 2d 682 (Ky. 1980); *Brown v. Barkley*, 628 S.W. 2d 616 (Ky. 1982); and *Legislative Research Commission ex rel. Prather v. Brown*, 664 S.W. 2d 907 (Ky. 1984). For a complete discussion of these cases, see Chapter IV.

Proposed Constitutional Amendments

Kentuckians have gone to the polls to vote on sixty-nine amendments to the 1891 Constitution. Thirty-two of these amendments have passed. Of the proposed amendments, twelve have pertained directly to the Executive Branch. Only two of these have passed. In addition, two amendments relating to the Legislative Branch indirectly affect the Executive Branch. Proposed amendments relating to executive revision are presented below:

Proposed Amendments to the Constitution of 1891 Affecting the Executive Branch

A. DEFEATED

Year Submitted	Sections Affected	Purpose
1921	91	Would have removed the Superintendent of Public Instruction from the list of elective officers.
1925	246	Would have raised the $5,000 salary limit for certain officers.

1927	246	Would have abolished the $5,000 salary limit and substituted in its stead a provision that the General Assembly fix reasonable compensation.
1943	246	Would have removed the $5,000 salary limit.
1953	91 and 93	Would have removed the Secretary of State, Commissioner of Agriculture, Labor and Statistics, and the Superintendent of Public Instruction from the list of elective officers.
1957	91, 93, 95, and 96	Would have abolished the elective office of Superintendent of Public Instruction and established in its place a Commissioner of Education appointed by a nine-member Board of Education.
1963	246	Would have abolished the salary limit.
1973	91, 93, 95, 99, 183, and 209	Would have deleted the requirement that the Superintendent of Public Instruction be elected; allowed sheriffs to be elected to consecutive terms; established a seven-member State Board of Education; and abolished the Railroad Commission.
1981	71, 82, 93, and 99	Would have permitted statewide constitutional officers to serve two consecutive terms and would have permitted sheriffs to be elected to consecutive terms.
1986	183, 91, 93, and 95	Would have, in effect, abolished the then current statutorily established State Board of Education and established constitutionally an appointed State Board of Education; would have abolished the then current constitutionally mandated elected Superintendent of Public Instruction in favor of a Superintendent appointed by the Board.
1990	28	Would have authorized the General Assembly to create, by statute, a process through which it or a body it designates could scrutinize administrative regulations to determine whether they comply with statutory authority and legislative intent; would have authorized rejection of regulations found to be inconsistent with that authority or intent.
1992	91, 93, 94, 95, 201, 209, and 218	Would have abolished the offices of Register of the Land Office, Commissioner of Agriculture, Treasurer, Secretary of State, Superintendent of Public Instruction, and Railroad Commission; would have provided for the appointment of the Secretary of State, Treasurer and Commissioner of Agriculture by the Governor, and would have made them eligible for reappointment; would have provided for the appointment or election of members of boards and commissions as provided by law, which may include consent by the Senate.

B. ADOPTED

1949	246	Repealed the $5,000 salary limit of Section 246 and substituted limits of $12,000 per annum for officials with statewide jurisdiction and mayors of first-class cities, $8,400 for circuit judges, and $7,200 for all other officials.
1979	42	Changed the length of regular sessions to sixty "legislative days," thereby allowing both chambers to recess near the end of each session and then return to consider overriding vetoed legislation; provided for a ten-day planning session in odd-numbered years; increased the number of constitutional amendments from two to four that the General Assembly can pass in a single session.
1984	99	Allowed sheriffs to be elected to consecutive terms.
1992	70,71,72,73, 74,82,83,84, 85,86,87,91, 93,94, and 95	Required joint election of the Governor and Lieutenant Governor; permitted statewide constutional officers to serve two consecutive terms; required duties of the Lieutenant Governor to be those delegated by the Governor; removed the Lieutenant Governor as presiding officer of the Senate; provided for determination of gubernatorial disability; allowed the Governor to retain the powers of the office when absent from the state; abolished the offices of the Register of the Land Office and Superintendent of Public Instruction; provided for the appointment or election of members of boards and commissions as provided by law, which may include consent by the Senate.

Constitutional Revision Efforts

There have been calls for a new state Constitution or for extensive revision since at least the 1920s. More recently, revision efforts have had four major forms: the Constitution Review Commission of the 1950s, the Constitution Review Assembly of 1964-66, the Special Commission on Constitutional Review of 1987, and the current efforts within the framework of the interim committee structure of the Legislative Research Commission.

The Constitution Review Commission

In 1949 Governor Earle C. Clements appointed by executive order a seven-member Constitution Review Commission, whose purpose was to determine what constitutional amendments, if any, were needed. The Commission, which was given statutory basis in 1950, made several suggestions concerning the Executive Branch.

The Constitution Review Commission proposed to permit the Governor to serve two consecutive terms. No limit was suggested for the Lieutenant Governor. The line of succession to the governorship would have remained unchanged under the Constitution Review Commission's proposals, although the provision whereby the Lieutenant Governor becomes Governor whenever the chief executive leaves the state would have been eliminated. The gubernatorial veto power would have been amended, so that a three-fifths majority would have been necessary to override a veto, and the Governor would have been permitted twenty days, rather than ten, within which to decide whether to approve or veto a bill.

Because many voters do not vote for the minor state offices, the Constitution Review Commission recommended decreasing the number of elective state officials. Only the offices of Governor, Lieutenant Governor, Auditor, and Attorney General would have been required to be elective, although the General Assembly would have had the power to establish additional elective offices. The Railroad Commission would have ceased to be constitutionally mandated, as the Constitution Review Commission recommended that railroad regulation be assigned to an agency by the General Assembly.

None of the recommendations of the Constitution Review Commission was acted upon by the General Assembly, and thus none could be submitted to the voters for ratification. The commission itself was abolished in 1956 and its functions transferred to the Legislative Research Commission.

The Constitution Revision Assembly

In 1960 the General Assembly, in anticipation of a vote on a constitutional convention to be taken later that year, created the Constitution Revision Committee. The committee was to service the convention if the voters approved the call. After the call for a convention was defeated, the Constitution Revision Committee, its membership expanded and its name changed in 1964 to the Constitution Revision Assembly, was assigned by statute the task of recommending changes in the Constitution. This impressive body of fifty members included all living former Governors plus forty-three members appointed by a committee of Governor Edward T. Breathitt, the Lieutenant Governor, the Speaker of the House, and the Chief Justice of the Court of Appeals. Its proposed revision, published in 1966, suggested a number of changes in the Executive Branch.

All elected state executive officers would have been permitted to serve two consecutive terms. The offices of Secretary of State; Treasurer; Auditor; Commissioner of Agriculture, Labor and Statistics; and the Railroad Commission would have been removed from the Constitution. The Superintendent of Public Instruction would have ceased to be elective and instead would have been appointed by the State Board of Education.

The Constitution Revision Assembly would have amended the line of succession to the governorship, replacing the Secretary of State with the Speaker of the House and eliminating the Attorney General. In addition, provision would have been made for determining gubernatorial disability, whereby the Auditor, Attorney General, and a physician would certify gubernatorial disability to the new Supreme Court, the Court then having final authority to determine the existence and duration of the disability. The Constitution Revision Assembly also would have eliminated the provision under which the Lieutenant Governor assumes the powers of the Governor whenever the latter leaves the Commonwealth.

The gubernatorial veto powers would have been limited by a provision that, if the legislature adjourns after sending a bill to the Governor and the Governor decides to veto it, the vetoed bill would be laid before the next session for further action, unless a new General Assembly were elected in the meantime. This provision, coupled with the Constitution Revision Assembly's recommendation of annual legislative sessions, would have reduced the incidence of the situation whereby the legislature, by adjourning, has no chance to override gubernatorial vetoes of bills passed during the busy final days of the session.

However, this problem has been somewhat alleviated by a subsequent amendment to Section 42 which regulates the time of adjournment of legislative sessions and establishes a new method for counting the days of the constitutionally mandated sixty-day session. This amendment, ratified by the voters in November, 1979, permits the General Assembly to recess near the end of each session and then return to consider any bills which may have been vetoed by the Governor. The session continues to be limited in length to a total of sixty days. Prior to passage of the 1979 amendment, each weekday, exclusive of holidays, was counted as one of the sixty days. The amendment provides that a legislative day is one on which at least one chamber convenes, but provides that each regular session must adjourn by April 15.

As a final recommendation, the Constitution Revision Assembly recommended a constitutional provision guaranteeing procedural safeguards and judicial review for persons testifying before state agencies in administrative hearings.

The efforts of the Constitution Revision Assembly, like those of the Constitution Review Commission, proved fruitless. The proposed Constitution, which the General Assembly submitted to a vote of the people in 1967, was defeated.

The Special Commission on Constitutional Review

In January, 1987, the Legislative Research Commission created the Special Commission on Constitutional Review, which was charged with conducting a section-by-section review of the Kentucky Constitution. Recommendations for improvement were to serve as a guide for constitutional amendments offered for voter approval over a number of years. The forty-one member Special Commission represented the Legislative, Executive, and Judicial Branches of state government, city and county governments, business, labor, media, academia, and citizens at large. The Special Commission issued a report in September, 1987 containing seventy-seven individual suggestions for alteration of the Constitution. Several recommendations concerned the Executive Branch.

The Special Commission proposed to reduce the number of elected statewide officers to four: the Governor, Lieutenant Governor, Attorney General, and Auditor of Public Accounts. The office of Secretary of State would be merged with the office of Lieutenant Governor, who would continue to preside over the Senate, be first in line of succession, and have additional duties assigned by the Governor or by statute. The Speaker of the House of Representatives would replace the Secretary of State as third in the line of gubernatorial succession.

Noting that team nomination and election of the Governor and Lieutenant Governor would enhance the philosophical and political compatibility of the two offices and thereby contribute to a more meaningful Executive Branch role for the Lieutenant Governor, the Special Commission also proposed that the Governor and Lieutenant Governor be slated as a team prior to the primary.

The Special Commission recommended deleting the requirement for the Lieutenant Governor to act as Governor when the Governor is merely absent from the state. New language would provide for the Lieutenant Governor to become acting Governor if the Governor is to be absent and certifies by entry on his journal that temporarily he cannot discharge the duties of his office. The same would apply throughout the line of succession.

Recognizing the lack of provisions in our Constitution to govern a situation in which the Governor is incapacitated and cannot discharge the duties of his office, the Special Commission proposed a specific procedure for determining the existence and duration of gubernatorial disability. Briefly, the Attorney General and the Auditor of Public Accounts, having certified that the Governor was disabled, would petition the Speaker of the House and the President Pro Tempore of the Senate to convene the General Assembly within seventy-two hours to vote on the question of disability. Termination of the disability would be decided by the Kentucky Supreme Court.

Finally, the Special Commission proposed allowing statewide elected officers to serve two consecutive four-year terms, and proposed removing the Railroad Commission from the Constitution.[12]

Most of these proposals by the Special Commission were endorsed by other groups, such as the Kentucky Tomorrow Government Committee (September, 1986),[13] the Shakertown Roundtable (November, 1987),[14] and Project 21 (Kentucky Chamber of Commerce, 1988).[15]

General Assembly Proposals

The 1980 General Assembly proposed a constitutional amendment which would have permitted statewide constitutional officers, including the Governor, to serve two consecutive terms, then seek reelection four years after the expiration of the second term. It would also have permitted sheriffs to serve consecutive terms. The 1980 amendment was defeated, but, a 1984 proposed amendment to allow sheriffs to serve an unlimited number of consecutive terms was ratified by the voters.

The 1986 General Assembly voted to submit a proposal which would have abolished the current statutorily established State Board of Education and establish a constitutional Board, to be appointed by the Governor with Senate ratification. The proposal would have also abolished the then current constitutionally mandated elective office of Superintendent of Public Instruction in favor of a Superintendent appointed by the Board. This proposal was defeated by the voters in November of 1986.

The 1990 General Assembly proposed a constitutional amendment which would have authorized the General Assembly to create, by statute, a process through which it, or a body it designated, could examine administrative regulations for compliance with statutory authority and legislative intent. Administrative regulations not found in compliance could have been rejected. The voters rejected this proposal in November, 1990.

In 1992, the General Assembly proposed a constitutional amendment to require joint election of the Governor and Lieutentant Governor; permit statewide elected constitutional officers, including the Governor, to serve two consecutive terms; require the duties of the Lieutenant Governor to be those prescribed by law and those delegated by the Governor; remove the Lieutenant Governor as presiding officer of the Senate; establish precedures for the determination of gubernatorial disability, including the Governor's own declaration of disability; allow the Governor to retain the powers of the office when absent from the state; abolish the offices of Register of the Land Office and Superintendent of Public Instruction; and provide for

the appointment or election of members of boards and commissions as provided by law, which may include consent by the Senate. This proposal was ratified by the voters on November 3, 1992.

Another proposal of the 1992 General Assembly would have abolished the offices of Register of the Land Office, Commissioner of Agriculture, Treasurer, Secretary of State, Superintendent of Public Instruction, and the Railroad Commission as elected offices; would have provided for the appointment of the Secretary of State, Treasurer, and Commissioner of Agriculture by the Governor and would have permitted them to be eligible for reappointment; and would have provided for the appointment or election of members of boards and commissions as provided by law, which could include consent by the Senate. The voters rejected this proposal on November 3, 1992. However, since both proposals contained some of the same provisions, in effect the voters rejected only the provisions for appointment, rather than election, of the Commissioner of Agriculture, Treasurer, Secretary of State, and the Railroad Commission.

Our Constitution: Strengths and Weaknesses of the Executive Branch

Most of the provisions of the Constitution of 1891 which pertain to the Executive Branch resemble in most respects those of the charters of other states, with such typical clauses as those assigning executive power to a Governor, making his office elective, giving the Governor veto power, allowing him to call special sessions of the legislature, and conferring upon him the power of executive clemency. One of the provisions much criticized in the past, the salary limitations of Section 246, has been modified by very broad judicial construction. The constitutional provision limiting the General Assembly to biennial sessions weakened the Legislative Branch in relation to the Executive Branch. Recent developments have contributed to a more even balance of power between the Executive and Legislative Branches. These developments include more reluctance on the part of recent Governors to attempt to influence the General Assembly, and passage of a constitutional amendment changing the time of election of legislators and providing for a ten-day planning session to be held in odd-numbered years.

Gubernatorial Power

Although the 1891 constitution increased the power of the Governor and vested "the supreme executive power of the Commonwealth" (Section 69) in the office, that power is diluted by provisions for nine other executive officers to be elected independently of the Governor (Sections 91 and 209). The Governor thus shares executive power and responsibility with nine elected executives over whom the Governor has no direct official control. Many see this as a weakness, especially at a time when the Legislative Branch is moving toward fulfilling its role as an equal branch of government.

Like most of the state Constitutions of the time, Kentucky's 1891 document reflects the nineteenth century desire to provide the people with as much direct control over government as possible. Those in favor of electing fewer state executive officers argue that this "mincemeating" of the Executive Branch "hogties" government.[16] They feel that the existence of several centers of power answerable to no single authority weakens the Executive Branch and limits its ability to respond to public needs. These elected officials frequently have been in conflict with the Governor and with each other. Some of the elected executive officials have been quite hostile toward the Governor's leadership and have chosen to operate in a partial vacuum. Some officials

view themselves as rivals of the Governor and pursue their own plans independently of the chief executive.

Until the adoption of the 1992 constitutional amendment, two additional factors allowed potential conflict between the Governor and Lieutenant Governor. The Governor and Lieutenant Governor were not to be elected as a team. Also, the Constitution provided for the temporary succession of the Lieutenant Governor whenever the Governor was absent from the state (Section 84). Consequently, there were several occasions when the Governor was hesitant to leave the state, lest the Lieutenant Governor call the General Assembly into special session or take other actions contrary to the political philosophy of the Governor. For example, Lieutenant Governor A. B. "Happy" Chandler in 1934 and Lieutenant Governor Thelma Stovall in 1978 called special sessions when Governors were absent from the state, establishing their own agendas in the call. The conflict between Governor Breathitt and Lt. Governor Harry Lee Waterfield rendered the Governor a virtual prisoner in the state. These areas of potential conflict between the Governor and Lieutenant Governor were addressed by an amendment adopted in 1992, which, in part, required the joint election of the Governor and Lieutenant Governor and allowed the Governor to retain the powers of the office when absent from the state.

Most constitutional scholars favor the election of fewer state officials, and this trend is growing nationwide. Council of State Governments' statistics indicate that two states have more elected state executive officials, three states have the same number, and forty-four states have fewer.[17]

Despite the large number of elected executive officials, Kentucky traditionally has had powerful Governors. The strength of the Governor reached its peak under Governor Julian Carroll, leading one political adversary to refer to him as the "Emperor of Kentucky." However, in 1979, when John Y. Brown, Jr. became Governor, there were signals of change in the balance of power. Governor Brown reversed the trend established by his predecessors and made less effort to exert control over legislative proceedings and the selection of legislative leadership. Governor Martha Layne Collins followed Governor Brown's style of leadership regarding the General Assembly and made no effort to dominate the legislative process.

The style set by those Governors, coupled with a more active role taken by the General Assembly, resulted in greater legislative independence. That independence was tested by Governor Wallace Wilkinson's desire to take a more active role in the legislative process. However, in light of the failure of Governor Wilkinson to gain passage of a succession amendment proposal, his original tax package for education reform, the designation of lottery proceeds for specific purposes, and other proposals, it is generally felt that the level of legislative independence established prior to his taking office was maintained.

Two constitutional amendments which strengthened the General Assembly were approved in 1979. One amendment permits the General Assembly to pass four rather than two proposed constitutional amendments each session. The second amendment provides for the election of legislators in the fall of even-numbered years after each session, so the newly-elected legislators have the experience of working through legislative committees for a year prior to the convening of the General Assembly. Legislators were previously elected in odd-numbered years, just prior to the convening of the regular session. Thus, freshman members had no experience working

with committees or the legislative process and were possibly more susceptible to gubernatorial influence than is now the case. The same amendment also established a ten-day planning session in odd-numbered years. Thus the General Assembly now convenes every year, although the odd-year session is limited to ten days and no legislation can be passed in this session. Another factor strengthening the General Assembly was the establishment of various legislative oversight committees which involve the legislature to a greater extent in the month-to-month operation of executive agencies.

The newly independent General Assembly asserted itself in several areas which were challenged by the Governor as violating the separation of powers between the two branches. The resulting litigation is discussed in Chapter IV.

Additional factors contributed to the redefinition of power of the two branches. Prior to 1982 Kentucky statutes granted the Governor extensive powers of reorganization, subject to approval of the next regular session of the General Assembly. Those powers meant that Governors were able to significantly alter the administrative structure of state government.

One extensive reorganization was accomplished in 1972 by Governor Wendell Ford. The notable feature of that reorganization, continued under the administration of Governors Carroll, Brown, Collins, Wilkinson, and Jones has been the creation of a program cabinet and program agency system which group together state agencies which perform similar services. This cabinet organization has resulted in the creation of the office of Secretary of the Cabinet. The Governor directs the Secretary in supervising the agencies encompassed in the program cabinet system and assists in overall program administration and policy development.

Furthermore, by transferring duties from elected constitutional executive officers to appointed subordinates under a scheme of reorganization, instead of dispersing executive powers among a number of elected constitutional executive officers, the Governor can consolidate the executive functions in officers and departmental structures directly under his authority. However, Governor John Y. Brown, Jr.'s attempt to reorganize the Department of Agriculture, a department headed by an elected constitutional officer, led to the litigation in *Brown v. Barkley* (see Chapter IV). The court held that the Governor has no inherent power to reorganize a department headed by a constitutional officer.

In 1982 the General Assembly enacted legislation to require that the Legislative Research Commission (LRC, a group composed of legislative leadership) approve the Governor's temporary reorganization plans between regular sessions of the General Assembly before the plans could take effect. In subsequent litigation, *LRC v. Brown,* the Kentucky Supreme Court held that certain legislative decisions were properly made by the entire General Assembly rather than by the LRC. Therefore, the statute granting LRC power to veto executive reorganization plans was declared invalid. In summary, the Governor has limited power to reorganize, absent legislative authority.

Finally, in 1984 the procedure for executive reorganization was altered. KRS 12.028 permits the Governor and other elected state executive officers to propose reorganization plans to the General Assembly for approval. It also permits temporary implementation of reorganization

plans between sessions of the General Assembly if the plans are first reviewed by a legislative interim joint committee with appropriate jurisdiction. The temporary plan must then be submitted to the next regular session for approval. Without approval, the temporary plan is terminated 90 days after final adjournment of the General Assembly.

Constitutional Revision and the Executive Branch

For decades there have been repeated efforts to amend and revise constitutional provisions regarding limitations on the ability of the Governor and other constitutional state executive officers to succeed themselves; the "absent from the state" provision, conferring the executive power on the Lieutenant Governor when the Governor is absent from the state; the line of gubernatorial succession; the veto power; and the number of elected state executive officials, discussed above. All of these issues have been addressed in previously-described constitutional amendments adopted in 1979 and 1992, although not necessarily to the extent recommended by proponents of constitutional revision.

1. The One-Term Limitation. The constitutional one-term limitation was a recurring concern prior to the adoption of the 1992 amendment. According to statistics from the Council of State Governments, only two other states now prohibit their Governors from serving consecutive terms in office. The Constitution Review Commission, the Constitution Revision Assembly, and the Special Commission on Constitutional Review recommended removing this provision, and the Model State Constitution of the National Municipal League would impose no such limitation. Those who would allow the Governor to succeed himself at least once argue that the provision represents an undue suspicion on the part of the delegates to the constitutional convention of 1890-1891.

2. Gubernatorial Absence from the State. Prior to the 1992 amendment, the Constitution of 1891 required that the duties of the office of Governor devolve automatically upon the Lieutenant Governor when the Governor was absent from the state. Twenty-four states have similar provisions in their Constitutions. Five others confer the executive power upon the Lieutenant Governor if the Governor's absence exceeds a specified length of time.[18] The Constitution Review Commission, the Constitution Revision Assembly, and the Special Commission on Constitutional Review would have removed this clause, and the Model State Constitution contains no such provision.

Those favoring the elimination of this provision maintained that it was an anachronism in an era of instant communication. They pointed out the great potential for political confrontation when the Governor and Lieutenant Governor are in opposite political camps and the Governor is reluctant to leave the government in the hands of the Lieutenant Governor.

3. Line of Gubernatorial Succession and Disability. The line of succession to the governorship raised the question of gubernatorial disability. In support of adoption of the 1992 amendment and preceding proposals it was argued that the 1891 Constitution failed to deal adequately with the question of what to do when the Governor became physically or mentally unable to function in the office. The Constitution stated simply that the Lieutenant Governor assumed the executive power when the Governor was "unable to discharge the duties of his office." It did not specify who was to decide whether the Governor was disabled. As noted. the Constitution Revision Assembly and the Special Commission on Constitutional Review

proposed procedures for determining the existence and duration of the disability. The Model State Constitution does likewise.

Subsequent to the open-heart surgery of Governor Brown, a legislative subcommittee examined the issue of gubernatorial disability. Proposals were drafted but failed to pass the 1984 General Assembly. In 1987, the issue was discussed by a legislative subcommittee. Proposals relating to disability were introduced during the 1988 General Assembly, and again in 1990, but failed to pass. The 1992 amendment finally addressed the issue.

Left unaddressed by recent constitutional revisions is a related issue. Critics maintain that the present Constitution leaves unanswered another succession question, that of who should become Governor in the event a Governor-elect dies before taking office. Governor Goebel, it will be recalled, died after being sworn in. One provision of the Constitution states that the Governor shall remain in office until his successor qualifies, while another provides that the Lieutenant Governor takes office if the Governor is unable to qualify. (Sections 73 and 84.) The Constitution, then, is unclear, and the uncertain interval that would be required for judicial interpretation could be a chaotic one.

4. The Veto. The gubernatorial veto is a powerful tool for the state's chief executive officer. Formerly, the veto was nearly impossible to override, since most vetoes occurred at the end of the General Assembly's sixty-day biennial session, when there was no opportunity for the legislature to reconsider bills. However, this problem has been reduced somewhat by the constitutional amendment ratified in 1979. This amendment permits the General Assembly to structure its regular sessions so that it may recess near the end of each session to allow the ten-day veto period (under Section 88) to expire. Thus, the Governor will have forwarded all his veto messages to the General Assembly while both chambers still have an opportunity to reconsider the vetoed legislation.

Conclusion

Kentucky's 1891 Constitution reflects the era in which it was written. Despite the desirability of revision, efforts of the last several decades to revise the document extensively, or even to replace it, have failed. The state continues to rely upon an innovative judiciary to render the constitutional provisions more applicable to modern conditions.

FOOTNOTES

1. Debates of the 1890-91 Constitutional Convention, p. 1104.

2. Z. F. Smith, *The History of Kentucky* (Louisville: Courier-Journal Job Printing Co., 1885), p. 784.

3. *Proceedings and Debates,* p. 1424.

4. *Proceedings and Debates,* p. 4459.

5. 56 S.W. 177, at 184.

6. *Franks v. Smith,* 142 Ky. 232, 134 S.W. 484 (1911), *Begley v. Louisville Times Co.*, 272 Ky. 805, 115 S.W. 2d 345 (1938).

7. *Jackson v. Rose,* 223 Ky. 285, 3 S.W. 2d 641 (1928), *Hamilton v. Commonwealth,* 458 S.W. 2d 166 (Ky. 1970).

8. *Trenton Graded School District v. Board of Education,* 278 Ky. 607, 129 S.W. 2d 143 (1939).

9. Stickler v. Higgins, 269 Ky. 260, 106 S.W. 2d 1008 (1937).

10. *Royster v. Brock,* 258 Ky. 146, 79 S.W. 2d 707 (1935).

11. *Arnett v. Meredith,* 275 Ky. 233, 121 S.W. 2d 36 (1938).

12. Legislative Research Commission, *Report of the Special Commission on Constitutional Review,* Research Report No. 226 (Frankfort: Legislative Research Commission, September. 1987), pp. 11-17.

13. Kentucky Tomorrow Government Committee, *Final Report* (Frankfort: Kentucky Tomorrow Commission, September, 1986), p. 28.

14. Shakertown Roundtable Conference, *The State of the Commonwealth: A Report of the Shakertown Roundtable Conference* (Pleasant Hill: November, 1987), p. 18.

15. Project 21, *White Paper 2* (Frankfort: Kentucky Chamber of Commerce, 1988), pp. 3, 6.

16. James W. Fesler, "The Challenge to the States," The American Assembly, *The Forty-Eight States: Their Tasks as Policy Makers and Administrators,* ed. James W. Fesler (New York: Columbia University School of Business, 1955), p. 8.

17. Council of State Governments, *Book of the States, 1992-93* (Lexington: Council of State Governments, 1992), pp. 76-79.

18. Ibid., pp. 93-94.

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CHAPTER VII

THE JUDICIAL BRANCH AND THE KENTUCKY CONSTITUTION

Pat Hopkins

Summary of Judicial Article

The judicial power of the Commonwealth is vested in the Court of Justice, composed of the Supreme Court, Court of Appeals, Circuit Courts, and District Courts. The court is a unified judicial system for operation and administration. The General Assembly retains its impeachment powers. (Section 109.)

The Supreme Court, composed of the Chief Justice of the Commonwealth and six Associate Justices, has appellate jurisdiction only. It hears cases at its discretion, except that appeals from judgments imposing sentences of death, life imprisonment, or imprisonment for twenty years or more are taken directly to the Supreme Court. A majority of justices constitutes a quorum. If two or more justices decline to sit to hear a case, the Governor shall appoint justices to constitute a full court to hear the case. The existing Court of Appeals districts became the Supreme Court districts and there is one justice from each district. These districts are subject to redistricting by the General Assembly. The justices elect one of their number to serve as Chief Justice for a term of four years. He is the executive head of the Court of Justice. (Section 110.)

The Court of Appeals consists of fourteen Judges, two from each Supreme Court district. The General Assembly may change the number of judges upon certification of necessity by the Supreme Court. The Court of Appeals has appellate jurisdiction only. The judges elect one of their number to serve as Chief Judge for a term of four years, and he is administrative head of this court. The Court of Appeals divides itself into panels of not fewer than three judges. A panel may decide a cause by the vote of the majority and may sit anywhere within the state. (Section 111.)

Circuit Court is held in each county. Circuit Judges are elected from judicial circuits, which may be rearranged, increased or reduced by the General Assembly. The number of judges may also be increased, or decreased by the General Assembly. Changes in circuits or number of judges may be made only upon certification of necessity therefor by the Supreme Court. The Circuit Court has original jurisdiction of all causes not vested in some other court and appellate jurisdiction as may be provided by law. In a judicial circuit with one judge, that judge is the Chief Judge. In multi-judge circuits, the judges choose a Chief Judge for a two-year term. He is the administrative head of the Circuit Court. (Section 112.)

District Court is held in each county. District Judges are elected from judicial districts which are set by the General Assembly. The number of judges was initially determined by the General Assembly. However, additional district judges may be created by the General Assembly only upon certificate of necessity from the Supreme Court. The Chief Judge is chosen in the same manner as the Chief Circuit Judge and is the administrative head of the District Court. In any county where there is no District Judge, the Chief Judge shall appoint a trial commissioner. Other trial commissioners may be appointed where needed. They perform such duties as the Supreme

Court prescribes. The District Court is a court of limited jurisdiction and exercises original jurisdiction as provided by the General Assembly. (Section 112.)

Clerks of the courts are: Supreme Court Clerk, appointed by that body; Clerk of the Court of Appeals, appointed by that body; and Circuit Court Clerks, elected in each county, who also serve as Clerks of the District Courts. (Section 114.)

Section 115 deals with appellate policy and Section 116 outlines the rule-making power of the Supreme Court.

All judges and justices shall be elected from their districts or circuits on a non-partisan basis. (Section 117.) Section 118 provides for the filling of vacancies in office by nominations by the Judicial Nominating Commission and appointment by the Governor.

Supreme Court Justices, Court of Appeals Judges, and Circuit Judges are elected for terms of eight years, and District Judges for terms of four years. (Section 119.) Salaries of judges and justices are fixed by the General Assembly, and compensation and necessary expenses are paid from the State Treasury. (Section 120.)

Section 121 sets up a Retirement and Removal Commission that may, upon notice and hearing, retire for disability, suspend without pay, or remove for cause any judge or justice.

Section 122 sets out the requirements for eligibility to serve as a judge or justice. A person must be a citizen of the United States and a resident of his district for two years. He must have been a licensed attorney for eight years to serve as Supreme Court Justice, Judge of the Court of Appeals or Circuit Judge; he must have been licensed for two years to serve as District Judge.

Section 123 lists prohibited activities for a judge or justice. These include the practice of law, running for elective office other than judicial office, or holding office in a political party or organization.

Section 124 resolves conflicts between new and old constitutional provisions. This section is specific in stating that the amendment is not intended to repeal those sections of the Constitution which confer nonjudicial powers and duties upon county judges and justices of the peace or to limit those powers.

A schedule of transitional provisions concludes the Judicial Article.

Comparison of Prior Constitutions

Prior to 1776 a military organization maintained civil order in Kentucky in those cases where men failed to settle their differences privately. In 1776 Kentucky became a county of Virginia and a limited system of local courts was established for trials. Appeals had to be taken to the Virginia Court of Appeals.

In 1792 Kentucky became a state and its first Constitution, ratified that year, vested judicial power in a Court of Appeals and such inferior courts as the General Assembly might establish, thus following the language of the U.S. Constitution. The Court of Appeals had original and final jurisdiction in all other matters. The article also required the appointment of a "competent" number of justices of the peace in each county.

The second Constitution, ratified in 1799, removed the original jurisdiction of the Court of Appeals in matters relating to title to land. It provided that the number of justices of the peace be regulated by law. It also permitted each court to appoint a clerk. Again, it followed the federal language as to court organization. Both of these earlier Constitutions provided for executive appointment and life tenure for judges.

In 1822, the Court of Appeals affirmed a Circuit Court decision declaring unconstitutional an act of the General Assembly. This action conformed to the doctrine of judicial review of legislation established by the Supreme Court of the United States in *Marbury v. Madison.* Many legislators disagreed with this doctrine. In 1824 the General Assembly passed an act purporting to abolish the constitutional "old court" and substitute a legislative "new court." The Governor appointed judges to the "new court." The "old court" refused to recognize the "new court" and for two years they both held sessions. In 1826, the General Assemblv abolished the "new court."

The citizens remained dissatisfied with the system of appointing for life judges who had the power to decide that a legislative measure was unconstitutional. This dissatisfaction was a primary reason for calling the constitutional convention in 1850.

The third Constitution again used the federal language and further provided for four Court of Appeals Judges to be elected for terms of eight years from districts to be prescribed by the General Assembly. Also, the General Assembly was given the power to reduce the number of judges to three. The Governor had the power to fill vacancies. Residency, citizenship, and age requirements were set out and judges were required to have practiced law for eight years. The Court of Appeals was to sit at the Capitol but the General Assembly could direct that the sessions be held elsewhere. The article also required the election of a clerk of the Court of Appeals and set forth eligibility requirements and method of filling a vacancy in office. For the first time, Circuit Courts were established by constitutional mandate.

The 1850 document contained various provisions related to election of Circuit Judges, establishment of districts, and eligibility for office. County courts were established, and consisted of a presiding judge and two associate judges. Jurisdiction was to be regulated by law, and until changed was to "be the same now vested in county courts of this state." County courts had been created previously by legislative enactment. It also provided for election of justices who were to be "conservators of the peace." The General Assembly could empower justices of the peace to sit as a court of claims and assist in levying county taxes and making appropriations. Municipalities were given the power to establish courts. The Louisville Chancery Court was recognized and given status, as were various city and police courts. Judges for these various courts were to be elected for terms of years as specified.

The fourth Constitution, adopted in 1891, departed from the federal language and vested the judicial power of the Commonwealth in "the Senate when sitting as a court of impeachment, and one Supreme Court (to be styled the Court of Appeals) and the courts established by this Constitution." The Court of Appeals was given appellate jurisdiction and power to exercise general control of inferior jurisdictions. The number of Court of Appeals Judges to be elected was to be not less than five nor more than seven. Provision was made for an elected clerk.

Circuit Court jurisdiction and the number of judges and districts remained a matter to be determined by the General Assembly. Quarterly Courts were established in each county, with the county judge presiding and jurisdiction determined by the General Assembly. Likewise, the county court was established with exactly the same jurisdictional provisions as Quarterly Court. Justices' courts, one for each justice of the peace in each county, were established; and the right to establish police courts was given to municipalities.

The greatest difference between the 1891 Constitution and the earlier ones was the provision that only the courts established by the 1891 Constitution were to be recognized. Prior to that time, the General Assembly had the power to create such other courts as it deemed necessary. This limitation virtually choked the appellate level of jurisprudence in Kentucky, while a hodgepodge of trial courts proliferated below the Circuit Court level.

The 1975 amendment to the 1891 Constitution, summarized at the beginning of this chapter, overhauled our judicial system by providing two appellate level and two trial level courts. Except for the Supreme Court, these courts may be changed in size and in jurisdiction to meet the needs of the people. This flexibility is one of the most important changes made by the amendment.

Another important change was the unification of the courts into one integrated system, administered in a uniform manner by the Chief Justice of the Supreme Court. The results have been balanced caseload, optimum use of judges in districts where caseload is greatest, and an even flow of cases from trial to appellate level. Uniformity of rules, forms, filing fees, fine schedules, and accounting methods should result in the judicial ideal -- equal justice for all citizens.

Court Decisions

In *Davis v. Delahanty,* the Supreme Court of Kentucky upheld KRS 118A.070. This statute provides for a primary election process by which the number of candidates for each judicial office whose names shall be printed on the ballots for the general election is reduced to not more than two.

In *Comm. v. Schumacher*, the court held: "When the legislature, by enactment of KRS 22A.020(4), attempted to establish rules of appellate procedure, it was contrary to the dictates of the Constitution." (Section 109 and Section 116 provide that only the Supreme Court has power to prescribe rules governing appellate procedure and jurisdiction.)

In *Ex parte Farley,* the court held:

Except for matters in which the U. S. Supreme Court has the right of review over the judgments of the Kentucky Supreme Court, the jurisdiction to hear and determine any cause that has as its ultimate objective a judgment declaring what the Kentucky Supreme Court must do or not do is vested exclusively in such court.

Subdivision (5)(b) of this section (Section 110) vests the supervisory and policymaking authority of the Judicial Department in the Supreme Court.

In *Nicholson v. Judicial Retirement and Removal Comm.,* the court held:

The purpose of this section [Section 121] is the regulation of the conduct of those persons charged with the administration of justice and the aim of proceedings instituted pursuant to this section is to improve the quality of justice administered within the Commonwealth by examining specific complaints of judicial misconduct, determining their relation to a judge's fitness for office, and correcting any deficiencies found by taking the least severe action necessary to remedy the situation.

Ex parte Auditor of Public Accounts is a landmark decision. According to Chief Justice Palmore, it "delineates the separation of powers in the light of the judicial amendment of 1975." Various sections of the Constitution are discussed and the perimeters of judicial power, as well as legislative and executive power, are clearly defined. This opinion represents the first definitive exposition of the power of the Judicial Branch of government since the passage of the judicial amendment.

Prior Amendments to the 1891 Constitution

The only other amendment affecting the judiciary which was passed by the voters was ratified in 1949. It changed the salary limitations of public officers. Judges and commissioners of the Court of Appeals were raised from $5,000 to $12,000; Circuit Judges were raised to $8,400. Analyzing this section, the Court of Appeals in 1962 wrote in *Matthews v. Allen* that the salary limitations of this section may be adjusted to equate current salaries with the purchasing power of the dollar in 1949, when this section was amended. It further held that, in the instance of the judiciary, other factors may also be considered in establishing the adequate compensation directed by Sections 112 and 113 of the Constitution. As a result of that decision, raises have been given to the judiciary through the years. In 1975 the salary of a Court of Appeals Judge was $31,500 and the salary of a Circuit Judge was $26,000. The latest salary scale, set by the General Assembly in accordance with the judicial amendment, took effect July 15, 1986, but it is updated each year, based on changes in the consumer price index. For 1993, the salary levels are:

Supreme Court	$77,498
Court of Appeals	$74,334
Circuit Court	$71,171
District Court	$64,244

Past Proposed Revisions

Constitution Review Commission (1950s)

The proposal offered by the Constitution Review Commission envisioned a Court of Appeals and Circuit Courts, with such divisions of each, as well as such other courts, as the General Assembly should establish upon certification of need by the Court of Appeals. No nominating commission was formed; rather vacancies were to be filled, pending election under Section 152 of the Constitution, by assigning sitting and retired judges to temporary service. Qualification of judges included an age requirement, and no appeal as a matter of right was guaranteed. Otherwise, there were no substantial differences between this proposal and the one ultimately ratified.

Constitution Review Assembly (1964-66)

The proposed revision of the judicial sections submitted by the Constitution Review Assembly in 1966 were almost identical to the 1975 amendment. The only significant difference was in the area of selection of judges. Judges presently are elected. The 1966 Revision Assembly proposed appointment of Supreme Court Justices and Court of Appeals Judges and those Circuit Court Judges in districts with a population of more than 50,000. Those judges who were appointed were to run against their record of performance, rather than against other candidates, after a three-year period of service. Other Circuit Judges and District Judges were to be elected.

Special Commission on Constitutional Review (1987)

In 1987, the Special Commission on Constitutional Review recommended that all justices and judges be appointed by the Governor from lists of persons submitted by nominating commissions and, thereafter, run for retention. This proposal, according to the report, was based upon concerns about nationwide trends toward excessive spending in judicial elections and negative effects of political pressures judges currently face.

Comparison With Model State Constitution

Kentucky's judicial article is at variance with the Model State Constitution on the election of judges. The Model firmly upholds the concept of an appointive judiciary, holding office after an initial term of seven years, during life or on good behavior. The appointments are made by the Governor with the advice and consent of the legislature. By use of a public opinion poll, proponents of judicial reform found that the voters of Kentucky were overwhelmingly opposed to appointment of judges. They therefore rewrote their proposal to mandate election of judges before submitting the Judicial Article to the people in 1975. The differing methods for judicial selection have also been applied to the selection of the Chief Justice for the Supreme Court. The Model provides that the Governor designate the Chief Justice, while the Kentucky Constitution provides that the Justices of the Supreme Court elect one of their number to serve as Chief Justice for a four-year term.

The Kentucky Judicial Article and the Model also differ in some other aspects. Kentucky requires the Supreme Court to discipline lawyers and to regulate admissions to the bar. Kentucky has an innovative section that requires the Court of Appeals to hear cases in panels of at least three judges. The Model contains neither provision. Kentucky also has no mandatory retirement age for judges, but provides for a retirement and removal commission; the Model makes retirement for judges mandatory at age 70.

In other areas Kentucky's system is consistent with the Model State Constitution. However, Kentucky goes much further in spelling out such matters as court organization, jurisdiction, judicial eligibility and qualifications, appellate practice and procedure, clerks' duties, and a variety of other details.

As noted above, the strengths of the Judicial Article include uniformity of administration and flexibility for current and future needs. Any weaknesses it has will be determined as the system operates.

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CHAPTER VIII

TAXATION AND FINANCE AND THE KENTUCKY CONSTITUTION

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Present Constitutional Provisions on Taxation and Finance

The constitutional provisions on taxation and finance are numerous and far-reaching. The control of spending and the accountability for public funds held high priorities with the delegates who revised Kentucky's Constitution in 1891.

Since the provisions touch so many separate areas, the sections of the Constitution which relate to taxation and finance are identified and summarized as follows:

Section 46. All bills for appropriation of money or creation of a debt must receive the votes of a majority of all members elected to the House of Representatives and to the Senate.

Section 47. Bills to raise revenue must originate in the House; the Senate may amend.

Section 48. The General Assembly is prohibited from diminishing resources of the sinking fund set up to pay previous debts of the state. This particular sinking fund went out of existence when previous debts were retired.

Section 49. The General Assembly may contract debts not to exceed a total of $500,000. This provision applies to failures in revenue.

Section 50. The purposes of debt can only be to meet casual deficits or failures in revenue, unless an annual tax is levied to discharge the debt. Such a debt and annual tax must be submitted at a general election and receive a majority of the votes cast on the issue. Sections 49 and 50 provide for three classes of indebtedness:

(1) Casual deficits or failures in revenue;

(2) New indebtedness, which, with an annual tax to retire the debt within 30 years, must be approved by a vote of the people; and

(3) Debt existing at the time of the adoption of the Constitution.

Section 52. The General Assembly is prohibited from extinguishing or transferring the debt of any individual or corporation to the state or to a county or city.

Section 53. The General Assembly shall provide for the monthly investigation of accounts of the Treasurer and Auditor of Public Accounts.

Section 58. The General Assembly's authority to pay private claims against the State is limited.

Section 59. Local or special legislation in the areas of taxes, fees, and interest is prohibited. In all other cases where a general law can be made applicable, no special law shall be enacted.

Section 88. The Governor may approve or disapprove distinct items in appropriation bills. Those parts disapproved will not become law unless reconsidered and passed.

Section 157. Maximum tax rates are set for cities, counties, and taxing districts:

Cities 15,000 and over—rate of $1.50 per $100 assessed valuation.

Cities between 10,000 and 15,000—rate of $1.00 per $100 assessed valuation.

Cities with less than 10,000—rate of $.75 per $100 assessed valuation.

Counties and tax districts—rate of $.50 per $100 assessed valuation.

No local government unit may become indebted for more than one year without the approval of two-thirds of the voters thereof.

Section 157A. The credit of the Commonwealth may be loaned or given to any county for roads; within specified limits any county may vote to incur indebtedness and levy additional tax for roads.

Section 158. The maximum indebtedness of cities, counties, and taxing districts is set, and provision is made for indebtedness incurred prior to the adoption of the Constitution.

Section 159. Any municipality authorized to contract an indebtedness shall be required to collect an annual tax to pay interest on the debt and create a sinking fund to pay back the principal within 40 years.

Section 169. The fiscal year is to begin on the first day in July in each year unless otherwise provided by law.

Section 170. Property exempted from taxation includes public property, most religious property, burial plots, institutions of charitable organizations, educational institutions, public libraries, household goods, current year crops, and up to $6,500 on homesteads of persons who are age 65 or older or are classified as totally disabled under a program of the United States government. Cities may exempt factories from property tax for five years.

Section 171. An annual state tax shall be levied. Taxes shall be levied and collected for public purposes only and by general laws and shall be uniform within classes within the taxing district. The General Assembly may classify property for taxation. State and local bonds are exempt from taxation. Provision is made for a referendum on classification of property and rate of taxation.

Section 172. Property shall be assessed at fair cash value. The assessor shall be punished for willful error.

Section 172A. Farm land shall be assessed according to its value for farm purposes.

Section 172B. The General Assembly may authorize counties, cities, and urban-county governments to declare property assessment or reassessment moratoriums for qualifying units of real property, not to exceed five years' duration.

Section 173. A public officer who makes a personal profit on public funds is guilty of a felony.

Section 174. Property shall be taxed according to value, whether corporate or individual. The General Assembly may provide for income, license, and franchise taxes.

Section 175. Power to tax property shall not be surrendered or suspended by the Commonwealth.

Section 176. The Commonwealth shall not assume a debt of a county or city except those debts contracted for self-defense during war or to suppress insurrection.

Section 177. The Commonwealth shall not lend credit, nor become a stockholder in a corporation, nor build a railroad or highway.

Section 178. All laws authorizing the borrowing of money by governmental units shall specify purposes for which the money may be used.

Section 179. A political subdivision shall not become a stockholder in a corporation or appropriate money or lend credit to any person, except for building roads or a state capitol.

Section 180. Any act or ordinance levying any tax must specify the purpose. Such revenues shall not be used for another purpose.

Section 181. The General Assembly shall not levy a tax for a political subdivision, but may confer such power. The General Assembly may provide for license and excise taxes and for a city tax in lieu of ad valorem taxes.

Section 182. The General Assembly may establish procedures for assessing and taxing railroads.

Section 184. A common school fund is established, and provision is made for a vote on any tax for education other than in the common schools.

Section 185. The General Assembly shall make provision for the payment of interest on the school fund and investment of proceeds from the sale of stock in the Bank of Kentucky.

Section 186. The school fund shall be used for maintenance of the public schools, and the General Assembly shall prescribe its distribution.

Section 188. A refund of the direct federal tax by Congress is to become part of the school fund.

Section 189. School money is not to be used for any church, sectarian, or denominational school.

Section 230. Money shall not be drawn from the Treasury unless appropriated. Provision is made for the annual publication of accounts. Certain revenues shall be usable only for highway purposes.

Provisions Included From Earlier Constitutions

State involvement in the areas of taxation and finance is almost entirely a creation of the 1891 Constitution. The Constitutions of 1792 and 1799 provided that revenue and appropriation measures should originate in the House and that no money should be drawn from the State Treasury except by lawful appropriation. The third Constitution, adopted in 1850, dealt with

revenue and taxation in somewhat greater detail. By 1849 the state debt had grown to almost $4,500,000, due to heavy expenditures by the state in the construction of locks, railroads, and turnpikes. Rivalries and jealousies between the regions and the severe strain on the state's credit led to the inclusion of Article II, Section 3 of the 1850 Constitution, which provided that the credit of the Commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation.

Also in the third Constitution was a debt limitation of $500,000, as well as provisions requiring that tax measures specify their purposes and that they be approved by a majority of those representatives voting on them. Both measures reappear in the 1891 Constitution, as does the provision for a Common School Fund.

Neither the state nor the federal government prepared any kind of budget in 1890. Money was spent based on projected revenue for the coming year. As these estimates were often faulty, the $500,000 debt limitation was meant to be a check on casual indebtedness caused by a failure in revenues. Since the annual expenditure by state government in 1891 has been estimated at around $2 million, a debt of about 25 percent of the total appropriation could be incurred. By comparison, in fiscal year 1991-92 the general fund appropriations alone were $4.5 billion. In that fiscal year, $500,000 represented less than .01 percent of estimated general fund revenues.

New Provisions

All other provisions of the 1891 Constitution which dealt with revenue and taxation were new to that document and were products of that turbulent era. The convention debates have become the major source of reference regarding the purposes of many of the sections. What were later to become constitutional sections frequently appear in the debates as sections of committee reports. Often these sections were adopted by the convention without debate. Moreover, much debate centered on relatively few controversial areas, such as the exemptions from the property tax. A general outline of the delegates' posture toward the areas of taxation and finance becomes apparent from the debates.

Property Tax Exemptions

The issue of exemptions from property taxation consumed much of the delegates' time. Interpretation revolved around their conception of what the Constitution was meant to do; they debated whether to set up a framework of government for the General Assembly to build upon or to restrain the General Assembly from venturing into areas the delegates felt should be avoided. The delegates made certain that detailed provisions within which the General Assembly would be compelled to operate were included in the Constitution.

The Committee on Revenue and Taxation favored exempting public property used for public purposes, actual places of religious worship, places of burial not held for private or corporate profit, and property owned by institutions of purely public charity. Educational institutions had not previously been exempted, and some delegates argued they should not be exempted. The view that prevailed is that such an exemption was necessary. As one delegate stated:

> It is not an economic question at all. It is, sir, a question of policy, it is a question of what Kentucky will do, what spirit Kentucky will manifest towards the institution of learning.[1]

It was argued that church property should not be given a blanket exemption, some delegates being opposed to exempting all the property of large, wealthy congregations. Some delegates also argued for exempting growing crops, reasoning that farmers had paid taxes on the ground which produced the crops.

At least a few delegates argued that the Constitution was no place to provide for exemptions. One delegate stated prophetically the reasons for this approach, which the convention chose not to accept:

> This country . . . is passing from that period when the people have paid greatest attention to the civil rights of the citizens to the period when attention will be called to the property rights of the colossal property holders. We know not what may be the result of that movement, and when it does come whenever that question does come the legislature ought to have the power to afford relief.[2]

Section 170 as finally adopted contains several of these proposed exemptions; residences owned by religious societies were exempted to a maximum of a half acre of ground in towns and cities and two acres in the country. Crops grown in the year of assessment and in the hands of the producer were also exempted. In 1990, this section was amended to exempt all real property owned and occupied by, and all personal property, both tangible and intangible, owned by institutions of religion.

By contrast, when the convention took up discussion of an annual tax "to defray the estimated expenses of the Commonwealth . . . ," there was very little debate and only minor change concerning the wording before Section 171 was adopted.

The convention wished to establish a basis of property tax assessment. This was particularly important since the property tax was the primary revenue source throughout the state. The method they chose was to assess property at fair cash value, something approximating the market value. Some delegates mentioned difficulties in ascertaining what market value would be for things that are not normally resold, such as railroad equipment or turnpikes and toll bridges. Finally the delegates settled on an amendment assessing all property "not exempted from taxation by this Constitution." Although the tax rate could vary up to a maximum amount, the assessment of property was thus set at its probable market value. Seemingly one of the most straightforward sections in the document, Section 172 would cause great problems years after the convention.

Another indication of the delegates' reaction to their era was the inclusion in Section 172 of a provision that anyone committing willful error in assessment would forfeit his office and be subject to legal penalties. Some delegates had argued such a concern was not a proper function of a constitution. In Section 173 the delegates went on to provide that any officer receiving a profit on public funds was guilty of a felony. Again it was argued that a constitution was not the place to include such a provision, one delegate arguing, "A constitution should be a declaration of principle, with only such limitations on the legislative power as experience has shown to be necessary or expedient."[3] However, one of the delegates stated, "There is very little in the section that could not be regulated by the Legislature; but as they have neglected to provide the necessary safeguards for so long, it is obviously the duty of this body to correct the evil."[4]

It was specifically provided in Section 174 that property, whether corporate or individual, was to be taxed according to value. In the same section, the delegates also provided that nothing should prevent the General Assembly from imposing income, license, or franchise taxes. This was a rather far-sighted provision and an unusual one for a constitution adopted at this time. The delegates felt that the General Assembly should have various options at its disposal for raising revenue, and this is one of the few open-ended powers given to the legislature in the document.

The convention debated the question of whether the Commonwealth should assist cities or counties in the payment of their debts. A section was drawn up prohibiting the Commonwealth from assuming the debt of any county or city. Some delegates wanted to include specific exemptions for counties which had built up railroad debts. Most objected to this, however, saying relief for these counties was best left to the General Assembly. The delegates were probably also aware of the muddled financial affairs of some cities, notably Louisville, and did not wish to have cities rescued by the state. Section 176, as finally adopted, prohibited the state from assuming the debt of any "county, municipal corporation, or political subdivision," except those debts incurred for self-defense during wartime or to suppress insurrection.

In Section 177 the convention retained a prohibition from the third Constitution against the state lending credit to, or becoming a stockholder in, a corporation. The ban on state construction of railroads was also retained, as was the requirement that appropriation bills specify the purpose for which the money is to be used.

The convention added to the document a provision that a political subdivision may not become a stockholder in a corporation or lend credit to any person. Several amendments were proposed which were readily defeated. The only change made before the adoption of Section 179 was that the state might lend its credit for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads. The section also allowed cities to offer money or property to the state as an inducement to moving the capitol.

An area of the Constitution which aroused much debate was the provision setting maximum tax rates for cities. Again the controversy turned on the delegates' perception of the Constitution and its function. The delegates from Louisville led the fight for maximum constitutional rates. The City of Louisville had been the scene, on a somewhat smaller scale, of the kind of corruption going on in such cities as Chicago and New York at the same time. One Louisville delegate argued:

> I tell you all, this trouble has come by not having a limit on taxation. If you had a limit beyond which officials could not go, if they had understood that they could not create valid indebtedness beyond that amount, and if the people who took contracts understood that they could not recover on work in defiance of the right to the city, we would have been saved this $3,800,000 which have been taken from us in the last twenty years for purposes which the officers had no right to incur the debts for, and which they incurred in absolute violation of any right.[5]

Other delegates, however, felt that a constitution was not the place to set tax rates. Another Louisville delegate argued:

> I cannot consent that the tax rate shall be fixed in the Constitution for all time to come . . . you cannot look far enough in the future to do that; and yet, in this matter, you are undertaking to fix the rate for cities for years to come. I cannot think this is wise or just.[6]

Still other delegates argued that someone in the community could always object to an expenditure of money and that maximums were therefore best left outside a constitution.

Maximum limits on city taxes were set in Section 157. As one delegate confidently announced:

> We have assumed after careful consideration, and I do not believe we are wrong, that, for all time to come, for governmental purposes, $1.50 [tax per $100 assessed valuation] should be the maximum limit, and I say that is correct.[7]

Another provision that would create problems after the adoption of the Constitution was Section 158, which set limits on the maximum indebtedness of cities. Again, the Louisville delegates fought for such a limit. As one non-Louisvillian, Delegate Phelps, was to say, I believe that one of the controlling reasons with the committee in fixing the limit was the large indebtedness of the city of Louisville.[8]

An additional barrier to cities' indebtedness was the requirement of a two-thirds majority of the electorate voting on any such indebtedness. While this barrier seems today to be almost insurmountable, some delegates felt even this was perhaps not strict enough. One delegate, speaking of the two-thirds vote, stated:

> You must consider the fact that the authorities, the powers that be, the police force, the fire department, the contractors, the people who want the debt contracted, will unite together, and can come very near carrying a proposition of that kind through, over the wishes of the taxpaying public.[9]

Given such fears regarding municipal finances, it is not difficult to understand the adoption of debt ceilings for cities.

The major modifications made by the fourth Constitution in the areas of taxation and finance were as a whole meant to restrain two institutions somewhat tarnished in 1890: the General Assembly and the cities. Given the environment of the delegation, it is not hard to understand such action, although such an understanding does nothing to ease the problems of a modern state with a budget in the billions. The Constitution of 1891 is restrictive precisely because it was meant to restrict. Men from a predominantly rural state were attempting to face times of great change in their state and nation and had seen first hand the abuses possible in state and local governments. They acted accordingly.

Important Court Decisions on Taxation and Finance

The Court of Appeals, when it was the state's highest court, and now the Supreme Court, have been asked repeatedly to expand the scope and flexibility of the 1891 Constitution. As with any constitutional government, it is the judiciary in Kentucky which has given shape and form to the words of the Constitution. Balancing the words and intent of the framers with the practical realities of government, Kentucky courts have had a major role in developing current taxation and finance procedures. They have in several instances effectively amended the Constitution by judicial interpretation.

The maximum debt limitations for cities, counties, and special districts set by the Constitution (Section 158) have proved to be a problem for these units. Basically, the debt limitations provide that failures in revenue may not exceed a certain percentage of the total property assessment of a city or county. Any new debt proposal must be submitted to a vote and approved by two-thirds of those voting on the issue. Because of the near impossibility of securing a two-thirds voter approval, local governments have been forced to use revenue bonds, which are debt securities retired by income produced from the project to be funded. Revenue bonds generally carry a higher interest rate than normal full faith and credit bonds and are thus a more expensive means of financing city or county debts. For example, the Lexington Civic Center, a $33 million project, cost approximately $4 million in additional interest because revenue bonds were used rather than full faith and credit bonds.

In *Bowling Green v. Kirby* (1927), the Court of Appeals had "no difficulty" in concluding that bonds for a waterworks plant were not debts within the meaning of the Constitution, as long as they were paid for out of the income and revenue derived from the operation of the waterworks plant. In *Robertson v. Danville* (1956), the Court upheld the constitutionality of a special benefit assessment. The Court held that the pledge of the city in such assessments was limited to employing all available measures for the enforcement and collection of the tax and that the full faith and credit of the Commonwealth was not pledged to the bonds. Therefore, the bonds were not an indebtedness, and no vote of the people was required prior to issuance.

The Court has also allowed school boards to create nonprofit corporations which can issue revenue bonds, build schools, and then lease the buildings back to the boards and retire the bonds, without being subject to the debt limitations of the Constitution. In *Waller v. Georgetown* (1925), the Court held that only that annual rent paid by the school boards fell under the debt limitation. This particular method of funding has been widely used at various levels of state government to fund capital construction.

In *McGuffey v. Hall* (1977), the Supreme Court took a more restrictive approach to the sometimes ambiguous terms in Section 50 of the Constitution which define the allowable types of state debt. Invoking Section 50, the Court disallowed a plan for providing medical malpractice coverage for Kentucky physicians which allowed claims to be paid out of the state's General Fund. The interpretation stated that the "constitution prohibits any commitment against future general revenues without the vote of the people" and that:

> No agency of state, including its legislature, can place obligation against general funds otherwise available for appropriation and expenditure by a future legislature, and it is no answer to say that general fund will be taxed only temporarily, in form of a loan.[10]

In *Legislative Research Commission v. Brown* (1984), the Supreme Court ruled, based on language in Section 88 of the Kentucky Constitution referring to the budget document as a "bill," that such document must indeed be a bill and not a resolution. The court further explained that "while the Governor's veto power applies to all bills, it is only in the case of appropriation bills that a line by line veto may be exercised."[11]

Section 172 of the Kentucky Constitution states that for ad valorem tax purposes, property should be assessed at "fair cash value, estimated at the price it would bring at a fair voluntary sale." Prior to 1965 it was common practice, however, for the officials in charge of assessments to value property at as little as twenty-five percent to thirty-five percent of its full value. Property owners who filed suit, charging that their assessments were too high, placed the Court of Appeals in a dilemma. Since the property of neighboring owners was often assessed at much less than full value, the Court had to either raise all assessments or lower one which was higher than that of comparable property owners.

In *Eminence Distillery v. Henry County* (1918), the Court ruled that a lower court erred when it did not adjust the fair cash value of one property owner's holdings to equal the percentage of value of other property owners in the county. The Court stated it had no other means of redressing the grievance of which the appellant justly complained.

By 1960 the Court had begun to look with disfavor on the low assessment levels. The Court noted that tax rates were never applied to the fair cash value of the tangible property except by chance. The Court had difficulty understanding why all assessments should not be at one hundred percent of value.

This shift was complete when the Court ruled, in *Russman v. Luckett* (1965), that the fact that property had been under-assessed for seventy-five years did not justify the continuance of the practice. The Court held that the assessment procedure was unfair and administratively inefficient and gave the tax commissioners an unwarranted and arbitrary control of the tax base. The Court further stated that the then current method of assessment was in direct violation of clearly written, mandatory laws. The court ordered that all property in the Commonwealth, whether assessed by county or city officials, be assessed at fair cash value after January 1, 1966. In no year since 1966 has assessment been at 100%, but the assessment levels in Kentucky are among the highest average levels in the United States.

A further refinement of the equity issue arose in *Parrent v. Fannin* (1981), when the Supreme Court ruled that increases in assessments of taxpayers' properties ranging from one percent to 400 percent did not violate Sections 171 and 172 guaranteeing uniformity in the rate of taxation and assessment standards for property in the same class. The Court of Appeals determined that the varying increases in assessment of properties from one year to the next had instead occurred as a direct result of a change in the assessment levels. (The Revenue Cabinet had determined that the previous year's assessments had been only approximately eigthy-two

percent of fair cash value, and directed the Property Valuation Administrators (PVAs) to increase assessment levels as needed for compliance with the one hundred percent fair cash value standard.) The widely disparate tax increases were therefore not caused by any transgressions of the constitutional rules of uniform rates of taxation and uniform standards of property assessment.

In the same year, the Court reaffirmed the Revenue Cabinet's authority to ensure that property is assessed by the local PVAs at fair cash value, as guaranteed in Section 171. The *Allphin v. Butler* (1981) ruling stated that the Cabinet acted within "the authority and discretion granted it by the legislature [in directing] the PVAs to correct their assessments and to withhold their paychecks for non-compliance."[12]

Section 180 states that "no tax levied and collected for one purpose shall ever be devoted to another purpose." The Court of Appeals in *Lawrence County v. Lawrence Fiscal Court* (1908) ruled that the Constitution did not confine the revenues of a year to the payment of the liabilities incurred during that year. They held that Section 180 means that revenue raised for road purposes may not be applied to educational purposes, but that a fund raised in 1906 for bridge purposes could be appropriated by a fiscal court for bridge purposes whenever contracted.

Section 181 gives the General Assembly authority to delegate power to counties and cities to levy license and excise taxes. In *City of Louisville v. Sebree* (1948), the Court upheld an occupational tax, holding it was not an income but a license tax. The Court noted that the power to impose a license fee on trades, occupations, or professions given in Section 181 was granted without any language restricting or qualifying its exercise except that it be by general law. Many cities subsequently followed Louisville in enacting an occupational tax.

The state high court generally has been willing to amend the Constitution by judicial interpretation whenever it has been almost a necessity in order to have a functioning government. However, in the fair cash value decision, *Russman v. Luckett* (1965), the Court demonstrated there are areas where the letter of the Constitution must be followed.

Taxation and Finance Amendments Adopted Since 1891

A 1903 amendment to Section 181 of the Constitution authorizes the General Assembly to provide by general law for the levying by cities and counties of license fees and franchise taxes based on income derived from property or other sources. Prior to the adoption of this amendment the only source of revenue was property taxes. This amendment provides for revenue from license fees, which are based on the volume of the individual business. Franchise taxes are based on an owner's exclusive right to operate a business.

A 1909 amendment, placed in the Constitution as Section 157a, permits the state to give, pledge, or lend credit to counties for road purposes and permits counties to levy a tax of 20 cents per $100 of assessed property value to pay principal and interest on voted road and bridge bonds. Prior to 1909 many roads were privately owned and tolls were collected on them. The state encouraged the counties to purchase these roads. The only way the counties could finance the purchase of existing roads and the building of new ones was to float bonds. In the 1920s and 1930s, many counties levied the 20 cent tax per $100 as provided in this amendment. For the

fiscal years from June 30, 1938, to June 30, 1946, there was a total of $8,325,000 in road and bridge bonds. The provisions of this amendment have not been used since the 1920s and 1930s because of the 1945 amendment which guaranteed that receipts from certain tax sources shall be placed in the highway fund.

A 1915 amendment to Section 171 permits the classification of property for tax purposes. Before 1915 Kentucky was known as a general property state. All property, including bank deposits, stocks and bonds, horses, cars, and carriages, was taxable at the same rate. There was very little uniformity in the assessment of property. This amendment provided that property which was assessed at fair cash value could be classified and taxed at varying rates. In 1918, the year in which this amendment became effective, the amount of money assessed in Kentucky banks rose from $11,227,196 to $179,143,180. The assessment on tangible personal property rose from $128,692,966 to $232,808,251. The assessment on intangible property rose from $68,650,880 to $246,348,379. Although the assessment figure on these classes of property rose, the rate established for taxing them was low. The amendment was followed by legislation which established the different classifications and rates.

A 1945 amendment to Section 230 guarantees that receipts from certain tax sources shall be placed in the highway fund. In 1945 the revenue collected from the motor fuels tax and the motor vehicle registration tax was being used to subsidize services other than road building. There was not enough revenue in the highway fund, so this amendment made it mandatory that receipts from these two tax sources be placed into the highway fund. The revenue collected from the motor fuels tax for the fiscal year 1991-92 was $344.4 million. Net receipts from the motor fuels taxes are distributed in the following manner:

	1991-92
Regular Road Fund	$81.8 million
Rural Secondary Program	$78.6 million
Municipal Aid	$27.2 million
County Road Aid	$64.7 million

The net receipts from the motor vehicle usage tax for 1991-92 were $210 million.

A 1955 amendment to Section 170 exempts all household goods and kitchen appliances from taxation. The tax had been administered very unevenly and household goods were not assessed uniformly. In 1955, the year before the amendment took effect, the assessments on these items amounted to $19,950,194.

Section 172A, which was ratified by the voters in 1969, mandates that the General Assembly provide that agricultural land adjacent to or near urban areas be assessed for taxation at its value for agricultural purposes and permits a unit of local government to tax property in different areas at different rates based upon services. This amendment allows the assessment of farm land near an urban area to be made for property taxes at its agricultural value rather than the value that would be placed on it if it were sold to build a factory or housing subdivision.

All land that fits the description in this amendment must be assessed twice: once at its market value or fair cash value, and once at its agricultural value. If the use of the land changes within three years after the first deferral, back taxes must be paid, based on the market value. The 1991 figure for deferred farm assessment was $6,999,000,000.

A 1971 amendment to Section 170 exempts from taxation up to $6,500 of the assessed value of a single-family residence owned and occupied by a person age 65 or older, and a 1975 amendment extends the Homestead Exemption to residents of other than single-family dwellings. The latter amendment provides an exemption for older persons who rent out a portion of their home or who own a condominium or an interest in a residential cooperative. An amendment adopted in 1981 further extends the Homestead Exemption to totally disabled persons who own their own home, regardless of the age of the taxpayer.

In 1972, the first year that the original homestead amendment went into effect, exemptions totalled $695,858,422. This amount represented 4.3 percent of the total real estate assessment. In 1975, the last year before the first amendment extending the exemption was added, there were exemptions totalling $1,110,421,398, amounting to 5.0 percent of the total real estate assessment. In 1992, exemptions under the homestead amendment had grown to $5,437,000,000, accounting for approximately 7.0 percent of the total real estate assessment.

A substantial amount of the increase in the value of the Homestead Exemption is attributable to a 1974 Act of the General Assembly which applied the dollar value (rubber dollar) principle to the $6,500 constitutional exemption. KRS 132.810 provides that the $6,500 exemption shall be construed to mean $6,500 in terms of the purchasing power of the dollar in 1972, and further provides for an adjustment in the amount of exemption every two years if the cost of living index has changed as much as one percent. The value of the Homestead Exemption for 1992 was $21,300.

The total number of persons now covered by the homestead exemption is estimated to be between 200,000 and 225,000. The percentage of real estate assessment exempted is usually higher in rural counties, with a larger population of older citizens, and lower in metropolitan areas, with a broader commercial and industrial base and a younger population.

Amendments to Section 186 pertaining to the financing of education were passed in 1941, 1949, and 1953. The 1941 amendment permitted ten percent of money appropriated by the General Assembly for school purposes to be used in an equalization fund, instead of being divided on a per capita basis. The 1949 amendment changed from ninety percent to seventy-five percent the state-appropriated school funds to be divided on a per capita basis. The 1953 amendment repealed Section 186, which required school funds to be distributed on a per capita basis.

Prior to the adoption of these amendments, the state appropriated all school funds on a per capita basis, according to the school census. A total of nine dollars was appropriated for each school-age child, whether or not the child was attending the public schools. Many rural children often did not attend school, and some counties, such as Kenton in northern Kentucky, had a large number of children attending private parochial institutions. These differences caused state-supported schools in these counties to receive more revenue than state-supported schools in other counties. In 1953 all per capita provisions of Section 186 were eliminated. The present section provides that the General Assembly shall decide how the public school fund is to be divided.

A 1990 amendment to Section 170 exempted from taxation real property owned and occupied by institutions of religion, and all personal property owned by institutions of religion. Prior to the amendment, only places actually used for religious worship and appurtenant grounds (one-half acre in the city, two acres in the country), and all parsonages occupied as a home by a minister of religion and appurtenant grounds were exempt.

Proposed constitutional amendments relating to taxation and finance which have been defeated are:

Year Submitted	Section To Have Been Amended	Purpose
1897	181	Would have permitted municipalities to tax property on the basis of income.
1907	145	Would have made the payment of taxes a prerequisite to voting.
1913	171	Would have permitted the classification of property for tax purposes. Through error this amendment was not publicized as required by Section 256. Thus, although it was placed upon the ballot, voted upon and passed, it was declared invalid.
1931	158	Would have raised the debt limits of cities and counties in certain cases.
1933	172	Would have permitted the legislature to exempt real and personal property from taxation by the state.
1990	172	Would have permitted any city or county to exempt businesses and industries and any property owned by them from municipal or county taxation for a period not to exceed ten years.

Comparison of Revisions

The following table is a comparison of the revisions proposed by the Constitutional Review Commission in 1950 with those proposed by the Constitutional Revision Assembly of 1964-66 to constitutional sections in the area of taxation and finance.

Present Sections	Proposed Revisions 1950	1964-66
1. Section 88 Governor's veto power)	1. No changes proposed	1. Recommended a requirement that 3/5 majority override Governor's veto instead of simple majority. The Governor to be given twenty days at end of legislative session to veto any bills for reason that ten days had not proven to be sufficient for Governor to give detailled consideration to any bills passed by General Assembly near the close of a session.
2. Section 157 (Maximum tax rates for cities, counties, and taxing districts)	2. Recommended deletion. "Outdated"	2. Proposed General Assembly set ad valorem tax rates. Deleted requirement for payment of debt out of current revenues and requirement of referendum.
3. Section 157a (Prohibition against loaning Commoná- wealth's credit)	3. Recommended deletion. "Obsolete "	3. Recommended deletion "Obsolete"
4. Section 159 (Municipalities to pay debts within forty years)	4. Recommended deletion of Sections 158 and 159. Recommended these areas be left to legislation.	4. Recommended General Assembly regulate local government indebtedness. Would allow local governments to use full faith and credit indebtedness.
5. Section 170 (Exemptions from property tax)	5. Recommended deletion.	5. Recommended extending exemptions to "personal effects," and all crops in hands of producer. Would allow counties and cities to give five year exemptions to industry but require new industry to pay school tax.
6. Section 171 (State to levy annual property tax)	6. No changes proposed	6. Proposed deleting requirement of state to levy annual property tax. Would allow General Assembly to provide for taxes in addition to ad valorem taxes and would delegate part of taxing power to local government.
7. Section 172 (Fair cash value provision)	7. No changes proposed.	7. Recommended fair cash value language be retained. General Assembly would provide for assessment of farm land near cities. Recommended deletion of Section 174.
8. Section 175 (Power to tax property not be surrendered)	8. No changes proposed.	8. Recommended taxes not be reduced to avoid repayment of pledged indebtedness.
9. Section 176 (Prohibits state from assuming local debt) Section 177 (Prohibits state from lending credit) Section 178 (Law for borrowing money) Section 179 (Local governments not to become stockholders)	9. Recommended deletion. "Obsolete"	9. Proposed changing Section 177 and 179 to allow state and local governments to operate through public corporations. Ban on government aid to private ventures retained. Recommended changing Section 178 to allow borrowing for more than one stated purpose.
10. Section 180 (Authorizes poll tax)	10. Recommended deletion of Sections 180 and 181 and adoption of following: "The General Assembly shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may by general laws only confer on the proper authorities thereof the power to assess and collect such taxes."	10. Recommended combining Sections 180, 181, and 157a into brief section authorizing state to allocate part of state tax money to cities and counties for local purposes.
11. Section 184 (Common school fund) Section 185 (Interest and investment of school fund) Section 186 (Use of school fund) Section 188 (Refund of direct federal tax) Section 189 (Prohibits use of school fund for church or denominational schools)	11. No changes proposed.	11. Recommended removing restriction limiting state aid for higher educa tion. Would keep requirement that public school funds be used for public schools. Superintendent of Public Instruction removed from list of elected officials. Recommended deletion of provisions on school fund and interest, and requirement for segregated schools.

Strengths and Weaknesses
Constitutional Provisions on Taxation and Finance

This discussion of taxation and finance provisions in Kentucky's Constitution has already specified or implied some of its strengths and weaknesses. The following section summarizes those criticisms. Following that summary is a brief examination of what a few similar states have done in this constitutional area and what have been proposed as model constituional provisions in the area of taxation and finance.

Strengths

The 1891 Constitution undeniably has forced greater accountability on state and local governments than existed before. The prohibition of special legislation, which is also found in many other state constitutions, put an end to a particularly damaging practice. Kentucky's Constitution has allowed adoption of an income tax, which has grown into a major revenue source, one totally unforeseen by members of the 1890 convention. It has proven, through interpretations by the state high court, to be flexible enough to support revenue bonding and municipal occupational taxes. The sections on revenue and taxation have been among the most amended sections of the 1891 document, showing that necessary change has been possible through the amendment process. Perhaps the strongest argument for the present Constitution in the area of taxation and finance is that it has worked thus far, with the aid of judicial interpretation. It has provided a relatively dependable mechanism for financing government. Numerous court rulings have bolstered and embellished it, and procedures have developed over eighty-six years which have fleshed out its constitutional provisions.

Weaknesses and Limitations

As with any document claiming to be the basic law of a government, Kentucky's Constitution has some limitations. The debt limitations imposed on state and local governments and the resultant use of revenue bonds have undoubtedly caused higher costs. Investors demand higher rates of interest for the greater risk involved in the purchase of bonds scheduled for repayment only from revenues generated by the financed project, as opposed to general obligation bonds which carry the full faith and credit of the Commonwealth and have first call upon any or all of the Commonwealth's resources for repayment. The interest on revenue bonds is normally one-fourth of one percent higher than the interest on general obligation bonds. Some have argued that revenue bonding procedures have led to greater executive control of the bonding process without increased legislative oversight, a process which could easily lend itself to abuse, especially in the capital construction area.

The various taxation and debt limitations on local governments have also caused some inequities. In third-class cities of more than 15,000 population, debt obligations may be undertaken amounting to twice as great a proportion of their assessed valuation as smaller cities of the third class. Similarly, a city having a population of 15,001 may levy a tax rate of $1.50 on every $100 of assessed property; but a city of 14,500 may levy a tax rate of only $1.00. Cities in search of new revenues to support growing local services are prohibited by the Constitution from levying an income tax or sales tax.

As a whole, the 1891 Constitution places rather severe limitations on local government sources of revenue. The limited powers of taxation by cities, counties, and municipal governments was identified by the Subcommittee on Revenue and Taxation of the 1987 Special Commission on Constitutional Review as the constitutional area most in need of revision. Cities are limited to ad valorem, license, and excise taxes. A two-thirds voter approval is required for new local

indebtedness, compared to a majority vote on new state indebtedness. Further, the state is forbidden to levy taxes for political subdivisions. Many taxation and finance authorities argue that local governments thus need more flexibility in their power to tax. Otherwise they will be forced to use less equitable and satisfactory sources or look to the state to take over more and more local functions.

The taxation system set up by the 1891 Constitution has come under criticism. For instance, it has been argued that the property tax exemption given to educational institutions is too extensive. Many universities both inside and outside Kentucky have diverse property holdings unrelated to any educational purpose. Also, the concept of fair cash value in property assessment, in terms of its uniform application throughout the state, is still a source of controversy among tax administrators.

The lack of continued legislative control over the enacted budget is another area in which the 1891 Constitution has been criticized. The Subcommittee on Revenue and Taxation of the 1987 Special Commission on Constitutional Review identified the lack of legislative control and the failure of the Constitution to establish a manageable budget reduction mechanism involving all branches of government as the second major issue within its area of review that should be addressed by a constitutional amendment. The Subcommittee recommended the creation of an emergency budget board, with members from all three branches of government.

Other States

The Constitutions of states economically similar to Kentucky reveal few major differences. The Constitutions of Tennessee, West Virginia, Alabama, Arkansas, and South Carolina were adopted between 1870 and 1901, and all are basically similar to that of Kentucky. In Tennessee, property tax rates are set at a percentage of value, with assessment required to be uniform throughout the state. The Tennessee legislature has the power to authorize counties and towns to impose taxes. In West Virginia, bonded indebtedness of cities and counties is limited, and any new debt must be approved by three-fifths of all votes cast. Higher debts for school districts are allowed without the three-fifths requirement for approval. South Carolina's Constitution provides that any increase in the state debt be approved by two-thirds of the qualified electors. Both the Alabama and Arkansas Constitutions set tax rates and debt limitations on state and local governments.

During 1984-85, South Carolina joined states that tie state expenditure increases to state economic growth. Louisiana rejected a limit on growth in state general fund expenditures during that period. South Carolina also approved a state balanced budget amendment in 1984-85. Alabama approved a new, permanent trust fund from oil proceeds; Louisiana rejected a proposal for a permanent trust. During 1983-84, Louisiana created the Louisiana Investment Fund for Enhancement (LIFE) to capture windfall revenues from deregulation of oil and gas. That state also created the Quality Education Trust Fund, to channel $540 million of $640 million from the federal government from offshore oil disputes into a fund protected from expenditure; only seventy-five percent of the investment income from the fund may be spent.

Tennessee imposed restrictions on state spending in 1979, linking the growth of state spending to personal income growth indexed to the year of adoption, 1979. The amendment has, however, had little practical effect on state spending. Arkansas rejected a new Constitution in 1980 that would have increased flexibility in property tax provisions and would have included an overhaul of property evaluation and assessment.

Louisiana's present and tenth Constitution was adopted in 1975. It contains several provisions not found in surrounding states' Constitutions. The Louisiana Constitution states specifically that the full faith and credit of the state is pledged to the repayment of all state funds, allowing Louisiana to avoid the more costly revenue bonding. The Louisiana Constitution also provides for a revenue sharing fund to be established to return money to local governments.

In 1982, West Virginia adopted a property tax limitation and created a homestead exemption. The limitation states that all property subject to ad valorem taxation will be assessed at 60 percent of its value unless altered by general law agreed to by two-thirds of the members of each legislative chamber. The property tax limitation also called for a statewide appraisal to be completed and submitted to the legislature by March 31, 1985. The homestead exemption applies to the first $20,000 of assessed valuation of any real property mobile home used exclusively for residential purposes. The property must serve as the residence of at least one owner. The owner must be a citizen of the state and be 65 years of age or older or be permanently and totally disabled, as defined by the General Assembly. This amendment also addresses levies for free schools, allowing the General Assembly to require that local school districts levy all or any portion of the maximum level allowed in order to equalize the support of free schools.

In 1986, West Virginia adopted the "Warehouse Freeport Tax Exemption Amendment," exempting from ad valorem taxation certain personal property of inventory and warehouse goods, with a five-year phase-in to full exemption.

A Model Constitution

The Model State Constitution was written by the National Municipal League as a help to those interested in improving state constitutions. The Model State Constitution leaves to the legislature and the Governor broad responsibility for the conduct of the state's fiscal affairs. There is no referendum requirement for the creation of state debt. Except to qualify for federal grants, the practice of earmarking taxes is prohibited, in order to prevent any built-in imbalance between actual public expenditures and genuine public need. Home rule is granted to cities and counties. This document also recommends that an auditor appointed by the legislature perform a second audit on governmental agencies.

Summary

In the area of revenue and taxation, Kentucky's Constitution is fairly representational. All of the Constitutions of the similar states in the comparisons above were written with the assumption that the property tax would be the major source of revenue. All set some limitations on tax rates and state indebtedness. With the exception of Louisiana's, all were written at roughly the same time. All reflect a general distrust of the legislatures as taxing authorities.

Kentucky has, in comparison, done better in its revenue production than many of these other states. The oil-embargo-induced explosion in revenue from the coal severance and corporate income taxes that sustained Kentucky in the mid- and late 1970s and early 1980s has subsided. Changing revenue and public service needs may force Kentucky, as they have other states, to examine constitutional restrictions on revenue and taxation.

FOOTNOTES

1. *Debates of the 1890-91 Constitutional Convention*, Beckham, p. 2711.

2. *Debates*, Bullitt, p. 2746.

3. *Debates*, Kennedy, p. 2750.

4. *Debates*, Johnston, p. 2750.

5. *Debates*, Young, p. 2872.

6. *Debates*, McDermott, p. 2870.

7. *Debates*, McKay, p. 2878.

8. *Debates*, p. 2892.

9. *Debates*, Phelps, p. 2893.

10. *McGuffey v. Hall*, 557 S.W.2d 401 (Ky. 1977).

11. *Legislative Research Commission v. Brown*, 644 S.W.2d 907 (Ky. 1984).

12. *Allphin v. Butler*, 619 S.W.2d 483 (Ky. 1981).

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Russman v. Luckett, 391 S.W.2d 694 (Ky. 1965).

Waller v. Georgetown, 209 Ky. 726, 273 S.W. 498 (1925).

CHAPTER IX

LOCAL GOVERNMENT AND THE KENTUCKY CONSTITUTION

Kathy Campbell

Introduction

> . . . a Constitution is not an ornament; it is not like a "counterfeit presentment" of some of our cherished dead; it is something we must use every moment; it is less like a portrait than it is like a suit of clothes or a house. . . .
>
> Speech by Louisville Delegate
> E. J. McDermott at the 1890
> Constitutional Convention

On September 8, 1890, one hundred delegates gathered at what is now the Old Capitol in Frankfort to attend a constitutional convention which would not formally adjourn until September 28, 1891. After 226 sessions, which produced 6,000 pages or 20,000 words, the delegates presented to the electorate the Commonwealth's fourth Constitution, which was subsequently ratified. The 1891 Constitution remains the basic law of the Commonwealth; however, it has been amended thirty-two times to reflect the changing needs and desires of the citizens of this state.

Kentucky's present Constitution reveals sweeping reforms in the area of local government, when compared to the previous three Constitutions that governed the state. All local units of government (cities, counties, special districts, and school districts) are legal subdivisions of the state. They derive their powers from the state and can do only those things permitted by the Constitution and the General Assembly. This chapter addresses the constitutional provisions affecting Kentucky's local governments.

General Constitutional Provisions Relating To Local Government

Prior to 1891, many legislators worked for the passage of special legislation that would benefit only one city or one county. "Because such legislation could be used to benefit the friends or harm the enemies of a legislator, there developed out of such system . . . a great deal of favoritism, corruption and confusion."[1] Due to the rural background of a majority of the convention delegates, and the low esteem in which local officials, especially municipal officials were held, the abolition of special legislation had top priority during the 1890 convention.

The deep-rooted mistrust of local officials and of special legislation resulted in the inclusion of several key sections in the final draft of the Constitution. Section 59 expressly prohibits the General Assembly from passing any local or special legislation on twenty-nine topics. Section 60 prohibits the legislature from indirectly enacting any special or local legislation by repealing any part of a general act which affects the entire state, or by exempting any city, county, town, or district from a general act.

Other issues affecting local governments were of paramount importance to the framers of the 1891 Constitution, as evidenced in Sections 44, 165, and 237, which address the issue of conflict of interest. Section 44 makes members of the General Assembly ineligible, during the term for which they were elected, and for one year thereafter, for appointment or election to civil office or receiving increased compensation during said term, with the exclusion of such offices as may be filled by an election of the people. Section 165 prohibits any person from holding incompatible offices or

employments and states that no person shall, at the same time, be a State officer or a deputy officer or member of the General Assembly, and an officer of any county, city, town, or other municipality, or an employee thereof; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities, except as may be otherwise provided in this Constitution; but a Notary Public, or an officer of the militia, shall not be ineligible to hold any other office mentioned in this section. Section 237 prohibits persons holding or exercising an office of trust or profit under the United States or any foreign power, or members of Congress, from holding state office.

In an attempt to restore confidence in and integrity to public office, corrupt election practices were included in constitutional prohibitions. Section 150 mandates that persons be disqualified from office for using money or property to secure or influence an election. Corporations are prohibited from using money or other things of value to influence an election. Section 150 also excludes persons from holding public office who have been convicted of a felony or a high misdemeanor.

Section 151 charges the General Assembly to "provide suitable means" for depriving of office any person who has been guilty of any unlawful use of money or other things of value, or has been guilty of fraud, intimidation, bribery, or corrupt practices. Section 173 mandates that any officer of the Commonwealth, or of any county, city or town, or any member or officer of the General Assembly shall be guilty of a felony if he directly or indirectly receives a profit from the use of public funds in his charge, and requires that part of his punishment be disqualification from holding office.

The fourth Constitution also addresses contracts and franchises. Section 162 voids any unauthorized contracts or agreements of counties, cities, towns, or other municipalities. Public utilities are mandated by Section 163 to obtain a franchise from the proper city legislative body before constructing any apparatus upon or under streets, alleys, or public grounds of the city. An exception is noted in Section 163 for utilities that had been granted permission to construct prior to the adoption of the 1891 Constitution. Section 164 limits local governments by prohibiting counties, cities, towns, taxing districts, or other municipalities from granting any franchise or privilege, or making any contract in reference thereto, for a period exceeding twenty years.

Section 61 mandates the General Assembly to provide by general law for cities and counties to hold local option elections on the question of selling alcoholic beverages.

City Government

Classes of Cities

The abolition of special legislation necessitated the creation of a mechanism for addressing the specific problems of the cities of various size across the Commonwealth. Section 156 of the new Constitution established a classified system that assigns cities to one of six classes, determined by population. The General Assembly is required to enact uniform legislation with respect to any one class, but legislation may differ from class to class.

Section 156 provided for the following class population limits:

Class	Population
First	100,000 or more
Second	20,000 to 99,999
Third	8,000 to 19,999
Fourth	3,000 to 7,999
Fifth	1,000 to 2,999
Sixth	999 or less

Section 156 also addressed the procedures to be followed when a city changes classification:

> . . . The General Assembly shall assign the cities and towns of the Commonwealth to the classes to which they respectively belong, and change assignments made as the population of said cities and towns may increase or decrease, and in the absence of other satisfactory information as to their population, shall be governed by the last preceding Federal census in so doing; but no city or town shall be transferred from one class to another, except in pursuance of a law previously enacted and providing therefor . . . .

In 1994, Section 156 was repealed and a new Section 156a authorized the General Assembly to provide for the creation, organization, and governance of cities and to establish classifications of cities based on population, tax base, form of government, geography, or any other reasonable basis. The classifications that were in effect when the amendment was adopted would remain in force until changed by the General Asssembly.

In 1894 the Court of Appeals ruled in *Green v. Commonwealth* that only the General Assembly may assign a city to a class, and if a city is assigned to the wrong class, the courts may not overrule the General Assembly and assign it to the proper class.[2] The Supreme Court and lower courts have therefore consistently not allowed any challenges to legislative classifications as long as they are based upon proper information.

One of the most recent cases in this area occurred on November 15, 1989, when police and fire employees of the fourth class city of Berea (1990 population estimate 9,126) filed suit against the General Assembly to compel the legislature to reclassify Berea as a city of the third class. The purpose of the lawsuit was to acquire the better retirement benefits that state law requires cities of the third class to provide to their employees.

On March 1, 1991, the Kentucky Court of Appeals issued an unpublished decision (No. 90-CA-0222-MR) that affirmed the opinion of the Franklin Circuit Court to dismiss the city employees' complaint "for failure to state a claim upon which relief may be granted. Kentucky Rules of Civil Procedure (CR) 12.02(f)." The Court of Appeals also held that the judiciary is without power to mandamus the Legislative Branch to reclassify the City of Berea.

In order to resolve the ambiguities surrounding the issue of city reclassification, the 1986 session of the Kentucky General Assembly enacted KRS 81.032 through 81.036. This legislation establishes standards for the reclassification of cities. The use of census data is required, unless an affidavit is filed by the city citing recent growth in population which is not reflected in the census figures. The affidavit must be supported by documentation, which may include more recent property valuation information, door-to-door population counts, or other municipal data, such as annexation records, which may not be included in the recent population estimates. The estimated population data and the constitutional reclassification information is required to be published in the official record of the General Assembly and, upon reclassification, the General Assembly is required to provide the Secretary of State a copy of the certified information which was presented to the General Assembly.

Municipal Officers

The election of municipal officers is governed by Section 160 of the Constitution, which provides that the mayor or chief executive officer, police judges, and members of legislative boards or councils of towns and cities shall be elected by the qualified voters thereof.

Election and Term

Section 160 establishes that mayors of cities of the first, second, and third classes and the members of legislative bodies of all classes of cities are to be elected by the qualified voters of the cities. Mayors of fourth, fifth, or sixth class cities may be appointed or elected, as provided by law. The terms of mayors are set at four years or until their successors qualify, and the terms of members of legislative bodies are two years. The section does not allow legislative body members to hold over in office until successors qualify.

Prior to 1986, Section 160 expressly prohibited mayors, chief executive officers, or fiscal officers of cities of the first or second class from succeeding themselves in office after serving one term. The section defined "fiscal officer" to mean an officer whose chief duty is the collection or holding of public monies, but did not include auditors or assessors. The 1986 General Assembly enacted House Bill No. 1 (Acts Chapter 140), which proposed to amend Section 160 to allow mayors or chief executive officers of first or second class cities to serve three consecutive terms before becoming ineligible for a succeeding term. The measure proposing to amend the Constitution was ratified by the voters at the regular election held in November, 1986.

If any city of the first or second class is divided into wards, the members of the legislative body must be elected from the city at large, but an equal proportion must reside in each ward. If any city of the first three classes has a bicameral legislative body, the members of the smaller body must be elected at-large.

Section 236 authorizes the General Assembly to fix the date on which officers take office, unless otherwise specified in the Constitution.

Section 167, just amended in November, 1992, provides that all elected city and urban-county officials are to be elected at the general election in November in even-numbered years. Senate Bill 226, (1992 Acts, Chapter 168), which outlined the subsequent changes to Section 167, also provided for a one-time transitional year to be added to the term of any newly-elected local officials who must have their terms of office extended in order to be elected in even-numbered years.

Section 152 specifies that vacancies in offices are to be filled by appointment. The appointee serves until the next regular city, county, district, or state election, unless that election takes place less than three months after the vacancy occurs, in which case the appointee serves until the second succeeding annual election. Section 160 empowers the General Assembly to create other municipal offices and to provide that they be elective or appointive. Any office so created has a term of four years.

Qualifications

Section 160 provides that the General Assembly may set qualifications for all officers and the manner in which they may be removed and how vacancies are to be filled. A number of

provisions, some applicable to all state officers, and others only to local government officers, set out various qualifications and disqualifications for public office.

Section 234 requires all municipal officers to reside within the city limits and to keep offices therein where required by law.

Section 228 requires that the following oath be taken by all officers prior to assuming the duties of their offices:

> I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of . . . according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

Section 239 disqualifies a person from holding an office if he has participated in a duel or acted as a second therein.

Disqualifications also result if any officer profits through the use of public funds (Section 173) or if any officer accepts free passes or reduced rates which are not also offered to the public on any common carrier (Section 197).

Section 68 provides that all civil officers are subject to removal by impeachment before the General Assembly. Section 150 disqualifies any person from public office if, to serve in such office, he has promised money or anything of value. Any person convicted of a felony or high misdemeanor is also disqualified from public office.

Section 45 makes any person who has served as a city collector of taxes or public monies ineligible to serve in the General Assembly unless he has received a quietus from the city at least six months prior to the election.

General Provisions Relating to Cities

Section 242 requires that whenever any city exercises the privilege of taking private property for public purpose it make "just compensation for property taken, injured or destroyed." Section 168 prohibits a city ordinance from fixing a penalty less than that imposed by statute for the same offense. A conviction under state law is a bar to conviction under local law for the same offense, and vice versa.

City Home Rule and the Constitution

Prior to the enactment of the Municipal Code of 1980, the Kentucky Constitution was, in actuality, of little direct interest to city officials. The powers of cities stemmed from specific legislative grants of authority enacted by the General Assembly. The limitations and restrictions contained in the Constitution were considered by the General Assembly and taken into account

in the legislation enacted. It was, therefore, usually not necessary for a city to determine whether its actions were constitutional; it was only necessary to determine whether its actions were within the perimeters of a legislative grant of authority.

The enactment of KRS 82.082 changed this situation dramatically. In place of specific grants of power, there is now a grant of home rule powers that gives cities all municipal powers, except those denied by the Constitution or by statute. Thus it is now up to cities to determine that their actions are constitutional and are not statutorily prohibited. In 1994, an amendment was adopted to provide a consitutional basis for this statutory grant of home rule authority.

County Government

Historical Overview

County government in Kentucky is a product of historical development. The idea of the county as a unit of local government dates from early English history. In England the county acted as a unit for judicial administration, law enforcement, and highway maintenance, and such offices as sheriff, justice of the peace, and constable developed there.[3] By the time Kentucky was admitted to the Union on June 1, 1792, nine counties had been established, and within eight years forty-three more counties were created.[4]

Creation of Counties

At the time of the adoption of the 1850 Constitution, Kentucky had one hundred counties. In the forty years before the constitutional convention of 1890, an additional nineteen counties were created. There were several reasons for this increase. Some new counties were created for the legitimate purpose of making the county seat more accessible in those days of poor transportation. In other cases, however, counties were created for political and economic reasons. If a particular part of a county was at odds with the politics and policies of those controlling the courthouse, it might simply form a new county.[5]

The delegates to the 1890 constitutional convention placed restrictions on the formation of new counties in Sections 63 and 64 of the Constitution, prohibiting the General Assembly from forming a new county with an area of less than 400 square miles or a population of less than 12,000. In forming a new county, the General Assembly must not reduce any existing county to an area of less than 400 square miles or a population of less than 12,000, and the boundary line of a newly-formed county must not pass within ten miles of the county seat of an existing county. These safeguards against the growth in the number of counties have been successful, with only one county being established since 1891: McCreary County was formed in 1912.

Provisions protecting existing county boundaries and county seats were also made a part of the present Constitution in Sections 63, 64, and 65. No territory may be taken from an existing county, except territory to be used to form a new county, unless a majority of the voters of the affected county approve. The petition of a majority of the voters is required in order to take land from a county, and any portion of a county so taken remains liable for its share of the debt of the county from which it is taken. No existing county seat may be moved to another city without the approval of two-thirds of the voters of that county. The General Assembly has the power to abolish any existing county at any time.

Section 102 provides that officers of newly created counties are to be elected or appointed "in such way and at such time as the General Assembly may prescribe."

The Court of Appeals ruled in 1904, in *Zimmerman v. Brooks*, that the General Assembly must comply strictly with the Constitution's requirements for the creation of new counties. The General Assembly is free to create other units of local government. Two recent cases, *Holsclaw v. Stephens* and *Pinchback v. Stephens*, have upheld the General Assembly's authority to create a new form of local government, the "urban county." Also, when Sections 148 and 167 were amended in 1992, urban counties were given constitutional recognition for the first time. Only the city of Lexington and Fayette County have merged their respective governments to form an urban county.

County Officers

Election and Term

Section 99 of the Constitution requires each county to elect a judge of the county court (now called county judge/executive), a county court clerk, a county attorney, sheriff, jailer, coroner, surveyor, and assessor and in each justice's district one justice of the peace and one constable. Sections 99 and 142 require each county to have no less than three and no more than eight justices' districts. Section 144 requires counties to have a fiscal court, consisting of a county judge and justices of the peace or commissioners. The major difference in the two types of fiscal courts is the manner of election of their members. Justices of the peace are elected from districts in the general election, while commissioners are elected from the county at large in general elections. The General Assembly has statutorily established procedures in KRS 67.050 for allowing voters of a county to choose their form of fiscal court.

These county officials assume office on the first Monday in January after their election and serve a four-year term until the election and qualification of their successors. All of the county officers named in Section 99 may succeed themselves in office. Prior to 1984, however, sheriffs were not allowed to serve consecutive terms, nor were they allowed to serve as a sheriff's deputy during a succeeding term. In November of 1984, the voters of the Commonwealth ratified an amendment to the Constitution, which permitted sheriffs to succeed themselves.

The Constitution says little regarding the duties and powers of these offices, and the General Assembly has enacted statutes assigning specific duties to each office. Most offices have a number of administrative and fiscal duties. Some, however, such as those of surveyor and constable, have become outdated and retain few duties. Originally, the Constitution provided for an elected office of county assessor. This office was abolished by the General Assembly, as permitted by Section 104 of the Constitution, and has been replaced by the statutory office of property valuation administrator.

Section 105 of the Kentucky Constitution permits the General Assembly to consolidate the offices of jailer and sheriff. To date, only Jefferson County has consolidated these offices. However, pursuant to HB 431 (1990 Acts, Chapter 138), beginning on January 3, 1994, the offices of jailer and sheriff in an urban-county form of government shall be consolidated. This change will only affect the Lexington-Fayette Urban-County Government.

The "judicial amendment" to the Constitution, which was ratified by the voters in 1975, had a profound impact on several county offices. It restructured the existing state court system, created a new unified court system, abolished the quarterly court, county court, and justices' court, and relieved the county judge and justices of the peace of their judicial duties. The 1975 amendment to the Constitution repealed Sections 125-138 effective January 1, 1976. Sections 124, 140, 142, and 144 relating to county government were amended. The new Judicial Article cited previously did not repeal any part of the Constitution that conferred non-judicial powers and duties on county judges and justices of the peace. Nothing in the amended sections

> shall be construed to limit the powers otherwise granted by the Constitution to the county judge as the chief executive, administrative and fiscal officer of the county; nor limit the powers granted by the Constitution to the justices of the peace or county commissioners as executive, administrative and fiscal officers of the county, or of the Fiscal Court as the governing body of the county.

Qualifications

The Constitution sets the qualifications for county officials. Section 100 requires the county clerk to be at least twenty-one years of age, while all other elected officials must be at least twenty-four years old. All candidates for office must be citizens of Kentucky. They must have resided in the Commonwealth for at least two years and in the county or district in which they are candidates for at least one year preceding their election to office (Section 234). Section 100 requires candidates for Commonwealth's Attorney to have been a licensed practicing attorney for four years prior to being elected. Candidates for county attorney must have practiced law for at least two years before they are eligible for that office, and candidates for county clerk must be certified by a judge of the Court of Appeals or of a Circuit Court.

County officers may be removed from office by impeachment, or upon conviction for misconduct in office, or by any other procedure which the General Assembly may establish (Sections 66, 67, 68, and 227). Section 235 authorizes the General Assembly to enact laws which permit deductions from officials' salaries for any neglect of their official duties.

The Constitution provides for the filling of vacancies in county offices, either by election or by appointment, depending upon the amount of time remaining in the term when the vacancy occurs (Section 152).

Section 103 requires county judges, clerks, sheriffs, surveyors, coroners, jailers, constables, and other officers, as required by the General Assembly, to give bond and security as prescribed by law. Section 238 requires the sureties of these public officials to be regulated by the General Assembly.

Section 106 requires the fees of county officers to be regulated by law. This section provides for the clerks of the respective courts (except clerk of city court), the marshals, the sheriffs, and the jailers, in counties or cities having a population of 75,000 or more, to be paid out of the State Treasury, "by salary fixed by law, the salaries of said officers and of their deputies and necessary office expenses not to exceed seventy-five percent of the fees collected

by said officers, respectively, and paid into the Treasury." In 1982, the General Assembly enacted House Bill 440 (1982 Acts, Chapter 385), which instituted sweeping changes in the operation of county jails. One of the most important reforms affecting county jail administration was the removal of the jailer from the fee system by statutorily mandating a monthly salary for county jailers (KRS 441.245).

Section 107 permits the General Assembly to create additional county offices.

Section 108 permits the General Assembly to abolish the office of the Commonwealth's Attorney.

County Home Rule and the Constitution

The Constitution is silent about the exact powers and duties of the fiscal court. The task of defining these powers and duties was left to the General Assembly. The courts have traditionally held that all power exercised by the fiscal court must be expressly delegated by law.[6] In 1950, the court held in *Casteel v. Sparks* that the implied powers of the fiscal court were limited and confined to the authority to carry out expressed powers. To determine the fiscal court's powers, it was necessary for county officials to search the statutes for specific authority and direction.

In 1972, the General Assembly enacted KRS 67.083, which granted home rule powers to county governments. Deeming the delegation of legislative authority in the 1972 act too broad, the Kentucky Supreme Court ruled in the 1977 decision, *Fiscal Court of Jefferson County v. City of Louisville*, that delegations of power to the fiscal court by the legislature were permissible only if such grants of authority were "thoughtful, purposeful and deliberate delegations of known powers."

The 1978 session of the General Assembly addressed the court's concerns regarding the delegation of home rule powers. KRS 67.083 now grants fiscal courts the authority to enact ordinances, issue regulations, levy taxes, issue bonds, appropriate funds, and employ personnel in the performance of twenty-five specified public functions. The county home rule statute permits the enactment of all taxes authorized by the Constitution or other statutes.

Compensation of Local Officials

Section 246 of the Constitution limits the compensation which may be paid to public officers and employees, excluding the Governor. As originally drafted, Section 246 imposed a $5,000 salary limit on public officers and employees. This section was amended in 1949 to increase the salary limits to $12,000 per year for officials with statewide jurisdiction and mayors of first class cities, $8,400 for circuit judges, and $7,200 for all other officials. The dramatic increase in the cost of living since 1949 has made the monetary limits established in Section 246 unrealistic; the court has addressed this problem in two landmark decisions, *Matthews v. Allen* and *Board of Education of Graves County v. Deweese*.

In *Matthews v. Allen*, popularly known as the "rubber dollar" case, the Court of Appeals interpreted the monetary limit not as an absolute limit, but as a limit which "stretches" as the purchasing power of the dollar decreases or increases.[7] Therefore, the actual compensatory limit of an officer is the amount of money currently required to equal the purchasing power of $7,200 or $12,000 in 1949. The Consumer Price Index is the guide employed and the Finance and Administration Cabinet annually computes the current level by the second Friday in February. The

formula, as approved by the office of the Attorney General, for calculating the current value of the constitutional limits is as follows:

$$\frac{\text{Current Consumer Price Index}}{100} = \frac{X}{\text{Constitution limit}}$$, X being the maximum compensation.

As of February, 1993, the $7,200 limit is $42,877 in today's dollars, and the $12,000 limit is $71,462.

Even with the "rubber dollars," the limit of Section 246 has been viewed as imposing a hindrance to the hiring of professional specialists to work in government. To address that potential problem, the Court of Appeals in *Board of Education of Graves County v. Dewesse* narrowly defined "officers," as used in Section 246, to mean only those officers specifically mentioned in the Constitution.[8] In the case of cities, therefore, only mayors, or chief executives, and members of the legislative bodies are subject to the compensation limit. In the case of county officials, the county judge/executive, county clerk, sheriff, justices of the peace, county commissioners, coroner, and jailer are subject to the compensation limits of Section 246.

Other county officials are under other compensation limits. The county attorney serves as the legal counsel for the county government, and represents the county and county officials when they are named as parties in legal actions. Since the adoption of the Judicial Article in 1975, the county attorney has served as a member of the unified and integrated prosecutorial system. In 1993 dollars, county attorneys will be compensated with state dollars to the limit of $38,165 for their state prosecutorial duties. The counties are permitted by the Constitution to contribute to the county attorney's salary up to the $71,462 ($12,000) limit.

Section 161 prohibits the compensation of any city, county, or municipal constitutional officer from being changed after his election or appointment or during his term. It also prohibits a term from being extended. While Section 161 prohibits compensation from being changed during the term of an officer, it has been construed not to prohibit cost-of-living "adjustments," since, under the reasoning of *Matthews v. Allen*, a cost-of-living raise is not actually an increase in compensation.[9]

Section 235 duplicates Section 161, in that it prohibits an officer's salary from being changed during the term for which he is elected. In addition it authorizes the General Assembly to establish what deductions may be imposed for neglect of duty.

Local Government Taxation

The Constitution establishes maximum tax rates for cities, counties, taxing districts, and other municipalities in Section 157. The maximum taxing rates for units of local government, other than for school purposes, are as follows:

MAXIMUM TAX RATES FOR LOCAL GOVERNMENTS

Type of Government	Population	Maximum Rate
City	15,000 +	$1.50/$100 taxable property
	10,000-14,999	$1.00/$100 taxable property
	Up to 9,999	$0.75/$100 taxable property
Counties and Taxing Districts		$0.50/$100 taxable property

The fiscal year is required to commence on the first day of July in each year (Section 169), unless otherwise provided by law.

Last amended by the voters in 1990, Section 170 exempts the following property from taxation:

(1) Public property used for public purposes;

(2) Non-profit burial grounds;

(3) Institutions of purely public charity;

(4) Non-profit educational institutions;

(5) Public libraries;

(6) Real property owned and occupied by, and personal property, both tangible and intangible, owned by institutions of religion;

(7) Household goods used by a person in his residence;

(8) Crops grown in the year of assessment which are still in the hands of the producer; and

(9) A maximum of $6,500 of real property owned and used as a permanent residence by a person over sixty-five years of age, or a person classified by the federal government as totally disabled. Applying the "rubber dollar" to the $6,500 homestead exemption, the exemption equals $21,800 for 1992.

Section 170 also permits the General Assembly to authorize any incorporated city or town to exempt manufacturing establishments they seek to attract from municipal taxation, for a period not exceeding five years.

Section 171 of the Constitution permits the General Assembly to divide property into classes and to determine which classes shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing districts, and school districts shall not be subject to taxation.

Section 172 requires that all property not exempted from taxation by the Constitution be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale.

Adopted in 1969, Section 172A permits the General Assembly to provide for reasonable differences in the rate of ad valorem taxation within different areas of the same taxing district. This section requires that those differences relate "directly to differences between nonrevenue-

producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district."

Section 172B, adopted in 1981, permits local governments to declare property assessment or reassessment moratoriums for a period not to exceed five years for the purpose of "encouraging the repair, rehabilitation or restoration" of existing improvements on real property.

Section 174 requires that all property be taxed in proportion to its value.

Section 180 requires that every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town, or municipal board that levies a tax specify "distinctly the purpose for which said tax is levied." No tax levied for one purpose shall be used for any other.

Section 181 of the Kentucky Constitution prohibits the General Assembly from levying taxes for the purposes of any county, city, town, or other municipal corporation but authorizes the General Assembly to confer on counties, cities, towns, or other municipal corporations the right to levy certain taxes. Local governments may be authorized to impose and collect the following taxes or license fees:

(1) License fees on stock used for breeding purposes; and

(2) License fees on franchises, trades, occupations, and professions.

Section 181 also authorizes cities or towns of any class to provide for taxation for municipal purposes on personal property, tangible and intangible, based on income, licenses or franchises, in lieu of ad valorem taxes thereon. Cities of the first class are expressly prohibited from omitting the imposition of an ad valorem tax on such property of any utility. This section does not explicitly provide for the imposition of an ad valorem tax on real property, but such power is implied from this section and others that refer or relate to such power.

Indebtedness Of Local Government

Section 157 of the Constitution prohibits counties, cities, towns, taxing districts and other municipalities from becoming indebted, "in any manner or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters." Any indebtedness incurred in violation of this section is void; however, this limitation does not apply to revenue bonds.

Section 157A permits any county, upon approval by the voters of the county, to incur an indebtedness in any amount fixed by the county for public road purposes, not to exceed five percent of the value of the taxable property within the county. If the county incurs said indebtedness, it may levy, in addition to the tax rate established in Section 157, an amount not to exceed $0.20/$100 assessed valuation for the purpose of paying the interest due and providing a sinking fund to retire the debt.

In 1994, a new section 157b was added to the Constitution to clearly specify that cities, counties, and taxing districts must adopt a balanced budget for each fiscal year. That is, a budget in which expenditures to be made for the fiscal year do not exceed the revenues to be received for

that fiscal year. The budget could be revised as needed within a fiscal year, but still must be balanced after the revision.

Section 158 establishes the maximums for the aggregate indebtedness of cities, counties, and taxing districts, which are prohibited from "exceeding the following maximum percentages on the value of the taxable property in their jurisdiction, to be estimated by the assessment next before the last assessment previous to the incurring of the indebtedness." Maximum aggregate indebtedness for cities, counties, and taxing districts is shown in the following table. These limits do not apply to revenue bond indebtedness.

MAXIMUM AGGREGATE INDEBTEDNESS

TYPE OF GOVERNMENT	POPULATION	MAXIMUM INDEBTEDNESS
City	15,000 +	Ten percent of taxable property
City	3,000 to 15,000	Five percent of taxable property
City	Less than 3,000	Three percent of taxable property
Counties and taxing districts		Two percent of taxable property

Section 159 of the Constitution requires that whenever any city, town, county, taxing district, or other municipality incurs indebtedness, that indebtedness be amortized in not more than forty years. Additionally, before such debt may be incurred, the city, town, county, taxing district, or other municipality is required to levy a tax sufficient to pay the interest due and create a sinking fund for the payment of the principal.

FOOTNOTES

1. *Kentucky Municipal Statutory Law*, LRC Info. Bull. No. 145, (1991), p.3.

2. *Green v. Commonwealth*, 95 Ky. 233, 24 S.W. 610 (1894).

3. Herbert S. Duncombe, *County Government in America*, Washington, D.C.: National Association of Counties, 1966, pp. 18-19.

4. Kentucky Constitutions of 1792 and 1799.

5. William Wiley and William Van Arsdall, *County Government in Kentucky*, LRC Informational Bulletin No. 115, (1993), p. 1.

6. *Rentz v. Campbell County*, 260 Ky. 242, 84 S.W.2d 44 (1935); *Hogg, County Attorney v. Rowan County Fiscal Court, et al*., 313 Ky. 387, 231 S.W.2d 8 (1950).

7. *Matthews v. Allen*, 360 S.W.2d 135 (Ky. 1961).

8. *Board of Education of Graves County v. Deweese*, 343 S.W.2d 598 (Ky. 1960).

9. Opinion of the Kentucky Attorney General, 80-171.

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Pinchback v. Stephens, 507 S.W.2d 327 (Ky. 1972).

Rentz v. Campbell County, 260 Ky. 242, 84 S.W.2d 44 (1935).

Zimmerman v. Brooks, 118 Ky. 85, 80 S.W. 443 (1904).

CHAPTER X

CORPORATIONS AND THE KENTUCKY CONSTITUTION

Ann Zimmer

Constitutional Requirements

The Constitution of the Commonwealth of Kentucky contains more than forty sections which affect both corporations formed under the laws of the state and foreign corporations functioning within the state. Nineteen sections are listed under the heading CORPORATIONS, while ten deal specifically with railroads. There are eleven sections which indirectly influence corporations in Kentucky.

Capsulizing the constitutional requirements and restrictions on corporations is difficult, for each section deals with an independent consideration. First, the term "corporation" is defined by the Constitution as including joint stock companies and associations. (Section 208.) Section 190 requires that all corporations already in existence at the time of constitutional adoption accept the provisions of the new Constitution in order to have the benefit of future legislation. Those charters which were granted prior to adoption of the Constitution and under which good faith business had not yet taken place were declared to be void. (Section 191.)

Being constitutionally restricted to activities expressly authorized by their charters, corporations may only hold such property that is "proper and necessary" for carrying on this activity. Any property not proper and necessary for the authorized activity of the corporation can be held no longer than five years under penalty of escheat, or reversion, to the state. (Section 192.)

Section 193 forbids corporations from issuing stocks or bonds for any consideration other than an equivalent in money paid or for labor or property at its market value, and all corporations formed under the laws of the state or carrying on activities within the state are required to have one or more places of business in the state and an authorized agent there upon whom process may be executed. (Section 194.)

The Constitution mandates that the property of corporations, like that of individuals, be subject to the state power of eminent domain and that it may be taken for public use. This provision goes on to state that the laws of the Commonwealth shall never be altered so as to allow corporations to infringe upon the rights of individuals. (Section 195.)

Regulation of transportation by common carriers to prevent unjust discrimination is called for by Section 196, and common carriers are forbidden in this section from contracting out of their liability under common law. Common carriers are also forbidden from issuing free passes or extending reduced rates to government officers or members of the General Assembly. The penalty imposed on public officials for acceptance or use of passes is forfeiture of office. (Section 197.)

The General Assembly is mandated by Section 198 to enact legislation to prevent pools, trusts, or other organizations from combining to act in restraint of trade by depreciating or enhancing the cost of any article.

The right of any corporation or individual to construct and maintain telegraph and telephone lines and to connect with other lines without discrimination is constitutionally protected;

however, the right of cities to designate the places and manner in which the wires of such companies are laid is not to be modified. (Section 199.) Section 201 forbids merger between telegraph, telephone, or common carrier and competing common carriers, along with contracts which split the earnings of corporations doing the actual carrying of freight or passengers with companies not doing the carrying. Telephone companies may, however, acquire or operate competing companies with the consent of the local municipality.

If any corporation organized under the laws of the Commonwealth shall consolidate with a foreign corporation, the resulting body, under Section 200, shall not become a foreign corporation. The courts of the Commonwealth shall retain jurisdiction over that part of the property within the limits of the state. It is also provided that foreign corporations shall not be allowed to transact business within the state under more favorable conditions than domestic corporations. (Section 202.)

Under Section 203 of the Constitution no corporation shall alienate any franchise to relieve the franchise or property held under it from liability incurred in its operation. Any officer of a banking institution who receives deposits for a bank that is known to him to be insolvent shall be held individually responsible for these deposits and guilty of a felony. (Section 204.) The General Assembly is instructed by Section 205 to provide for the revocation of the charters of corporations guilty of abusing their corporate privileges or being detrimental to the interest and welfare of the Commonwealth.

Section 206 declares all warehouses where property is stored for compensation to be public warehouses subject to legislative control, to provide for inspection of such items as grain, tobacco, and other produce.

A cumulative voting requirement is written into the Constitution, providing that each shareholder shall have the right to cast as many votes as he is entitled to under the charter of the corporation multiplied by the number of directors to be elected. (Section 207.) Each shareholder may then cast these votes for one candidate or distribute them among two or more candidates for the position of corporate director. This mathematical voting device is intended to ensure that minority groups of shareholders may obtain representation on a given board of directors.

Grouped under the title, RAILROADS AND COMMERCE, ten sections deal more specifically with the regulation of common carriers. Briefly, they establish a Railroad Commission (Section 209), restrict the business interests of common carriers to that function alone (Section 210), and forbid railroads from exercising the power of eminent domain or acquiring real estate until they become a corporate body in accordance with the laws of the state. (Section 211.) The personal property of railroads, which includes rolling stock, is liable to attachment like the personal property of individuals (Section 212); and any discrimination on the part of the railroads towards other corporations or individuals is constitutionally forbidden (Sections 213, 214, 215, 216), with penalties for violation to be enforced by the Attorney General. (Section 217.) The Constitution also contains a section which makes it unlawful for common carriers to charge more for a shorter distance than for a longer one traveled under similar circumstances. (Section 218.)

Scattered throughout the Constitution are sections which apply to corporations indirectly; for example, the General Assembly may not pass local or special legislation which would grant a charter to any corporation or amend the charter of any existing corporation (Section 59) and

corporations may not use money or any other thing of value to influence elections. (Section 150.) Property, whether corporate or individual, is to be taxed according to actual value. (Section 174.)

Several constitutional sections deal with the lending of state credit to corporations and individuals. The Commonwealth is constitutionally prohibited in Section 177 from extending credit or becoming a stockholder in a corporation, "nor shall the Commonwealth construct a railroad or other highway." However, this section must be considered in conjunction with Section 157A, which allows the credit of the Commonwealth to be extended to counties for road construction, and Section 179, which extends the restriction on lending money or holding stock to any political subdivision, with exceptions for the purpose of road construction or building the State Capitol.

The General Assembly is forbidden by the Constitution from releasing the debts of any individual or corporation to the state (Section 53), and property is not to be taken for public use without sufficient compensation. (Sections 13, 242.) Section 244 requires that wage earners in industry and of corporations be paid in money, and when a death results from negligence or wrongful act on the part of an individual or corporation, damages may be recovered for the death. (Section 241.)

Historical Background

Although people since ancient times have joined together in collective ventures, the corporation as we know it today is a relatively recent phenomenon. Incorporated business as a form of ownership in the United States did not take its present appearance until the late 1800s. Historically, however, incorporation of business enterprises dates to the 1600s, when joint stock corporations were chartered by the crown and financed with private capital. This practice was carried over to the colonies, which, in fact, were chartered by the king as business ventures. However, the Revolutionary War and early leadership in the United States helped to transform the image of the corporate entity from a monopolistic creature of government to a means through which businessmen could freely explore the opportunities of the new nation.

The long road toward statehood for Kentucky began when its first convention met on December 27, 1784, and progressed no further than discussing the problem of Indian raids on the settlements, which were then part of Virginia's western territory. Nine conventions followed before Kentucky was admitted as the fifteenth member of the Union. The Constitution of 1792 reflected the wilderness environment of the state. It was a simple document which made no reference to corporations.

As early as the legislative session of 1795, the first Constitution was found to be lacking. The election of the Governor and Senators by electors rather than direct vote was considered to be a main flaw, one that hinted at an "aristocracy." The second Constitution, like the first, made no reference to the regulation of corporate interests in the state. However, commerce was emerging as an important aspect of life in Kentucky.

The turn of the century brought about a boom in the manufacture of a wide variety of products; in fact, in 1810 Kentucky ranked fourth among the states in manufacturing, with 800 operations, not including some 2,000 distilleries. Southern trade was most important, and the Ohio and Mississippi Rivers provided the highway to Southern markets. In 1830 a canal was built around the falls of the Ohio at Louisville to facilitate the passage of the newly developed steamboat. The rivers of central Kentucky did not provide as effective a connection to market as

the Ohio. Through the early 1830s, both private corporations and state agencies attempted to improve the Kentucky River and other streams of central Kentucky without much success. Nor were overland routes the answer for transporting goods to the Ohio River. The state assumed no responsibility for road construction or maintenance in Kentucky's early days. Joint stock corporations built the roads and charged tolls for their use, a practice which prevailed into the 1900s and resulted in countless difficulties for travelers and merchants.

When the idea for railroads migrated from Europe, it seemed a possible solution for landlocked central Kentucky. On January 14, 1830, the General Assembly chartered the Lexington-Ohio Railroad Company. After many attempts faltered, the tracks running from Lexington to the Ohio River were completed in 1852.

During the late 1840s calls for constitutional reform were heard from liberal factions throughout the state, and finally in August, 1848, a sufficient number of voters favored a constitutional convention in the required second election. The delegates to the 1849 convention were preoccupied with protecting the institution of slavery from interference by the emancipation movement. However, for the first time discussion touched as well on the topic of corporations. One delegate proposed making stockholders liable for the amount of their holdings in case of corporate insolvency. Another called for uniform taxation, "provided, the General Assembly shall have power to tax merchants, brokers, hawkers, pedlers [sic], shows, theatrical performances, law process, seals, deeds, licenses, stocks, playing cards, corporations and privileges as may from time to time be prescribed by law."[1] However, when the final draft of the 1850 Constitution was signed, only one section dealt with corporations. Under Art. II, "Concerning the Legislative Department," Section 33 held that "the credit of the Commonwealth shall never be given or loaned in aid of any person, association, municipality or corporation."

After 1850 the increasing need for transportation in Kentucky was met by further development of the railroad. The Louisville & Nashville Railroad was chartered by the General Assembly as a joint stock corporation in 1850, with the city of Louisville subscribing to $1 million of its stock. Communities south of Louisville also heavily supported the project, which became as important a thoroughfare as the Ohio River.

The Civil War disrupted trade and resulted in damaged L&N tracks, but with another $1 million investment by the city of Louisville, the railroad recovered to become as thriving as ever. Louisville's resulting growth only heightened the competition which existed between Cincinnati and Louisville for control of the Southern markets. Louisville dominated the L&N to its advantage as a trade center, discriminating against goods originating in central Kentucky or Cincinnati.

In response to this problem, Cincinnati businessmen attempted to organize the Kentucky Central Railroad, whose progress had been halted by the war. Important to note here is the fact that corporations were, at this time, chartered by act of the General Assembly. In 1870 the Kentucky General Assembly denied Cincinnati a corporate charter for the railway, and the controversy which raged on this issue eventually reached the Congress of the United States. During this period railroad promoters from both factions resorted to petty bribery and lavished favors on members of the General Assembly in an attempt to sway the Central-Southern Railroad Bill vote. The General Assembly finally granted the charter, and the railroad was completed in 1880. Railroad track mileage in Kentucky jumped from 567 miles in 1860 to over 1,500 miles in 1880.

An evolving political climate accompanied this acceleration in Kentucky commerce. The legislative session of 1869 was particularly dramatic, as "new departure democrats" proposed

that the state subsidize railroads with $10 million of the treasury. This use of state funds was not approved, but special privileges and tax exemptions were granted freely. The agricultural depression of 1873 encouraged the development of third party movements which opposed the fostering of corporate interests and attempted to represent the needs of agriculture in the state. "Grangers" complained of railroad prices which were so exorbitant that farm profits were nonexistent. By 1889 the Farmer's Alliance was a powerful agricultural organization which influenced the election of delegates to the 1890 constitutional convention.[2]

The first call for a convention took place in 1873 and was repeated until 1888, when a sufficient majority of voters agreed upon the need for constitutional revision. The delegates to the convention comprised a diverse group, most of whom had strong partisan backgrounds. The Alliance delegates opposed the corporate forces, and railroad-influenced delegates found it difficult to understand the apprehension of the farmers regarding the corporate entity.

Discussion began September 8, 1890, and continued until September 28 of the following year. In their debates, the delegates considered almost every aspect of corporate power in the state, focusing on present problems and planning to prevent future abuses.

As one might expect, opinions often clashed and emotions ran high. Referring to the power of corporations, one delegate put forth this challenge to the convention:

> Can it be true that the state now has forces existing within itself created by its authority, defying its authority, and destroying the purposes of its existence, without the power or right to correct the evil? I say, as a matter of higher law, that the state has a right to preserve its own existence, and if necessary to reach that end, that it has a right and it is its duty to root out and destroy these forces. [3]

However, other delegates felt less threatened by the power of corporations. Arguing for the deletion of the section which delegates responsibility for the prevention of trusts to the General Assembly, delegate A. J. Auxier considered the possibility of changing times.

> I object to this section for another reason. It proposes to confer power upon the Legislature to enact laws to prevent monopolies and combinations. The Legislature has all that power. It has all power except that which we take from it by this Constitution. Why leave it to the Legislature when it already has ample and complete power to legislate on these questions? Times change.[4]

Overall, however, the debates project extreme caution as the mood of the delegates. Great care was taken to protect the citizens of the state from unscrupulous behavior by corporations, especially out-of-state enterprises. The legislative branch was suspect, as well, and most of the delegates felt that only constitutional provisions could supply the needed reform in the area of corporate growth and power. This distrust of the legislature pervades the entire Constitution and is reflected again and again in sections which deal with areas that are typically statutorily regulated.

The result of the Convention of 1890-91 relevant to corporations, and particularly railroads, was more a bundle of statutes than a constitutional outline. What had been dealt with in one

section of the 1850 Constitution was the specific subject matter of nineteen sections, and was involved in another twenty-one sections, of the 1891 document, which, as amended, is our present Constitution.

Constructed during a period of reaction to the newly powerful arm of business, our Constitution reflects the impact of the transformation from virtual wilderness to the twentieth century, and the anxious response of those attempting to safeguard the interests of the common man in Kentucky.

Court Decisions Concerning Corporations

The restrictions placed on corporations by the Kentucky Constitution have been the focal point of many lawsuits. In most of these cases, however, the court has not deviated substantially from the basic meaning of the section in question. Only two or three opinions have provided the judicial interpretation necessary to alter the scope of specific sections, thereby permitting a more modern application of the Constitution in this area.

A great deal of litigation has hovered over Section 192, which restricts a corporation to those business activities which are expressly authorized by its charter, "or the laws under which it may have been or hereafter may be organized," and limits the holding of any real estate not "proper and necessary" for carrying on its legitimate business to five years, under penalty of escheat or reversion to the state.

The constitutional restriction of corporations to their charter authority has been given broad construction by the Kentucky Court of Appeals in *Commonwealth ex rel. Luckett v. L & N Railroad Company* (1972), which held that L&N has the power to buy and sell securities to facilitate its corporate purposes as a common carrier.

KRS 271B.3-010(1), a provision of the Kentucky corporation statutes, provides:

> Every corporation incorporated under this chapter shall have the purpose of engaging in any lawful business, unless a more limited purpose is set forth in the articles of incorporation.

In response to an inquiry as to the constitutionality of the similarly worded all-purpose clause of KRS 271A.270(c) (now repealed) and how it related to Section 192, the office of the Attorney General proposed that the constitutional provision is not a restriction on the General Assembly, in view of the qualifying phrase, "or the law under which it may have been or hereafter may be organized," which allows for changes in the laws relating to corporations. (OAG 73-164)

The problematic escheat provision of Section 192, which prohibits corporations from holding real estate longer than five years under penalty of escheat, unless such property is "proper and necessary for carrying on its legitimate business," is dealt with in *Great-West Life Assurance Company v. Courier-Journal Job Printing Company* (1956). The court interpreted this "proper and necessary" as "proper and needful," rather than essential to the activities of the corporation. Cases preceding this decision held that corporations dealing primarily in real estate could not be bound by the prohibition in Section 192, because such activity is necessary for the carrying on of their legitimate business. Holding of realty for the future purpose of building an office was held to be valid.

The procedural aspects of the requirement of Section 192 have also been problematic. An initial handicap to the escheat provision was lack of a procedural means to implement forfeiture of holdings which were violative of the section. In *Commonwealth v. Wisconsin Chair*

Co.(1905), the Court of Appeals ruled that the Ballard County escheator could not maintain an action of escheat of real estate held in Ballard County by a foreign corporation for more than five years because neither the Constitution nor statutes on escheat at the period (Sections 1606-1623, Ky. St. 1903) provided a procedure by which such forfeiture could be made. The escheator was limited by the court to his specifically stated duties.

Two years later this decision was distinguished in *Commonwealth ex rel. Louisville School Board v. Chicago, St. L & N Railroad Company* (1907), in which the court liberally interpreted a statute delegating certain powers of escheat to school boards of cities of the first class (Section 2971, Ky. St. 1903) to hold that the General Assembly had, by the nonspecificity of the statute, permitted the school board to represent the Commonwealth in taking action against corporations violating Section 192 of the Constitution.

A 1911 court in *Louisville Banking Company v. Commonwealth* went on to hold that Section 192 is self-executing; that is, a right of action automatically accrues when property has been held in violation of Section 192. However, in 1927 the Court of Appeals, in *Shanks v. Board of Education* (1927), went on to hold that the mere violation of the section by a corporation or the institution of an action for escheat does not on its face work an escheat.

Section 193 requires that stock issued by a corporation must be "for an equivalent in money paid or labor done, or property actually received." In *Kirk v. Kirk's Auto Elec., Inc.*, (1987) the Supreme Court of Kentucky held that shares of common stock issued by a corporation in exchange for unsecured promissory notes which were payable only upon demand were void. Thereafter, when Kentucky adopted its version of the Model Business Corporation Act in 1988, it modified MBCA section 6.21 to limit the types of permissible consideration to those set out in Section 193. At present, KRS 271B.6-210 mirrors the language of Section 193.

Section 194, which at first glance seems self-explanatory, has been a source of problems. Requiring corporations to have a known place of business and an authorized agent there upon whom service of process can be made, the section is unclear as to what constitutes the "known place of business." Must this be the place of the corporation's commercial business or could it be another office? Kentucky courts have consistently upheld service of process on a registered agent in a registered office which was not the same as the commercial location of the corporation. An opinion of the Attorney General's office (OAG 75-10) has dealt with this as well and advised that the registered office of a corporation at which its registered agent must be located constitutes a "known place of business," as required by Section 194. Thus, the office of an attorney who represents a corporation as registered agent may be the office registered for service of process.

Section 197, which forbids public officeholders from accepting or using free passes or reduced rates and calls for forfeiture of office as the result of such action, has been liberally interpreted by Kentucky courts. The latest of these cases, *Daniels v. Adams* (1950), ruled that no proceeding could be held to oust an individual from public office under Section 197 unless there had been a previous conviction for the offense.

The court, in *Owen Co. Burley Tobacco Society v. Brumback* (1908), held that Section 198, which deals with the prevention of trusts and combinations in restraint of trade, is not self-executing; and the need for implementing legislation in this area is left to the General Assembly;

hence pools and combinations created for the purpose of obtaining fair prices may be legalized by the General Assembly.

Section 207, which grants the power of cumulative voting to corporate shareholders, has been strictly interpreted in *Farmers No. 4, Inc. v. Lexington Tobacco Board of Trade* (1971). The Court ruled that cumulative voting rights do not extend to members of a nonstock nonprofit corporation, since the members of such an organization are not shareholders as the term is contemplated by the Constitution.

Amendments

Few amendments to the Constitution in the area of corporate regulation have been presented to the voters of Kentucky since its adoption in 1891, and only one has passed to become part of the document.

In 1917 an amendment was proposed which would permit telephone companies, under certain conditions, to buy or lease competing companies, making an exception to Section 201, which prohibits public utility companies from consolidating with competing systems. This was submitted to popular vote and passed, to become part of the original Section 201. The result of its passage was to accommodate the special needs of the newly developing telephone industry.

Two other amendments dealing with corporate regulation were proposed in 1972 and 1992, to abolish the Railroad Commission; they were defeated by popular vote. As far as corporations are concerned, our present Constitution is the same document as was drafted in 1891, with the exception of a single amendment to Section 201.

Revisions

Movements to revise our Constitution have developed just a step behind the problems they have attempted to solve. There is, of course, the amendment process of Sections 256 and 257. Section 258 provides for the calling of a constitutional convention only after two successive legislative sessions have enacted a law whereby the sense of the people as to the issue may be taken. A majority of the voters must then choose to call a convention. This attempt at revision has been rejected by the voters of Kentucky three times.

The Constitution Review Commission was appointed by the governor in 1949 to examine the Constitution and make recommendations for revision to the General Assembly. In reviewing the sections of the Constitution which regulate corporations, the Commission's Committee on Private Corporations concluded that most of the provisions contained in these sections were of a legislative nature but recommended changing or eliminating only those sections which actually interfered with the activity of corporations or were outright obsolete.

Section 191, which revokes charters that were not exercised in good faith at the time of the adoption of the Constitution, was felt by the Commission to be no longer operative. It was recommended that Section 192 be amended by eliminating altogether the prohibition on the holding of real estate for more than five years, on the premise that "this is a matter which can be safely left to the General Assembly and does not need to be forever frozen in the Constitution."[5]

The Commission called for the repeal of Section 200, which deals with the consolidation of domestic and foreign corporations, and provides that the resulting corporation shall not be foreign. It was felt that the section had been consistently circumvented. According to the

Commission's report, its only effect "is to complicate, income tax-wise, consolidations or mergers."[6]

Section 204, the provision holding bank officers liable for receiving the deposits of an insolvent bank, was recommended for repeal because it had been thoroughly dealt with by statute and had no place in a constitution. The need for an immediate change in Section 209 was voiced by the Constitution Review Commission. It was proposed that this section, which establishes the Railroad Commission and provides for the election of its members, be replaced by a general provision for the regulation of railroads by the General Assembly.

The work of the Constitution Review Commission, however, proved to be of no avail in convincing the General Assembly or the people of the need for reform. In 1956 the General Assembly abolished the Constitution Review Commission. A new body, the Constitution Review Committee, was formed in 1960, in anticipation of a call on the question of a convention in November. The voters rejected the idea. In 1964 the Committee's membership was increased; it became the Constitution Revision Assembly. By 1966 the Assembly had finished its revision of the Constitution and submitted its recommendations to the General Assembly.

In the area of corporate regulation this revision recommended a thorough revamping of the Constitution. A single article was proposed to cover the topics of common carriers, public utilities, and corporations. Sections 209-218, on railroads, were deleted in the proposed revision, since railroads have declined in importance in recent years and since the General Assembly is able to deal with railroad matters.

Section 1 of the proposed Article XII, titled COMMERCE, allowed for legislative authority over common carriers and public utilities. Corporations were dealt with in Section 2, which in the first subsection provides for the creation and regulation of corporations by the General Assembly, and in the second subsection prohibits a corporation from holding real estate not proper and necessary for carrying on its legitimate business for a longer period than twenty-five years, under penalty of escheat. This provision was the source of a great deal of debate in the Revision Assembly. Many delegates felt Section 192 should be deleted completely; others favored keeping the section as it was. The twenty-five-year limitation was proposed on the premises that:

(a) the five-year period had not been enforced;

(b) a longer period was needed for adequate corporation planning; and

(c) the present limitation is a deterrent to corporate investment in the state. [7]

The third subsection of Section 2 on corporations was a repetition of Section 203, which prohibited the leasing or alienation of any franchise in order to release a corporation from liability. The Assembly felt this section was important enough to be spelled out in the Constitution along with a requirement for cumulative voting, Section 207, which was proposed in the revision as subsection 4 of Section 2 on corporations. Finally, the Assembly felt that Section 206, which subjected warehouses to legislative control, was important enough to be retained in an abbreviated form as the third section of Article XII. These three sections made up the 1966 proposed revision of the Constitution in the area of corporations and commerce in general.

However, the work of the Constitution Review Assembly was, for all practical purposes, in vain. The General Assembly voted to submit the revision directly to the people for approval, and the result was a defeat.

Strengths and Weaknesses

Few sections that deal with corporations or railroads have been left uncriticized as obsolete or not properly constitutional material. On the other hand the opponents of a constitutional convention argue that the Kentucky Constitution has in no way impeded the growth of commerce in Kentucky.

An examination of Kentucky's corporation statutes, updated in 1988, points out some of the problems of Kentucky's constitutional provisions regulating corporations. Kentucky's present statutes are based upon the revised version of the Model Business Corporation Act issued by the American Bar Association in 1984. The liberal interpretation of constitutional provisions by the courts has helped allow the lawmakers to keep Kentucky corporation statutes up to date. An example is the all-purpose clause of KRS 271B.3-010, as it relates to Section 192 of the Constitution. This section provides that a corporation may engage in any lawful business unless a more limited purpose is set forth in its articles of incorporation. Had not the similarly worded section which this statute replaced been construed broadly by the courts, the law would have to have been declared unconstitutional.[8]

The escheat provision of this same constitutional section is consistently criticized as being unenforced and one of the weaker sections of the document. It calls for escheat to the state of any real estate not proper and necessary to the legitimate business of a corporation that is held by the corporation for more than five years. Arguments for its deletion have maintained that the five-year limitation does not allow sufficient time for planning corporate development.

Section 192 was included verbatim in the corporation statutes as KRS 271A.705(1), which was repealed in 1988. No comparable provision dealing with escheat of corporate property is contained in KRS Chapter 271B. Whatever the construction given Section 192, there has been no litigation involving the escheat of corporate real estate under this constitutional prohibition since *Great-West Life Assurance Company v. Courier-Journal Job Printing* in 1956.

Section 200 has been criticized for its ambiguity. This section provides that the result of a merger between a foreign corporation and domestic corporation shall not become a foreign corporation. The section does not venture to explain what such a merger does produce and that the courts of Kentucky will retain jurisdiction over the part of the resulting corporate property within the limits of the state. The statutory provision which covers this jurisdictional issue is KRS 271B.11-070, which requires that the surviving foreign corporation of a merger with a Kentucky corporation or the acquiring foreign corporation of a share exchange between a foreign and a Kentucky corporation shall be deemed to have agreed, to the extent required by Section 200 of the Kentucky Constitution, that the courts of Kentucky retain jurisdiction over that part of the property within the limits of the Commonwealth, as if the transaction had not taken place. The section has been criticized as limiting corporate growth. Note should be made that it has been circumvented by devices like the sale of the assets of the domestic corporation to the foreign corporation. Besides being ambiguous, Section 200, like most of the other sections involving corporations and railroads, covers an area which should be dealt with by statute.

Kentucky is not the only state whose constitution has a great number of provisions in this area. Most state constitutions written in the late 1800s have at least fifteen sections directly regulating corporations, many of which are identical to the restrictions in Kentucky's document.

The date of a constitution's writing, rather than region, size or population of a state, is the factor which helps determine the amount of material it will contain on private corporations.

The Constitution of Alabama, written in 1901, contains twenty-five sections on the combined topics of corporations and common carriers. Arizona's 1912 document contains twenty-nine, and Arkansas' 1874 Constitution contains twenty-five sections. Idaho's and Mississippi's Constitutions (1890) each contain over fifteen sections on corporations and common carriers. The Constitutions of North and South Dakota were written in 1889; the former contains sixteen provisions on this topic, while the latter has twenty. Utah's Constitution (1896) contains twenty sections, Washington's (1889) twenty-two sections and Wyoming's (1890) nineteen sections on corporations and common carriers. In these Constitutions the restrictions on corporations parallel those contained in Kentucky's document.

States whose constitutions date back to the pre-civil war era have few, if any, sections pertaining to corporate regulation. These include Maine, Massachusetts, Rhode Island, and Vermont. At the other end of the spectrum are states which have revised their constitutions since 1950. On an average these documents contain fewer than two sections dealing with corporations, and these merely delegate the regulation of them to the legislature. These states include Alaska, Connecticut, Florida, Hawaii, Illinois, Louisiana, Michigan, Montana, New Jersey, and North Carolina.

The Model State Constitution, drafted as part of the National Municipal League's State Constitutional Studies Project, is a streamlined document which makes no mention at all of corporations, common carriers, or commerce in any of its sections. In this respect it is much like the simple and traditional early state constitutions and the Constitution of the United States. The states which have recently revised or rewritten their constitutions have followed the same trend toward simplicity.

FOOTNOTES

1. *Debates of the Constitutional Convention of 1847*, p. 831.

2. Thomas D. Clark, *A History of Kentucky* (Lexington: The John Bradford Press, 1960), p. 412.

3. *Debates of the 1890 Constitutional Convention*, Montgomery, p. 3648.

4. Ibid., p. 3701.

5. *Report of the Constitution Review Commission*, (Frankfort, 1950), p. 48.

6. Ibid., p. 49.

7. James T. Fleming and John E. Reeves, *A Comparison: The Present, the Proposed Kentucky Constitution*, Informational Bulletin No. 52 (Frankfort: Legislative Research Commission, 1966), p. 90.

8. *Commonwealth ex rel. Luckett v. L & N Railroad Company*, 1479 S.W. 2d 15 (Ky. 1972).

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Opinions of the Attorney General

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CHAPTER XI

EDUCATION AND THE KENTUCKY CONSTITUTION

Sandra Deaton

The Constitution requires the General Assembly to provide for an "efficient system of common schools throughout the State" (Section 183) and establishes general guidelines in the sections discussed below. The statutes providing for this system cover eleven chapters of the Kentucky Revised Statutes: KRS Chapters 156-163, 167, and 168.

A Common School Fund was established in Section 184; the money may be used for no purpose other than education. Any tax which is collected for education must be approved by the voters, and the General Assembly is charged with the responsibiity of investing the money. (Section 185) The school funds are distributed to the school districts as directed by the General Assembly. (Section 186)

Section 187 provides that no distinction shall be made in the distribution of funds on the basis of race.

Section 188 requires that money received as a refund of the federal direct tax, a tax levied after the Civil War, was to become a part of the school fund.

Section 189 prohibits the use of school money for any church, sectarian or denominational school.

Section 158 sets a limit on the indebtedness of a school district of an amount not to exceed two percent of the value of the taxable property therein.

Section 5 of the Bill of Rights guarantees religious freedom and states that no man can be compelled "to send his child to any school to which he may be conscientiously opposed."

Prior Constitutions

Education was not provided for in Kentucky's Constitution until 1850. At that time, provision was made for the Common School Fund and for the election of the Superintendent of Public Instruction for a four-year term. The legislature had formerly provided for education on a limited basis.

The Report of the Committee on Education in the 1849 Convention recommended a number of sections which would provide for the investment of money and the distribution of interest, but the convention delegates did not place these sections in the Constitution. The 1891 Constitution contains such provisions, however.

Court Decisions

There have been a number of court decisions concerning the constitutional provisions for education; the following cases are particularly significant.

The financing of the construction of schools was greatly facilitated by the decision in *Waller v. Georgetown Board of Education* (1925). The people of Georgetown proposed to

establish a corporation whose purpose would be to purchase an incomplete school building. The board of education would then lease the building from the corporation until the indebtedness was paid, at which time the building would again belong to the board. The Court upheld this method of financing on the basis that there was no mortgage which obligated the board; thus, the board had not exceeded the debt limitation of Section 158.

The sale of revenue bonds for capital construction was upheld by the Court in *Bowling Green v. Kirby* (1927). This and subsequent decisions have enabled the cost of capital construction in all levels of government and taxing districts to stay within the constitutional debt limitation by not considering the cost as a debt, but applying only the interest to the debt limitation.

The United States Supreme Court decision in *Brown v. Board of Education* (1954) voided Section 187 of the Kentucky Constitution, which had mandated separate schools for black and white children. It also made unconstitutional the Day Law, a 1904 statute which prohibited integrated schools. In *Willis v. Walker* (1955), the Court held Section 187 and the Day Law to be unconstitutional and ordered the schools of Adair County to be integrated in 1956.

The use of state funds to provide for the busing of students for the purpose of achieving racial balance in the schools was challenged on the grounds that this was not an efficient school system, as the General Assembly is directed to provide in Section 183 of the Constitution. The Court, in *Carroll v. HEW* (1976), held that the state's argument that busing was inefficient was merely a philosophical statement, rather than a legal question. Furthermore, the Court stated that the schools must exist in a constitutional manner, as prescribed by the Fourteenth Amendment to the U. S. Constitution, regardless of the monetary cost.

The state's relationship with private and parochial schools was clarified when the Kentucky Supreme Court, in *Kentucky Board of Education v. Rudasill* (1979), held that Section 5 of the Bill of Rights prohibits the state from requiring private schools to hold state accreditation, setting standards for the quality of instruction, requiring certification of private teachers, or mandating that schools use state-approved textbooks. The General Assembly may monitor the work of private and parochial schools with a standardized achievement testing program. The state is responsible for the regulation of health, fire, and safety standards for those schools.

The separation of church and state was reinforced by the United States Supreme Court in *Stone v. Graham* (1980), when it ruled that a 1978 Kentucky statute requiring the posting of the Ten Commandments in every public classroom was unconstitutional. The decision stated that even though the copies included the words "the fundamental legal code of Western Civilization and the Common Law of the United States," it is a religious document and requiring its posting violates the First Amendment to the United States Constitution.

In 1978 the General Assembly enacted a statute to require the Department of Libraries and Archives to purchase textbooks for distribution to pupils in the state's nonpublic schools. The Kentucky Supreme Court in *Fannin v. Williams* (1983) struck down the law and held that the

Constitution prohibits the use of tax money levied for educational purposes to be spent to aid any church, sectarian, or denominational school.

In June 1989, the Kentucky Supreme Court affirmed the Franklin Circuit Court's ruling in *Council for Better Education v. Wilkinson* (1988), which held that the system of financing education in use at that time was unconstitutional, in that insufficient funds were provided to permit the poor school districts to have an efficient system of public schools. The high court ruled that the statutory system as a whole and the interrelationship of its parts were in violation of Section 183 of the Constitution and stressed that the General Assembly has the sole responsibility and absolute duty to re-create and re-establish a new system of schools. A Task Force on Education Reform, twenty-two legislators and representatives of the Governor's office, developed recommendations for a new system and presented them toward the end of the 1990 session of the General Assembly. The General Assembly adopted the recommendations as the Kentucky Education Reform Act of 1990.

Amendments to the 1891 Constitution

Kentucky voters have changed the basis of distribution of school funds on three occasions. Section 186 of the 1891 Constitution originally provided that the funds were to be distributed on the basis of population of school-age children in the district. In 1941 an amendment was passed which permitted ten percent of the money appropriated by the General Assembly for schools to be placed in an equalization fund, instead of being divided on a per capita basis. In 1949 this percentage was increased to twenty-five percent. In 1953, Section 186 was changed to provide that school funds are to be distributed as prescribed by the General Assembly, rather than on a per capita basis. This amendment permitted the establishment of the Foundation Program, and later the SEEK Programs (Support for Education Excellence in Kentucky), which provides for the distribution of funds on a per-pupil basis.

In 1992, a constitutional amendment was adopted to abolish the office of Superintendent of Public Instruction. (Section 91). Previous attempts to remove the Superintendent of Public Instruction from the list of elected state officers had failed five times: in 1921, 1953, 1957, 1973, and 1986.

Suggested Revision in the Past

The Constitution Review Commission of the 1950s recommended the removal of Sections 184, 185, and 188 because of their obsolescence.

The Constitution Revision Assembly in 1966 recommended placing only three sections on education in the Constitution:

1. The General Assembly shall provide for an efficient system of public education; a state board of education shall be elected, and the board shall appoint a Superintendent of Public Instruction.

2. All funds collected for the schools shall be used for public schools and no other purpose. The General Assembly shall prescribe the distribution of school funds.

3. No money designated for educational purposes shall be used by any church, sectarian, or denominational school.

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

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CHAPTER XII

CHANGING KENTUCKY'S CONSTITUTION

Anita Taylor

Kentucky's Constitution is the fundamental law of the Commonwealth, subordinate only to the federal Constitution. All state statutes, regulations, and local ordinances must comply with pertinent constitutional provisions. As the fundamental law, the Constitution may only be altered by the methods prescribed in the Constitution.

Three basic methods of changing a constitution are generally recognized:

1. Amendment;

2. Revision; and

3. Interpretation by executive and judicial officers.

Amendment is limited alteration of relatively narrow scope, while revision connotes more extensive change of a Constitution, involving the rewriting of several sections or the entire Constitution. Interpretation by executive and judicial officers is a continuing process which does not affect the written word of the Constitution, but does affect the utilization of the Constitution by current standards.

The current Kentucky Constitution recognizes these three basic methods. Previous Kentucky Constitutions did not recognize amendments, but required the more elaborate revision process. The amendment and revision methods of altering the Constitution are set forth in Sections 256 through 263 of the Constitution of Kentucky.

Prior Constitutions

When Kentucky became a state, the delegates who adopted the 1792 Constitution recognized that changes would be required. Therefore, they provided that the question of calling a convention would be submitted to the voters in 1797, just five years later. If the voters approved calling a convention in 1797, the question would again be on the ballot the next year. If a majority of the voters approved calling a convention at this second election, the General Assembly, at its next session, would call a convention to consist of as many delegates as there were members in the House of Representatives. If a majority of voters did not approve calling a convention, the legislature could do so, if two-thirds of both chambers approved. The 1792 Constitution made no provision for amendments.

In 1797 and 1798 the voters did approve calling a convention. In 1799 Kentucky adopted its second Constitution, which again did not provide for amendments, but did change the procedure for calling a convention. The General Assembly had to approve placing the question of calling a convention on the ballot within the first twenty days of any regular session. The voters then had to approve calling a convention at two regular elections. Then the General Assembly would provide for a convention. In the 1799 Constitution, the General Assembly no longer had the power to call a convention without the approval of the voters. No time was fixed for submitting the question again.

There were several attempts to call a constitutional convention after 1838, but no efforts were successful until the voters approved the convention call in 1847 and 1848. The convention then met in Frankfort from October 1, 1849, to December 21, 1849.

It is interesting to note that in the 1849 convention the committee which was to study revision methods for the constitution also had the responsibility of providing for slavery, the most controversial topic of the convention. The name of the committee was, in fact, the Committee on Revision of the Constitution and Slavery. Indeed, the two subjects were tied together because those who wanted slavery desperately wanted to insure that slavery would never be abolished by means of the Constitution. A resolution was offered during the convention which would have permitted amendments approved by the General Assembly to be voted on by the people and would have placed no limit on the number of amendments. This resolution was rejected, however, for the majority of the delegates did not want slavery to be subject to amendment. The Committee's report, which was essentially what the convention adopted, provided only for a convention to revise or amend the Constitution.

The 1850 Constitution retained the requirement of legislative approval for placing the convention question on the ballot and again required this approval within the first twenty days of any regular session. As before, the voters were required to approve the convention call at two regular elections. The significant change in the method of revision in the 1850 Constitution was the stipulation that the General Assembly was to provide for ascertaining the number of citizens within the state entitled to vote for representatives. There was no voter registration then, and eligible voters were determined by the tax assessor's list.

The Current Constitution

Amendments

The procedure for amending the Constitution is specified in Sections 256 and 257. Amending the Kentucky Constitution is a two-step process involving proposal and approval by the General Assembly, followed by submission of the proposed amendment to the electorate.

An amendment may be proposed in either chamber of the General Assembly during a regular session. Each chamber of the General Assembly must approve the proposed amendment by a three-fifths majority of members elected to each chamber, requiring approval by sixty of the one hundred House members and twenty-three of the thirty-eight Senate members. During the debates of the constitutional convention, a proposal was made to require a two-thirds majority vote of each chamber. One delegate wisely argued, " . . . in a state like Kentucky it would be almost impossible to get an amendment. The people of Kentucky are conservative and it is almost impossible to get a two-thirds vote in both houses on any proposition."[1] Hundreds of proposed amendments have been introduced in the General Assembly since 1891, with only seventy-one proposed amendments surviving the three-fifths majority vote requirement.

Following approval by the General Assembly, a proposed amendment is submitted to the voters for ratification at the next general election for House of Representatives members. The text of the amendment question is drafted by the Attorney General, pursuant to statute, and certified to the county clerks for placement on the voting machines. (KRS 118.415) Ratification of an amendment requires a simple majority of favorable votes from total votes cast on the amendment question. Election results are certified to the State Board of Elections, pursuant to statute, and if a majority of the votes cast are favorable, the amendment becomes part of the Constitution. (KRS 118.415)

Section 256 imposes certain restrictions on proposed amendments. Under the original terms of the current Constitution only two amendments could be submitted to the electorate at one election. The 23rd amendment, approved in 1979, increased the maximum number of amendments to be submitted at one election to four. When more than one amendment is submitted to the electorate, each amendment receives a separate vote.

An amendment may affect one or more sections of the Constitution, but it must relate to a single subject. The single subject restriction has been the subject of repeated litigation challenging the validity of amendments. In 1943, the Court ruled that ". . . if each provision of a proposed amendment is an integral part of a general plan, the amendment is not plural."[2] Several years later the Court held that a single amendment may cover several propositions if they are not distinct or essentially unrelated, and whether an amendment is related to more than one subject was a matter for the General Assembly to decide when proposing an amendment.[3] Several multi-section amendments have been approved, the most notable being an amendment passed in 1975 which affected thirty-three sections of the Constitution, all related to the court system.[4]

Section 257 requires the Secretary of State to publish notice of the full proposed amendment and the time of the vote. The Court has twice ruled that the ninety-day notice is mandatory.[5] Four amendments have failed for lack of notice. These amendments would have classified property for tax purposes, permitted the use of convict labor on public roads, allowed women to hold public office, and directed the General Assembly to provide aid to dependent children and the needy blind. The latter two proposals were allowed by court decisions without constitutional amendments.

As stated earlier, seventy-one amendments have been approved by the General Assembly. Of those, thirty-three have failed, thirty-four have passed, and four other amendments have been invalidated by the courts. Although numerous amendments are introduced, relatively few ever enter the Constitution as part of our fundamental state law.

Revision

Revision entails the calling of a constitutional convention according to the Kentucky Constitution. The process of calling a constitutional convention and revising the Constitution is considerably more difficult and time-consuming than the simple amendment process, although an amendment affecting multiple sections results in a modified revision. Calling a convention is a multi-step process established by Sections 258 through 263.

First, Section 258 requires simple majority approval by the elected members of each chamber at two successive sessions for a bill calling a convention to revise the Constitution, followed by a single popular vote on calling a convention. Prior to the 1890 Convention, the procedure for calling a constitutional convention required the people to vote twice on a single legislative approval of calling a convention. Further, approval of a convention call required affirmative votes from a majority of the citizens entitled to vote. A majority vote was difficult to obtain, since voter registration was not required to ascertain eligible voters. Eligible voters were

determined by the tax assessor's records. Repeated attempts to revise the outdated Constitution of 1850 were defeated, because not enough votes were cast in favor of the measure to offset all those who had no interest in voting. A voter registration bill passed the 1886 General Assembly. There was from that time on a specific number of citizens registered to vote, from which a majority vote could be more easily obtained. A convention call was approved at the polls in 1888 and 1889. The convention delegates in 1890 were well aware of the importance of establishing a satisfactory method for constitutional revision.

Second, following the second General Assembly approval of a constitutional revision bill, the question of calling a convention is submitted to the voters at the next general election of state officers or members of the House of Representatives. Voter approval of a convention call requires a majority of favorable votes cast on the question, and the total number of votes cast on the question must equal one-fourth of the number of qualified voters who voted at the preceding general election.

The vote requirement for approving a constitutional convention is new with the current Constitution. There was much debate on how large a vote to require and whether to base the required number on a percentage of the population, on a percentage of eligible voters, or on a percentage of voters in another election. It was finally determined to require one-fourth of the eligible voters who voted in the last preceding general election to approve calling a constitutional convention. The argument favoring a required number was that it would prevent a small number of persons with a vested interest in changing the Constitution to do so without many persons knowing the question was on the ballot. The argument against this requirement was that it placed a premium on the person who does not vote.

A successful convention call requires enactment of legislation at the next regular session of the General Assembly to call a convention. The number of delegates to the convention equals the number of members of the House of Representatives who are elected from the House districts. Qualifications for delegates are the same as for House members: they must be at least twenty-four years of age, residents of the state for two years, and residents of their district for one year. The election of delegates is held at the next general state election, and the newly elected delegates convene within ninety days after their election. Convention delegates determine any contest of election and establish their own rules of procedure without assistance or interference from the existing government.

The current Constitution does not specify any further instructions for the next constitutional convention. No provision is made requiring voter ratification of a new constitution. However, a requirement for voter ratification could be included in the convention call or the delegates could authorize ratification in the new constitution. The third Constitution did not direct submission to the voters of a fourth Constitution. The Constitution was submitted to the voters on August 3, 1891, and approved, as directed by the convention call.

Revision Attempts

Since 1891, four attempts have been made to call a constitutional convention. Fewer than twenty percent of the voters who went to the polls in 1931 voted on the convention issue. Of those voting on the convention call, 97,788 voted against the proposal, and 28,204 voted for the call. Fifty percent of the voters in 1947 voted on the question, but it suffered defeat by a vote of 191,876 to 144,692. A 1959 special session of the General Assembly proposed a limited constitutional convention to address twelve areas of consideration. The Supreme Court upheld the authority of the General Assembly to call a limited convention.[6] Following the court's decision and 1960 General Assembly approval of the convention call, the voters narrowly rejected the call by a vote of 342,501 to 324,777, in November, 1960, with nearly sixty percent of those voting in the election voting on the issue. The fourth attempt at calling a convention, after successful General Assembly action in 1974 and 1976, resulted in defeat at the polls by a vote of 254,934 opposed to 165,311 in favor.

In addition to the four attempts at calling a convention as prescribed by the Constitution, the revision process has been studied by two groups since 1891. In 1949 Governor Earle Clements appointed a seven-member Constitution Review Commission, which was directed to make recommendations for amendments which would update the Constitution. During each biennium from 1950 to 1956, the Commission recommended two amendments to the Governor and the General Assembly. The General Assembly rejected some of the recommended amendments, but did approve for submission to the voters the removal of the limit on the number of amendments, reduction of the number of elective state officers, and removal of the prohibition of a Governor's exercising his executive powers while outside the state. The voters rejected these proposals at the polls.

The Constitution Review Commission's recommendations on the amendment process which were not approved by the General Assembly included permitting the amendments to be proposed at special, as well as regular, sessions of the legislature; permitting the General Assembly to provide for a single vote on a group of amendments; requiring the vote on the amendments to be at the next regular election after the passage of the proposal, instead of at the next regular election for members of the House of Representatives; and removing the time limit on resubmission of an amendment. These last three recommendations were addressed by Senate Bill 98 and House Bill 752, which were passed by the 1978 General Assembly and approved by the voters in 1979. Senate Bill 98 increased from two to four the number of constitutional amendments which the General Assembly could submit to the voters for approval or rejection. House Bill 752 removed the restriction upon placing the same amendment upon the ballot again within five years of submission. House Bill 752 also changed the election of members of the House of Representatives from odd-numbered years to even-numbered years. Whereas formerly the General Assembly met in even-numbered years and House members were not elected until November of the odd-numbered years, there was a lapse of more than a year and a half between General Assembly approval and voter action on the amendments which appeared on the ballot when House members were elected. Now, with House elections in even-numbered years, the proposed amendments will appear on the ballot in November after the General Assembly action of the same year.

The Commission recommended simplifying the calling of a constitutional convention by requiring the General Assembly to approve placing the question on the ballot in only one session,

rather than two. The recommended number of delegates was the same as the membership of the state Senate, rather than the House of Representatives. The Commission retained the vote requirement of one-fourth of the number of those who voted in the last election and permitted the General Assembly to decide whether the revised Constitution would be submitted to the people.

In 1956 the Constitution Review Commission was abolished, and its functions were transferred to the Legislative Research Commission. In 1960 a Constitutional Review Committee was created, in anticipation of a constitutional convention call which would be on the ballot in November of 1960. The convention call was defeated. In 1962 membership of the Review Committee was increased; and in 1964 a fifty-member Constitution Revision Assembly (CRA) was appointed. The 1964 General Assembly directed the CRA, an agency of the Legislative Research Commission, to study the Constitution of Kentucky and submit its findings to the General Assembly.[7] The CRA was composed of thirty-eight delegates selected from the thirty-eight senatorial districts, and five selected from the state at large by a panel composed of the Governor, Lieutenant Governor, Speaker of the House, and Chief Justice of the Court of Appeals (now the Supreme Court). In addition to the appointees, all former Governors became members of the CRA.

The CRA conducted a section-by-section review of the Constitution. The Assembly's work required twenty-two months of committee and full Assembly review. The result of their work was a proposed revision of the Constitution including deletion of obsolete portions and provisions of a statutory nature. Seventy percent of the document remained unchanged, but the revision contained 13,000 words and 157 sections compared to 21,500 words and 266 sections.

The Assembly recommended retaining the two methods of revision, by amendment and convention, but with substantial changes. Amendments included in a session call could be proposed at a special session, in addition to regular sessions. The maximum number of amendments to be submitted at one time was increased from two to five. The process of calling a convention was to be completely altered. Rather than requiring two successive General Assembly votes and voter approval of a convention call, the proposal allowed a convention to be called by a three-fifths vote of the General Assembly in regular session with no voter approval of the call. Any document produced by a convention would be submitted to the voters for approval, a stipulation which is not required by the current Constitution.

The document produced by the CRA resulted in more than a proposal to the General Assembly. The 1966 General Assembly voted to submit the proposed constitution to the voters for their approval.[8] The legislature circumvented the sections of the Constitution regarding revision by relying on Section Four of the state Bill of Rights, which provides that the people have at all times an inalienable and indefeasible right to alter, reform, or abolish their government in such manner as they may deem proper.

The Court of Appeals upheld this method of revising the Constitution.[9] Despite the novel method of submission and the Court's approval, the voters defeated the proposed revision by a vote of 517,034 to 143,133.

A Comparison With Constitutions of Other States [10]

The Kentucky Constitution remains one of the most difficult in the nation to amend. Prior to 1979, Section 256 of the Constitution limited the number of amendments to two. However, Senate Bill 95 of the 1978 General Assembly, which was approved by the voters in 1979, increased the number of amendments which could be submitted to the voters from two to four. Even with this change, the Kentucky Constitution remains difficult to amend, both because of this limitation and because the General Assembly meets only every other year. In 1990, Kentucky voters were for the first time presented the maximum of four proposed amendments, only one of which passed.

The only other states with such limitations are Arkansas, Colorado, Kansas, and Illinois. Arkansas limits to three the number of constitutional amendments which may be submitted to the voters at one election. In Kansas, the limit is five amendments. The Colorado legislature may not propose amendments to more than six articles of its state Constitution at one legislative session, while Illinois only permits amendments to three articles to be proposed at one election.

Since the legislatures in fifty states are required to submit proposed constitutional amendments to the people, the frequency of legislative sessions affects the amendment process. Of those states noted above which place a limitation on the amendments to be submitted at one election, all have an annual session of the legislature, except for Arkansas, which meets in odd-numbered years. However, unlike Kentucky's, the Arkansas legislature can by a two-thirds vote extend its session for an indefinite period of time, even permitting the legislature to meet the next year.

Nine states have no provision in their constitutions for calling a convention. Of the states that do permit conventions, Kentucky is the only one which requires two sessions of the legislature to approve placing on the ballot the question of calling a constitutional convention. Most states do require legislative approval for submitting the convention question to the voters, but six states permit the legislature to call a convention without voter approval. In Florida only the people may call a convention, through an initiative petition. Fourteen states require the convention question to be submitted at regular intervals, one state every nine years, four states every ten years, eight states every twenty years, and one every sixteen years.

Kentucky is also the only state which requires the vote on the convention question to be a percentage of votes cast in another election; specifically the vote on the convention question must at least equal one-fourth of the votes cast in the last preceding general election. Illinois requires approval by a majority of those voting in the election or three-fifths of those voting on the question. Nebraska requires that the majority voting on the convention question be at least thirty-five percent of total votes cast in the election. Alabama, Maryland, Minnesota, Nevada, South Carolina, Utah, Washington, and Wyoming require a majority of those voting in the election to approve calling the convention. The other states simply require a majority of those voting on the question to approve the call.

Kentucky's Constitution does not require that the revision endorsed by a convention be ratified by the voters. The constitutions of thirty-five states contain such a requirement. In Kentucky and the six other states which have no such mandatory provision the legislature is not prevented from requiring the revision to be approved by the voters.

FOOTNOTES

1. *Proceedings and Debates of the Convention*, Mr. Whitaker, page 1559.

2. *Hatcher v. Meredith*, 295 Ky. 194, 173 S.W. 2d 665 (1943).

3. *Funk v. Fielder*, 243 S.W. 2d 474 (Ky. 1951).

4. The Judicial Article, Sections 109 through 143, Amendment Number XXII.

5. *McCreary v. Speer*, 156 Ky. 783, 162 S.W. 99 (1914); and *Arnett v. Sullivan*, 279 Ky. 720, 132 S.W. 2d 76 (1939).

6. *Chenault v. Carter*, 332 S.W. 2d 623 (Ky. 1960).

7. 1964 House Bill 39.

8. 1966 Senate Bill 161.

9. *Gatewood v. Matthews*, 403 S.W. 2d 716 (Ky. 1966).

10. The material in this section is from pages 22-26 and 137-140 of the 1992-93 *Book of the States*.

APPENDIX

The following Constitution of Kentucky has been previously published as a separate informational bulletin. The entire bulletin is reprinted here, including the Foreword, Table of Contents, Explanatory Essay, summaries of all proposed amendments, those which have been adopted, those which have been defeated, and the Index.

FOREWORD

The Constitution of Kentucky is the principal law of the Commonwealth, the foundation upon which state and local government rest. Its authority is superseded only by the Constitution of the United States and federal law. The life of the Commonwealth and the lives of its citizens are governed, knowingly or otherwise, by the principles and strictures contained in this essential document. Kentucky's Constitution is, furthermore, a testament to the basic democratic principle of the right of self-government.

Kentucky's present Constitution, its fourth, was painstakingly written between the summer of 1890 and the spring of 1891, in the Old State Capitol pictured on the cover. It is twice as long as the state's previous Constitution, written in 1850, and four times as long as the original 1792 Constitution, which was composed in a mere eighteen days. The current document reflects the political, social, and economic changes that had occurred in Kentucky during the first one hundred years of statehood, up to the time the present Constitution was written. Readers of the Constitution not only can learn what principles govern the state but also can gain some insight into the attitudes and concerns of the men who framed the present document.

Sixty-nine attempts to amend the Constitution have been made since its implementation in 1892, but only thirty-two have been successful, the most recent in 1992. In 1967, proposed major revisions in the present Constitution were submitted to the voters, the result of efforts by a special Constitution Revision Assembly created by the General Assembly. The vote was overwhelmingly against the proposed changes. Four unsuccessful attempts also have been made, over the years, to call a constitutional convention to draft a new Constitution. The most recent such failure occurred in November, 1977.

The often stormy history of Kentucky's Constitution and an enlightened discussion of many of its key provisions are contained in an accompanying essay by James T. Fleming, a former director of the Legislative Research Commission. The essay was written originally in 1952, the first year copies of the Constitution were published by the Commission, and updated by Mr. Fleming in 1966. A few additional revisions have been made by the Commission staff to reflect changes that have occurred in the Constitution and in state government during the years since 1966.

Vic Hellard, Jr.
Director

The Capitol
Frankfort, Kentucky
1993

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THE STORY OF KENTUCKY'S CONSTITUTION
AN EXPLANATORY ESSAY

> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law . . . . That the people have an original right to establish, for their future government such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it nor ought it to be frequently repeated. The principles, therefore, so established, are deemed fundamental . . . .
>
> Chief Justice John Marshall
> *Marbury v. Madison* (1803)

CONSTITUTIONS PRIOR TO 1891

The first Constitution of Kentucky was written at Danville and adopted in 1792, the year of admission into the Union. This Constitution was a brief document modeled in many respects after that of the United States. The drafters recognized that conditions would change and included a provision for a later popular vote on the question of holding another convention to consider constitutional modifications.

In the first eight years of statehood, the population of Kentucky increased at the rate of twenty-seven percent per year. Changing conditions brought a demand for constitutional change. One controversy centered about the fact that the Governor and state Senators were not elected popularly, but were chosen by a body of electors. It was claimed that the Senate had aristocratic tendencies. This and the fact that most officials were appointed, and not elected, were not in keeping with the spirit of a rapidly expanding frontier.

The second Constitution, drafted by a convention sitting in Frankfort, was adopted in 1799. The Governor, Lieutenant Governor, and Senators were now to be elected by the state-at-large. The Governor appointed all the judges, who held office during good behavior. Recognition of slavery was included. This provision had also been in the 1792 Constitution.

In accordance with the mode of revision specified in the 1799 constitution, the question of calling a convention to amend that constitution was approved twice by the people in 1847 and 1848. The convention for this purpose met in Frankfort in 1849-50. This body concerned itself principally with: the institution of slavery; providing for the election of all officers, particularly judges, by the people; organization of the judicial branch; and, the inhibition of the use of the credit of the state for internal improvements. This third Constitution was completed in 1850. Work on revising it was not to commence until the late summer of 1890.

SCENE: THE OLD STATE CAPITOL, FRANKFORT, SEPTEMBER 8, 1890

The day was hot, toward the end of summer. Trees in the Capitol yard on Railroad Street were dusty, and horses clopped wearily down quiet Frankfort streets. More than a dozen passenger trains a day then passed through Frankfort, and for nearly a week, important people had been arriving from all parts of the state on the hot and grimy cars. A number came by turnpikes and on the steamboats which served the city back in the 1890's.

Ex-Governor J. Proctor Knott and Governor Simon Bolivar Buckner were delegates. William Goebel, doomed to be cut down by an assassin's bullet in another ten years, Cassius M. Clay, of Bourbon County, and a number of other leading political figures were in the group, which included one person from each of Kentucky's hundred representative districts. They were assembling at Frankfort to write a constitution, and their work has outlasted the lives of all of them. After a year, marked at times by bitter wrangling and hours of oratory, they placed their signatures on a document which to this day affects the life of every Kentuckian.

The constitutional convention was called to order on September 8, in the House chamber on the second floor of the Old Capitol. Only after 226 days of sessions did the convention adjourn on September 28, 1891. In the meantime it had done enough talking and writing to fill over 6,000 finely printed pages of paper, and it had drafted a constitution containing about 20,000 words.

HOW THE 1890 CONVENTION CAME TO BE CALLED

The 1850 Constitution had been adopted before the War Between the States. One section was aimed at protecting slavery, now a thing of the past. Other provisions left the General Assembly with almost unlimited power to enact special laws. Many parts of the Constitution were out of date, and the only way to change them was by calling a convention for the purpose of readopting, amending, or changing this Constitution.

The first attempt to call a convention was made in 1867. Two consecutive sessions of the General Assembly had to order a separate public vote on the question. At each of these elections, "a majority of those entitled to vote for Representatives" had to vote in favor of a convention. Then, a law finally could be passed to call a convention and provide for the election of one hundred delegates. For twenty years it had been impossible to get a favorable majority. The number of eligible voters was calculated from the local tax assessors' records, but many taxpayers did not vote. As a result, even when a majority of those voting favored a convention, they failed to add up to "a majority of those entitled to vote for Representatives."

In 1886 an act was passed which required all persons voting in the general election of 1887 to register at the time they cast their votes. By law, only those voters were declared eligible to vote for Representatives, which is one of the things they were doing at the 1887 election. Then, in 1888 and in 1889 referenda were held on the question of calling a convention. Each time a majority of the "eligible voters" favored the proposal, so the General Assembly which met in the fall of 1889 passed a law calling for a constitutional convention.

ECONOMIC AND SOCIAL CONDITIONS IN KENTUCKY IN THE 1890's

Kentucky was an overwhelmingly rural state in 1890. Over eighty percent of its 1,858,000 people were farmers or residents of small rural communities, yet the impact of industrial development was affecting the thinking of the people. Railroads were opening up the coal fields. Timber resources were being exploited. Miles of turnpikes already linked many Kentucky communities, but the toll roads were provoking growing dissatisfaction. There were no automobiles, and the airplane was still a dream, along with radio, rocket ships, and the forty hour work week. Only a few houses had running water; a few businesses had telephones; and few people had seen an electric light bulb. There were common schools, but no compulsory education, and almost one-third of the population could not read. The cost of state government was about $3,500,000 a year compared to more than $11.5 billion today.

Politically, two sets of forces were at work: the "corporations" which had developed into powerful interests since the 1850's, and the "agrarians," the large mass of ordinary people, sometimes puzzled about the effects of changing times on Kentucky's government.

The corporations in their lusty fights for power and profit naturally tried to gain every possible advantage. Business combines were formed to control prices. Tax privileges were sought and sometimes bought. Cities and towns were persuaded or influenced into financing railroads, mills, and other business ventures. Largely because of this, the finances of many local governments were in chaos. A great number of Kentuckians felt that business literally was taking over the government. One speaker referred to the corporations as " . . . the hideous and dangerous spawn of inconsiderate legislation . . ." It was asserted that " . . . we have three houses in the legislative department of our State government: the Senate, the House of Representatives, and the Third House, and that the illegitimate monster unknown to the constitution of our fathers is the most potent of the three."

These conditions had a great effect upon the members of the 1890 constitutional convention. But at the very same time, the national government was starting to regulate business. The Interstate Commerce Commission had been established to regulate the railroads, and the Sherman Antitrust Act, governing

business combines and restraint of interstate commerce, was passed in the same year that Kentucky's convention met. Many of the problems which provoked the writers of the Constitution already were being faced at a higher governmental level.

Most of the delegates to the constitutional convention felt that the real root of Kentuckys governmental problems was the almost unlimited power of the General Assembly. One of them even said that " . . . the principle, if not the sole, purpose of the constitution which we are here to frame, is to restrain its [the Legislature's] will and restrict its authority." The framers desired regulation of big business, and they placed the controls in the Constitution. They wished to make government more responsive to the people, and they provided for more elective officials. They also forbade these executive officers to serve more than one consecutive term in office. They wanted good officials, so they permitted the payment of substantial salaries. They, however, overlooked the effects of later economic changes which greatly lowered the value of the dollar.

They distrusted the General Assembly, so they wrote many details of law into the Constitution. They recognized the need for an easier way of changing it, so they inserted for the first time in any Kentucky Constitution a procedure for amending the basic law. They carefully designed the amendment provision, however, so that it would be much harder to change the Constitution than an ordinary statute. Apparently because they liked the new word better, they also changed the legal name of Kentucky! Instead of calling it a "State," as the old Constitution did, they made it a "Commonwealth," a more accurately descriptive term implying a separate political entity but not necessarily indicating complete sovereignty. Kentucky, Massachusetts, the Northern Mariana Islands, Pennsylvania, Puerto Rico, and Virginia officially are designated Commonwealths.

Who were these hundred men who laid the foundation of our present Kentucky government? According to the record, sixty of them were lawyers. Twenty were farmers. Of the remaining twenty, thirteen were doctors and seven were bankers or merchants. Most of the delegates were middle aged or older. Quite a few were active in politics, and the delegates included a former Governor, a future Governor, and The Honorable Simon Bolivar Buckner, Governor at the time. No real radicals were in the group, and nearly all the delegates represented rural sections. Seven were from Jefferson County.

In general, these men were earnest, unselfish, and amazingly patient. They were willing to labor over a thousand different details for months. The earlier Constitutions had been drafted in only a few weeks. As they pursued their tedious labors in the stately Old Capitol, an industrial revolution was roaring round their heads, while they groped for ways to deal with it.

THE DOCUMENT
THEY DRAFTED

> *. . . a Constitution is not an ornament; it is not like a counterfeit presentment of some of our cherished dead; it is something we must use every moment; it is far less like a portrait than it is like a suit of clothes or a house . . . .*
>
> Speech of Delegate E. J. McDermott
> at the 1890 Constitutional Convention.

The job of the 1890-91 constitutional convention was a big one. It was to rewrite much of the basic law of Kentucky by drafting a new constitution defining the powers of government and the rights of individuals.

The delegates did not have to start from the beginning. They had the Constitution of 1850 as a guide, as well as the Constitutions of all the other states. Some very basic parts of the Constitution of Kentucky were completely beyond their power to change. These were the provisions of the the Constitution of the United States which apply to the states.

It is proper to say that part of Kentucky's Constitution is actually contained in an entirely separate document, *The Constitution of the United States*, which provides in Article VI that:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

In the first place, the United States Constitution gives certain powers to the national government and thereby denies some of these to Kentucky and the other states. These powers, among others, include the regulation of foreign and interstate commerce, naturalization and bankruptcy laws, and establishment of post offices and post roads.

The federal Constitution also forbids the states to do certain things such as making a treaty, coining money, impairing the obligation of contract, imposing a duty on imports or exports, and declaring war. States may not remove certain rights granted to the people, such as depriving a person of life, liberty, or property without due process of law or denying equal protection of law. Finally, the United States Constitution guarantees each state a republican form of government.

Within these limits and those practical limitations imposed by the attitudes and circumstances of the day the framers were free to do anything they desired. Under the federal Constitution, "The powers not delegated to the United States . . . nor prohibited . . . to the States, are reserved to the States respectively, or to the people." The Kentucky constitutional convention thus had a wide range of discretion. The task of the delegates was to define the organization of the government and its three major branches: executive, legislative, and judicial. In addition, it had to spell out, and limit, the powers of the government.

This concept of placing limitations on the powers of government is important. The states and the people have all the powers not assigned to the national government. As a result, one state owns a major railroad line. Another one set up a chain of grain elevators. Kentucky, back in the early 19th century, built and operated a series of locks and dams on the state's waterways. One important part of the Constitution is the specific limitations and prohibitions it contains, but, in a sense, every positive grant of power in a state constitution is also a limitation. When the framers wrote, for instance, that "The legislative power shall be vested in a House of Representatives and a Senate . . . " they prohibited the establishment of a single-chamber legislature such as Nebraska's. When the writers of the Constitution said nothing about a state corporation income tax, in effect they permitted such a tax to be adopted later, simply by not having forbidden it.

The men who labored through the year on Kentucky's Constitution came up with a document containing an enormous array of detail on many phases of state government. Particular stress was placed upon the powers and duties of the General Assembly, and these were spelled out in great detail.

THE CONTENTS OF KENTUCKY'S CONSTITUTION

When the delegates left for home on April 11, 1891, their completed draft of the proposed constitution contained 272 sections, under 22 different headings. It was ready for printing and submission to the voters. The document defined and distributed the powers of the state among its governmental branches, set forth the powers and duties of local government, and the rights of individuals. In addition, it contained a mass of legislative detail.

The Bill of Rights

The Bill of Rights is the first major section. Section 4 has this revolutionary statement:

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

Section 4 was to be the legal basis for submitting a complete revision of the Constitution directly to the people in 1967. This attempt at general revision is discussed in the last part of this essay. But the Constitution also includes a rather difficult and slow-moving amending procedure.

Much of the material in the Bill of Rights was taken from the Constitution of 1850. Despite this, the delegates spent almost two months in debate and argument over this part of the Constitution. Examination of Kentucky's Bill of Rights will show that it contains a number of important provisions, such as religious freedom, and the right to trial by jury. Today, important protection against the violation of civil rights by the states is found in the 14th Amendment of the federal Constitution, as interpreted and applied by Congress and the courts.

Distribution of Powers

The structure and powers of Kentucky government were definitely modified by the work of the 1890 convention. The traditional three branches of government -- the legislative to make the laws, the executive to enforce the laws, and the judicial to interpret laws and rights -- were, of course, retained, along with the plan that each branch would be checked and balanced by the other two.

The Legislative Branch was drastically affected by the work of the delegates to the 1890 convention. The framers of the Constitution prohibited special laws applicable only to one city, town, or county. They went even a step further, and enumerated twenty-eight subjects on which special legislation was forbidden. The last session of the General Assembly under the 1850 Constitution had passed 1,926 acts, only 117 of which affected more than one county in Kentucky!

The delegates provided for the classification of cities on the basis of population, so that the different problems and needs of larger and smaller communities could be met and the evils of special legislation avoided at the same time.

The new Constitution also limited the regular sessions of the General Assembly to sixty days each two years. Under the old Constitution the legislators could vote to stay in session for more than sixty days, and they often did.

Legislators and other public officials were forbidden to continue to accept free passes and other privileges from the railroads. A specific constitutional provision reestablished the old State Railroad Commission, and a large amount of the General Assembly's former authority to regulate and grant privileges to railroads was eliminated. Over thirty sections of the new Constitution covered railroads and corporations generally, and in one sweeping provision all their previous grants of special or exclusive privilege were abolished, undoing much of the work of earlier legislatures.

The Executive Branch was not greatly changed. The Governor was granted an additional veto power, which enabled him to reject individual items in appropriations bills, if he did not approve of them. Two more elective state officials were included in the Constitution: a Secretary of State and a Commissioner of Agriculture, Labor and Statistics. (The latter office is now generally referred to as the Commissioner of Agriculture; the Commissioner of Labor is a statutory office.) In addition, the framers of the new Constitution gave the Governor the duty of informing the General Assembly " . . . on the state of the Commonwealth . . . " and making recommendations for action on its part.

When the convention sat, the officers of the state were few in number and the officials provided for in the Constitution undoubtedly were intended to be the major departmental officers. Yet, in drafting the document, the delegates realized that there might be a need for additional officials, so they provided for the appointment or election of "inferior officers." The delegates did this in an offhand manner, without even debating the provision. Today those "inferior officers" are the heads of virtually every major state department.

In the last forty years, as the state government has taken on a growing number of programs, there has been a strong trend toward the creation of appointive statutory offices. Except in agriculture, appointive officers now are responsible for most of the state's executive functions. One of the biggest developments in the work of the Executive Branch has taken place under a phrase which was placed in the 1891 Constitution with only the most casual consideration.

The Judicial Branch underwent one major modification at the hands of the framers of the 1891 Constitution: the General Assembly was forbidden to create any courts in addition to those provided for in the Constitution. As a result, the Superior Court was abolished. Under the old Constitution there had been two "supreme courts" in the state, the Superior Court and the Court of Appeals. The Superior Court,

created by the General Assembly, had final jurisdiction over matters where the amount of money involved was small. This division of justice between so-called "poor man's court" and "rich man's court" was denounced thoroughly at the convention.

A great deal of debate and discussion concerned constitutional provisions governing the local courts. Dozens of special courts had been created by laws to serve individual communities. Their powers and jurisdictions were confused. The delegates provided for a somewhat overlapping set of quarterly courts, county courts, justice of the peace courts, and police courts. The new Constitution also permitted the payment of prosecutors and justices by fees which gave them a direct monetary interest in securing convictions. The Court of Appeals decided, in December of 1956, that this age-old method of compensating justices on the basis of finding people guilty deprived defendants of due process of law.

The Judicial Branch underwent another major overhaul in 1976, after voters in the preceding general election approved a constitutional amendment to vest the judicial power of the Commonwealth exclusively in one Court of Justice, divided into a Supreme Court, a Court of Appeals, a trial court of general jurisdiction (Circuit Courts), and a trial court of limited jurisdiction (District Courts). The amendment contained many provisions similar to those which had been proposed ten years earlier by a Constitution Revision Assembly.

Members of the Court of Appeals at the time the amendment was adopted became members of the new Supreme Court. All statutes which applied to the Court of Appeals and all cases pending before it were transferred to the Supreme Court as well. However, where the old Court of Appeals was required to hear appeals in all criminal and many civil cases, the jurisdiction of the Supreme Court was limited to appeals in certain criminal cases (those involving judgments imposing a sentence of death, life imprisonment, or imprisonment for twenty years) and such other cases as its rules might provide.

The amendment established a new Court of Appeals consisting, initially, of fourteen members, but whose size could be altered subsequently by the General Assembly at the request of the Supreme Court. The amendment provided for the new Court to divide itself into panels of not less than three judges in order to expedite its work. Jurisdiction of the new Court was left to the General Assembly to determine. The changes in the appellate system were necessitated by problems that had arisen since 1891, due largely to population growth and an increase in the various phases of modern life which required government regulation. These problems had resulted in case backlogs, which delayed the hearing of appeals for several years in some cases.

Circuit Courts were altered little by the amendment. The principal change involved their funding. When previously the courts were financed through a combination of revenue derived from fees, fines and forfeitures collected by the courts and supplemental funds from the state and the counties in which they were located, the amendment required that the courts be entirely state-supported.

A major provision of the amendment was the establishment of district courts throughout the Commonwealth to replace locally-administered quarterly courts, county courts as judicial bodies, justices' courts and police courts. Because of the complexity of implementing this portion of the amendment, its effective date was put off until two years after the rest of the amendment took effect.

The amendment made several other important changes in the Judicial Branch as well. It provided for the nonpartisan election of all judges and established judicial nominating commissions to make recommendations for filling vacant judgeships. It required, for the first time, that all judges be lawyers, a requirement only of Court of Appeals and Circuit Court Judges previously. It prohibited judges, while on the bench, from practicing law, running for elective office other than judicial office, or holding any office in a political party or organizations. It designated the Chief Justice of the Commonwealth as the executive head of the Court of Justice, requiring him to submit a budget for the entire court system and to perform all other necessary administrative functions relating to the system. It abolished the Clerk of the Court of Appeals as an elective office, but designated the Clerk elected at the time the amendment was adopted to serve as Clerk of the Supreme Court for the four years for which he was elected.

[Throughout the remainder of this essay, the highest court is referred to as the Supreme Court.]

Education

A new policy was written into the Kentucky Constitution that the General Assembly should " . . . provide for an efficient system of common schools throughout the state . . . ." The old Constitution had contained merely a provision for distributing the proceeds of the state common school

fund. This fund originally had been established in 1837. In it was placed $850,000 of the money given to Kentucky by the national government from the proceeds of public land sales. This money was soon "borrowed" by the state to finance extensive internal improvements. The state later refused to pay interest on this money, and the bonds showing that the money had been borrowed were burned by order of the Governor.

The 1848 General Assembly corrected this situation. New bonds were issued to cover interest due on the school fund, and a two-cent property tax was levied for a system of common schools. The drafters of the 1850 Constitution included a section making the capital of this common school fund "inviolate," a permanent and perpetual obligation of the state. The earnings of the fund were to be distributed equitably to each county. The 1891 Constitution retained the school fund provisions and supplemented them by the now famous section 186, which provided that "Each county in the Commonwealth shall be entitled to its proportion of the school fund on its census of pupil children for each school year . . . ."

As a result of this provision, subsequently amended in 1941 and 1949, the basic measure of a local government's eligibility for school funds until 1954 was the number of school age children it contained, rather than the number of students in schools.

The voters, at the 1953 election, approved a basic amendment to Section 186 of the Constitution. This amendment repealed the per capita distribution of school funds and permitted the General Assembly by general law to prescribe the manner of distribution of the common school fund. The General Assembly in 1954 adopted, and in 1956 financed fully, a foundation program for education under which school funds are distributed on the basis of school needs and attendance.

Generally speaking, the actions of the convention helped bring the Constitution up to date in the field of education, by recognizing as a state responsibility a program which had been developing for over fifty years.

The framers of the new Constitution also provided that equal but separate school facilities should be maintained for white and Negro children. Recent United States Supreme Court decisions, holding that separate facilities based on race are in themselves unequal, have altered drastically the application of this provision and the segregated schools requirement was removed from the Constitution in 1996.

Almost sixty years before the modern controversy about separation of church and state, the delegates wrote that no portion of the school fund " . . . shall be appropriated to, or used by, or in aid of any church, sectarian or denominational school." The delegates also decided to continue the provision under which the Superintendent of Public Instruction is an elective rather than appointive office.

The issue of public versus private higher education was vital at the time of the convention. The State Agricultural and Mechanical College had been growing rapidly. Numerous private sectarian colleges also existed throughout the state, and some of them were not in the best financial circumstances. Their supporters opposed and lobbied against extended public facilities. Others were against state colleges in principle. As Delegate Robert Rodes of Bowling Green put it,

> It is a question of pure, practical common sense . . . that all the State can or ought to do properly is to give to every child within its borders a good, thorough common school education.

Opposition over the issue became rather bitter at times, but the supporters of private colleges won an apparent victory, since they managed to insert in the constitution a provision that any proposed new taxes for higher education must be submitted to the voters for prior approval a provision which, however, has had little actual effect upon the development of our state colleges and universities.

Local Government

The prohibition against special legislation, already mentioned, was among the most significant actions taken in this field.

In discussing the relation of the Constitution to local government in Kentucky, it is important to note that local units, such as counties, cities, and school districts, are legally subdivisions of the state

government. They derive their power from the state, and can do only those things specifically permitted by the Constitution and the General Assembly.

The new Constitution abolished all the old city charters and required the General Assembly to enact general laws to replace the special acts granting charters to individual municipalities. The authors of the Constitution recognized that the problems and needs of smaller towns were different from those of large cities. So they set up in the Constitution six different classes of cities, based on their population. General laws could at least be tailored to the differing needs of each class of city but no law could be made to apply to less than a whole class. An amendment adopted in 1994 authorized the General Asssembly to classify cities based not only on population, but also by taking into account a city's tax base, form of government, geography, or any other reasonable basis. In the interest of limiting the power of elected officials, mayors of cities of the first and second classes were prohibited from serving consecutive terms. This constitutional prohibition remained in effect until 1986, when voters ratified an amendment permitting these mayors to run for a maximum of three consecutive terms.

Other sections of the Constitution set forth a general pattern of organization for cities, and established limits on their tax rates and borrowing powers. Because of the delegates' concern over the regulation and control of business, they included a provision forbidding any city or local governmental unit to grant a franchise or privilege for more than twenty years. In addition, the Constitution required that such franchises be awarded to the "highest and best bidder," to discourage concessions by city fathers to influential interests.

The framers of the 1891 Constitution spent long weeks of deliberation over provisions affecting county government. Clearly, they regarded the counties as among the most important units of the state government. At the time of the convention this was a valid attitude. The counties collected most of the property taxes, and most of the taxes levied at that time were property taxes. They provided whatever welfare services there were, enforced law and order, handled most of the court cases arising in the state, and were just beginning to take on responsibility for a function of prime importance -- the construction and maintenance of a system of public roads. Furthermore, the political foundations of the state were strongly embedded in the county governments, as they still tend to be today. County political office was a stepping stone to greater things, and the state political organizations were to a large degree built out of county-level support. Unlike the initial prohibition against succession by mayors of cities of the first and second classes, all county officers except sheriffs were permitted to serve consecutive terms. In 1986, an amendment permitting sheriffs to immediately succeed themselves in office was ratified by the voters.

The Constitution provided for the election of practically every county official, and continued the arrangement for governing the counties by fiscal courts made up of the county judge (now called county judge/executive) plus from three to eight magistrates, who are also the local justices of the peace. The framers added a section permitting a county to elect three commissioners, from the county at large, to replace the magistrates and to provide a more modern form of government. Only thirteen counties currently have this arrangement.

Since 1891, a vast change has come about in the character of our government. Counties are no longer the chief administrative arms of state government. Most of their functions are either shared with or supervised by the state and some of their traditional duties have been abandoned as a result of the centralizing tendencies of the last quarter-century. Perhaps one of the greatest strengths of our counties lies in their importance to the political organization of the state, for without such organization a prime characteristic of democratic government undoubtedly would be lost.

Many county officers still derive income from fees. At the time the present Constitution was written no thought was given to changing this arrangement, but a restriction was placed on the handling of fees in large cities and counties because it was alleged that certain officers in Jefferson County were making as much as $50,000 a year from fees in 1890! The Constitution set a maximum limit of $5,000 on the compensation of all officials and employees, including those of local government. The limit for local officers was raised to $7,200 by a 1949 amendment. A Supreme Court decision, however, has in effect raised this maximum. The Court held that $7,200, in terms of 1949 values, could be related to the purchasing power of the dollar at the present time.

Government Finances

About seventy percent of Kentucky's state tax revenue came from property taxes in 1890. Land and property were still the predominant sources of wealth in the state, and the property tax was not regarded as inequitable. The delegates were thoroughly aroused over the manner in which corporations had been

escaping taxation. More than $232,000,000 worth of corporation property was untaxed because it was "devoted to a public purpose." The framers provided that all property be taxed at a uniform rate, whether it was a highly profitable business or a small farm. Many members of the convention were in favor of exempting absolutely no property from taxation, and the question of taxing churches was discussed seriously and at length. A limited exemption was finally included, applicable to

> . . . places actually used for religious worship . . . not exceeding one-half acre in cities or towns, and not exceeding two acres in the country; places of burial . . . , institutions of purely public charity, [and] institutions of education not used or employed for gain . . . .

A 1990 amendment to Section 170 provides an exemption for all real property owned and occupied by, and all tangible and intangible personal property owned by, institutions of religion.

Over the years, one of the real strictures on financing local governments and local school districts was the low level of assessment; generally property has been assessed at less than thirty percent of its true value. This resulted in limiting the taxing power of local governments and, in effect, made the tax assessor the over-all shaper of public finance policy. The Supreme Court in 1965, in an historic decision, held that the Constitution meant precisely what is said, in this instance, that property must be assessed at one hundred percent of its true value. This decision has meant that local governments have had available to them a greater potential of property tax revenues and a greater potential of full faith and credit indebtedness.

The maximum tax rates of counties, cities, towns, and taxing districts were written into Section 157 of the Constitution, but no property tax limit was set on the state or on school districts. Very little was said about other possible forms of taxation, such as those on income, which in effect left the state government free to impose them, but a great deal was included in the Constitution concerning borrowing by both the state and localities. Recalling vividly how the state had its fingers burned in the early nineteenth century, and determined to prevent wild spending for public works, the framers retained a constitutional provision forbidding the state to go into debt more than $500,000.

In the last quarter-century this rigorous provision has been weakened. Revenue bonds, interest bearing warrants, and holding company bonds have been interpreted as not falling within the constitutional debt limit, since they are not guaranteed by the full faith and credit of the Commonwealth. Finally, the Constitution prohibited the General Assembly from giving financial assistance to local governments except in the case of schools. State grants-in-aid, state taxes for local purposes, and any loan of the state's credit to localities were forbidden.

The authors of the 1891 Constitution were concerned largely with the big financial problems of the day as they saw them. These were in the field of local government. Ironically, in dealing with them, they tied the cities and counties to a property tax base which in only a few decades was to become somewhat obsolete, as new forms of wealth came into existence. They were not much concerned with the then less important matter of state government finances. As a result the state has been free to exploit new fields of taxation as needs have developed and times have changed.

Elections

One highly significant change in elections was made: the old method of "viva voce" voting, or voice voting, was replaced by the secret Australian ballot. Only mute persons could vote by ballot under the 1850 Constitution.

Two principles guided the delegates in drafting provisions for elections: a belief that as many officials as possible should be elected, since the average person should be capable of filling governmental offices, and a belief that democracy and honesty as well are fostered by rotation in office. The old Constitution permitted certain state officials to run for reelection without limit. A state treasurer, known as "Honest Dick Tate," had been elected nine times before the discovery that he had absconded with thousands of dollars from the State Treasury. The Governor, Lieutenant Governor, other state constitutional officers, as well as all judges, court clerks, and local officials are elective under the provisions of the present Constitution, and statewide elected constitutional officers were prohibited from being re-elected to two consecutive terms. An amendment adopted in 1992 permits statewide officers elected in 1995 and thereafter to serve two consecutive terms.

Kentucky had always taken a rather liberal position regarding the right to vote, in contrast to many other states. Property ownership or the prior payment of taxes has never been a voting qualification. The 1850 Constitution gave the vote to "every free white male citizen who met residence requirements." The 15th Amendment to the United States Constitution, which came later, forbade any state to deny a person the right to vote because of race, color, or previous condition of servitude. The authors of the 1891 Constitution of Kentucky never attempted to circumvent this amendment, as some states have done, by the use of burdensome residence and registration requirements.

The voting rights of women had not been established in 1891, and the new Constitution limited the voting privilege to men as a matter of course. In 1920, the federal Constitution was amended to permit women to vote. Interestingly enough, Kentucky's Constitution contained an obsolete "male suffrage" provision until 1955 when the Constitution was amended to lower the voting age to age 18. Only then was the "male" requirement eliminated. An amendment to delete it was defeated in 1923. The 1891 Constitution had given women the right to vote in school elections, as they had been doing in some parts of the state.

At least two efforts were made to secure honest elections. Voters in cities and towns of 5,000 or more people were required to register, and registration was made permissive in the rest of Kentucky. Because of the distrust of big business which characterized the convention, any corporation convicted of trying to influence the outcome of an election was required to surrender its charter. This latter clause was invoked after the 1927 gubernatorial race, but the corporation involved surrendered its charter voluntarily and dissolved itself into subsidiary organizations.

The Constitution made no provision for political parties or primaries, which are a nomination process. In 1890, political parties chose their candidates at conventions. Today's Kentucky primaries are established by statutory provisions.

Historically, every year has been an election year in the Commonwealth. Since 1891, state and local elections in Kentucky have fallen in the odd-numbered years, while the election of national officers takes place in the even ones. This came about because, at the time the Constitution was being written, a bill was pending in Congress which would have given the national government extensive control over any election at which a national officer was being chosen. By keeping state and local elections separate from national races, the danger that they might be subject to federal supervision was eliminated. In 1979, an amendment was adopted that shifted elections for members of the General Assembly from odd to even years. An amendment ratified in 1992 moved all elections held in odd-numbered years to even-numbered years, except for elections for statewide constitutional officers. As a result, no elections will be held in one year of the four-year election cycle, with 1997 being the first election-free year.

The Amending Process

The proposal and adoption of amendments to the Constitution were provided for in the document prepared in 1890 and 1891. The earlier Kentucky Constitutions had contained no such provision. But they were much shorter than the 1891 Constitution, and contained little detail. As a result, the need for amending them was somewhat less.

The amendment question was thoroughly debated, and the general sentiment of the convention was that individual amendments should be permitted, but the process should be difficult enough to prevent arbitrary and capricious change.

Faith in the intelligence of the people and their ability to govern themselves was not wanting. A few members of the delegation argued for a simple and direct way of changing the Constitution. In a stirring, prophetic speech, delegate A. J. Auxier argued that:

> There is nothing so sacred about any of this Constitution but what the people can alter, modify or change, and adapt it to the wants of the people when the emergency arises . . . . We are simply the representatives of the people. They sent us here to form a Constitution; not for the government of all the generations yet unborn, but to prepare a Constitution suitable for the government of the people at the present time.

> Many changes have occurred since the Convention of 1849 . . . . The people have become more enlightened . . . . Great strides of progress have been made . . . and the Constitution that they framed then was not, in all things, adaptable to the present wants of the people of this State.
>
> Are we going to arrogate ourselves to the assumption that we today are more enlightened than they will be fifty years from today? . . .
>
> I predict that, before another Constitutional Convention shall be assembled in this hall, men will be navigating the air, instead of traveling in railroad coaches; that instead of going thirty or forty miles an hour, they will go two hundred miles an hour, and hundreds and thousands of unthoughtof things will be brought into existence; and new fields of operation and new systems of governments, or modifications, at least, will be required in those days yet to come . . . . We want to make some changes in our Constitution to adjust it to the present wants of the people. Why not give future generations the right to do the same?

The final outcome was an amendment procedure a little less difficult than in many states, and less restrictive than the original proposals considered by the delegates.

An amendment adopted in 1979 increased from two to four the number of amendments which can appear on the ballot at an election, beginning in 1980. An exception was 1982, a year of transition, when no amendment could appear on the ballot. The 1979 amendment also deleted the prohibition on resubmission of a failed amendment within five years. In addition this amendment permits specifically the amendment or modification of as many articles and sections as may be necessary to accomplish the objectives of the amendment, provided each treat a single subject or related subject matters. The 1980 General Assembly placed two amendments on the ballot; one amendment appeared in 1984; and two amendments were on the ballot in 1986. In 1988, two amendments appeared and passed with wide margins. For the first time, voters in the 1990 elections were presented with four proposed amendments, with only one being approved. Three proposed amendments appeared on the ballot in 1992.

General Provisions

Numerous miscellaneous provisions were included in the document. Generally, they relate to specific issues of the time, and some of them now seem quaint and out of place. Included was a prohibition against lotteries. These often had been used to finance schools, streets, and even seminaries in the early nineteenth century. The prohibition was removed by the voters in 1988, and in 1992 charitable gaming was authorized. Each person holding public office was required to swear that he had not taken part in a duel, and armed bands of men were forbidden to come into the state. This latter provision was aimed at the squads of detectives and other groups sometimes brought in during labor strife.

A suggestive flash of foresight is reflected in a requirement that " . . . the General Assembly shall . . . fix the minimum ages at which children may be employed in places dangerous to life or health, or injurious to morals . . . ." The purpose of this provision was to permit the General Assembly to outlaw the evils of child labor. This was one of the first steps toward the broad blanket of laws and regulations which now protect the safety and health of our children.

A sincere interest in child welfare led to a provision for the establishment of Houses of Reform for children under age 18. This was a step forward for Kentucky, and the debates on the proposal are full of gruesome illustrations of the need for such an institution. At the time, even young children were often sentenced to the penitentiary, where their services might be sold to contractors who used them on chain-gangs. One delegate told of seeing four boys under the age of 12, shackled together in chains, being transported to prison by train. Another mentioned a 16-year-old who had been crushed and horribly crippled while doing convict labor on a construction job. Partially as a result of such conditions the framers also wrote into the Constitution a prohibition against the sale of prison labor to private contractors.

Finally, the convention helped settle once and for all a debate which had gone on for almost a hundred years: the location of the State Capital. Lexington wanted it, Louisville wanted it, and other cities also submitted their bids; but under Section 255, the Capital was to be located permanently at Frankfort unless removed by a two-thirds vote of each house of the 1891 General Assembly. Frankfort retained the Capital because of the zealous efforts of its citizens, and because neither Louisville nor Lexington supporters would give in to each other.

GETTING THE NEW CONSTITUTION APPROVED

At noon on April 11, 1891, after seven months of tedious work, the delegates filed to the front of the House chamber in the Old Capitol and signed the proposed Constitution. In a brief farewell address, President Cassius M. Clay adjourned the convention until the first Wednesday in September. As he put it, "The Constitution is now signed. Our work is done . . . ."

A great deal of work remained, however, before the draft was finally to become the fourth Constitution of Kentucky. By the time the convention adjourned, the people of the state were rather fed up with the whole business of revising the Constitution. They felt that too much time had been spent on the job, and from some quarters there was strong opposition to portions of the draft. Many leading newspapers throughout Kentucky were against adoption. "Marse Henry" Watterson, editor of "The Louisville Courier-Journal," called it " . . . confusion worse confounded." It looked as though the voters were going to reject the proposed Constitution at the election of August 3.

Leading delegates took to the stump in behalf of their work. Gubernatorial candidates of both parties came out in favor of adoption. The opposition faded away. When all the votes were in, the count stood 213,432 in favor of the new Constitution, and only 74,017 opposed.

THE POST-RATIFICATION SESSION OF THE CONSTITUTIONAL CONVENTION

The delegates came together once more in September to celebrate their victory, and to make " . . . such alterations and amendments as are necessary to correct the style, remove ambiguities, and improve the phraseology of the Constitution." They agreed that it would be " . . . improper and a breach of faith for this Convention to now incorporate or make any radical change in the Constitution as approved by the people . . . ."

The delegates struggled with their desires and consciences for a while, and then set to work on the Constitution. They did not finish until September 28. When this second session ended, the Constitution was a better, more polished document. It was also somewhat different from the draft which the voters had ratified. Instead of 272 sections, it had 263.

The delegates, on their own initiative, wrote in provisions forbidding the Superintendent of Public Instruction, the Auditor of Public Accounts, and the Clerk of the Supreme Court to succeed themselves in office. Members of the Railroad Commission were made elective instead of appointive. A requirement that appointive state officials be confirmed by the Senate was dropped. An entirely new section was added, requiring the General Assembly to provide for local option elections on the sale of alcoholic beverages.

These revisions were never submitted to the people for ratification. The statute calling for the convention had required that " . . . before any Constitution agreed upon by said Convention shall take effect or become operative, the same shall be submitted to the qualified voters of this Commonwealth . . . ." The old Constitution, however, did not require any such ratification, and when the last minute changes were challenged a year later, the Supreme Court held that the convention had not exceeded its authority in making these revisions. The main argument of the court was that to throw out the changes would be to "bring confusion and anarchy upon the State."

THE MYSTERY OF THE MISSING CONSTITUTION

After the long, hectic work of the convention, an original copy of the document was written out "in a fine script hand" by William Randall Ramsey, the delegate from Laurel and Rockcastle Counties. And on Monday, September 28, 1891, at 4:30 p.m., ninety-six delegates marched to the clerk's desk to sign this

copy personally. On that same day, a committee of three members delivered the document to the Secretary of State, who issued a receipt for it.

But the only "original" copy of the 1891 Constitution now on file at Frankfort, at the Kentucky Historical Society in the Old Capitol, is a typewritten document apparently copied from the original. For nearly a century, the signed, hand-written copy of our present Constitution has been missing.

For that matter, the original draft of Kentucky's Constitution of 1850 has also disappeared from sight. And only in 1948 were the original copies of Kentucky's first two Constitutions (of 1792 and 1799) secretly returned to the Governor by an unnamed person who obtained the documents in an unrevealed manner.

Perhaps some day our present Constitution will be returned in a similar fashion. Or it may turn up in a musty pile of long forgotten papers. It may have been destroyed. At some point it was apparently stolen by a collector of historical documents or, to use the words of a writer who has explored the mystery of the missing Constitution, it may have been "rescued from imminent destruction."

In any case, the government of Kentucky continues to operate, unhampered by the fact that we have only a "carbon copy" of our most basic law.

PROPOSALS FOR CHANGE SINCE 1892

Amendment

Eighteen months of continuous legislative session were required to bring the laws of the state into some semblance of conformity with the new Constitution. Only a few weeks were enough to point up some basic defects in the document.

A fight which continued for twenty-four years began over the requirement that all property be taxed at a uniform rate, and an amendment was finally adopted in 1915 permitting the classification of property for taxation purposes. As early as 1903 an amendment was passed to permit cities to tax personal property on the basis of income, or through licenses or franchises, instead of levying a straight ad valorem tax. In 1909 another change was made, to allow counties to levy additional taxes for construction and maintenance of the public roads which were becoming so important to the economy of the state. The same amendment permitted state grants to the counties for this function.

Altogether, the people have seen fit to amend the Constitution thirty-two times. An amendment was necessary to permit the state to adopt a public assistance program in the 1930's. The Constitution was changed to require the earmarking of gasoline and motor vehicle taxes for the highway program. On three different occasions the state common school fund provision has been changed, in an effort to distribute more school money on the basis of differing local needs. The maximum salary limit of state and local officials and employees has been revised. In 1955, the minimum voting age was lowered from age 21 to age 18 and household furnishings were exempted from the property tax.

A 1969 amendment requires farm land to be assessed according to the land's value for agricultural or horticultural use. The amendment also permits the General Assembly to provide reasonable differences in tax rates within a taxing district based upon the governmental services rendered. Older Kentuckians benefited from a 1971 amendment which exempted from taxation up to $6,500 of the assessed value of a single family residence owned and occupied by a person 65 or older. The exemption was extended to other types of residences in 1975, and to certain disabled residents in 1981. The judicial system was reconstructed in 1975.

An amendment ratified in 1979 changed the election of General Assembly members from odd-numbered to even-numbered years, established a ten-day planning session of the General Assembly in odd-numbered years, and extended the period during which the General Assembly can meet. Under the provisions of this amendment, the General Assembly still is to meet for sixty legislative days beginning the first Tuesday after the first Monday in January. However, now any day on which neither chamber convenes is not counted in the total, and the session can thus be extended until April 15. With this flexibility, the General Assembly can now pass all legislation, recess for the ten-day period during which the Governor may exercise the veto power, and then reconvene to consider overriding the Governor's vetoes.

In 1984, the voters approved an amendment which permitted sheriffs to succeed themselves, and in 1986, succession was also approved for mayors of cities of the first and second classes, permitting them to run for election for three successive terms.

The people gave their approval in 1988 to two proposals which had generated heated debate for many years -- the broadform deed and lottery amendments. Under Section 19, as amended, mining of coal pursuant to any broadform deed is to be limited to methods of coal extraction utilized in the area at the time the deed was executed. The other amendment revised Section 226 to authorize the General Assembly to establish a state lottery as a mechanism for generating revenue. In extraordinary session in November, 1988, the legislature enacted legislation which created the Kentucky lottery. In 1990, the voters approved an amendment to Section 170 relating to tax exemptions for property owned by institutions of religion.

Two amendments were ratified by the voters in 1992. The first amended Section 226, relating to lotteries, to authorize the General Assembly to enact laws permitting and regulating the conduct of charitable gaming. The second made numerous changes affecting the Executive and Legislative Branches of government and eliminated elections in one year of the four-year election cycle. The amendment required the joint election of the Governor and Lieutenant Governor; permitted statewide constitutional officers to serve two consecutive terms, beginning with those officers elected in 1995; allowed the Governor to retain the powers of the office when absent from the state; provided a procedure for determining whether the Governor is unable to carry out the duties of the office; removed the Lieutenant Governor as presiding officer of the Senate and allowed the Governor to assign duties to the Lieutenant Governor in addition to those prescribed by law; abolished the offices of Superintendent of Public Instruction and Register of the Land Office; permitted the Senate to confirm appointments to state boards and commissions; and moved all elections to even-numbered years, except those for statewide constitutional office.

Thirty-three proposed amendments have been rejected by the voters, including four which would have liberalized the process of amending the Constitution, the last in 1963. Four other proposals were thrown out on technical grounds. The basic provisions of thirteen of these thirty-seven proposals have been incorporated in amendments which finally were adopted. Rejected proposals included: requiring persons who have not paid their taxes to be prohibited from voting; abolishing the elective office of the Superintendent of Public Instruction; giving local governments the power to reorganize; requiring voice voting instead of secret ballot; authorizing a compulsory workers' compensation law; reducing the number of elected state executive officers to the Governor, Lieutenant Governor, Attorney General, and Auditor; abolishing the State Railroad Commission; permitting the General Assembly to set the salary of all public officers and employees; in 1969 and 1973, permitting annual legislative sessions; permitting the General Assembly to call itself into special session; and permitting the General Assembly to reject administrative regulations issued by an agency of the Executive Branch.

The amending process never really has had a fair trial under the present Constitution. Most amendments submitted related to particular problems of a particular time. The present amending process would permit revision of a complete article by way of a single amendment. This approach is all the more important in light of failures to revise the Constitution by calling a convention or direct submission of a new document to the people. The General Assembly did not submit constitutional amendments to the people either in 1965 or in 1967. A general policy agreement was reached to hold off submitting amendments pending the outcome of the work of the Constitution Revision Assembly. As mentioned earlier, no amendments were submitted in 1982 either.

Constitutional Convention

On four different occasions steps have been taken to call a constitutional convention, the most recent being November, 1977. The first time, in 1931, less than twenty percent of those who voted in the previous election even bothered to check the question on their ballots and they voted against the proposal, 97,788 to 28,204. The issue was raised again in 1947, and this time almost fifty percent of the voters faced the question, only to vote it down, 191,876 to 144, 692.

In December, 1959, a special session of the General Assembly proposed a constitutional convention which would be limited to twelve areas of consideration. These twelve areas were as follows:

(1) The organization and powers of municipal, county, and other local governments.
(2) The Judicial Department and courts.

(3) Compensation of public officers and employees.
(4) The order of succession of persons entitled to act as Governor and the circumstances under which the Governor is disqualified to act.
(5) Misfeasance, malfeasance, and nonfeasance of public officers.
(6) Official oaths.
(7) The Railroad Commission.
(8) The Legislative Department.
(9) The mode of revision or amendment of the Constitution.
(10) Incompatibility of offices.
(11) Terms and tenure of state officers other than Governor and Lieutenant Governor.
(12) Removal of limitations on the holding of real estate.

Limited revision was subsequently upheld by the Supreme Court. Passage of a bill in special session permitted action by the 1960 General Assembly which was due to begin its regular session early in January, thereby speeding up the process of calling the convention. Both sessions enacted the appropriate measure, and a Constitution Revision Committee was formed to review and report on proposed changes. The convention call was endorsed by most of the state's leading political, commercial, and educational organizations, and seemed to face no major organized opposition. The voters, however, rejected the convention call question at the November, 1960, general election. The result was 324,777 in favor to 342,501 opposed. In the 1960 election almost 60 percent of those voting in the election voted on the constitutional question.

After both the 1974 and 1976 sessions of the General Assembly had approved bills calling for a referendum on a constitutional convention, the issue came before the voters once again in 1977. In this instance the response by the electorate again was negative, 165,311 in favor, and 254,934 opposed.

Judicial Interpretation

Only a limited number of major changes have been made in the 1891 Constitution via the process of amendment. Efforts to call a convention have failed dismally. But another, more subtle method of constitutional change has gone on since the day the document was adopted through judicial interpretation. As times have changed, the courts have been called upon to apply provisions of the Constitution to circumstances which were never anticipated by the framers. For example, a law permitting first and second class cities to levy an occupational license tax upon all persons working within the city limits was upheld by the Supreme Court in 1948. Such a tax had not been thought of at the time the Constitution was written.

Even more extensive changes have been made by judicial interpretation. The Commonwealth of Kentucky is an enormous enterprise, whose business transactions for 1989 involved $65.8 billion. At times, under the stress of emergency, it has been essential that money be borrowed, literally to keep the government in existence. In circumstances such as these, the Supreme Court at times has been quite liberal in its interpretation of the provisions of the Constitution. But it cannot be said that the court has overthrown the document or rewritten callously its meaning merely to fit the needs of the moment. As previously mentioned, the Supreme Court and the General Assembly have related the compensation of public officials to the value of the dollar. As the value of the dollar shrinks, the practical constitutional maximum automatically is raised. The effect of this is that in 1993 local officials have a $42,877, rather than a $7,200 maximum, and the $12,000 limitation is now $71,462. Another example of the court's broadening the meaning of the Constitution is in the upholding of revenue bonds on the basis that these do not constitute a full faith and credit indebtedness falling within the precise debt limitations of the present Constitution.

Constitution Review Commission

A Constitution Review Commission, created in 1949, came to the conclusion that the Constitution might be brought up to date and kept up to date by a judicious process of amendment. With this in mind, the commission recommended to the General Assembly a plan for liberalizing the amending process, which was rejected by the voters in 1951. The measure would have made it possible to submit more than two amendments for ratification at one time. In addition, however, the voters could be asked to approve more than one amendment by only a single vote, and this provision met strenuous objection. Finally, in 1979, the voters did approve an amendment increasing from two to four the number of amendments which may be considered at one election. However, since that time, the maximum number of amendments has been proposed only once, in 1990.

CONSTITUTION REVISION ASSEMBLY
DIRECT PROPOSAL

In a continuing effort to bring about constitutional revision in Kentucky, the 1964 General Assembly passed legislation providing for a Constitution Revision Assembly, a statewide panel of Kentuckians of both political parties, representing all areas of the state and groups of Kentuckians.

House Bill 39, signed into law on February 7, 1964, charged the Constitution Revision Assembly as an agency of the Legislative Research Commission "to carry on a program of study, review, examination and exposition of the Constitution of Kentucky." The Assembly would "analyze and appraise such suggestions for amendment or revision as may be made by any person or persons, groups or organizations pertaining to or in opposition thereto; and . . . bring to the public attention such proposals for revision or amendment of the Constitution in accordance therewith." The Assembly was further directed to submit its findings and conclusions to the General Assembly.

To implement House Bill 39, a committee composed of the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the Chief Justice of the Court of Appeals met to select membership of the Assembly. Thirty-eight delegates were selected on the basis of the thirty-eight senatorial districts, five delegates were selected from the state-at-large, and in accordance with the legislation, all living ex-Governors of the Commonwealth became members of the Assembly.

This fifty-member body convened for the first time in the House Chamber of the Old Capitol in Frankfort on February 17, 1964. It was in that chamber the present Constitution was debated, drafted, and approved by convention more than one hundred years ago.

At that first meeting five officers were elected. Five standing committees were established to deal with these broad subjects: State Government; Local Government; Bill of Rights and Elections; Education, Health and Welfare; and Revision Process. A sixth committee, the Coordinating Committee, was named and charged with coordinating the work of the other committees. As a rule, each delegate was placed on two committees in accordance with individual preference.

The first eighteen months were largely taken up with the work on subcommittee and committee level. By November 17, 1965, however, the committee work was virtually complete and the Assembly met to debate committee proposals in preparation for submission of a final draft to the 1966 General Assembly.

The Assembly proceeded to a section-by-section consideration of the Constitution, reserving final action until a completed document was developed. The completed draft was approved by the Assembly on December 28, 1965. On January 3, 1966, the delegates reconvened in the Old Capitol to affix their signatures to the proposed Constitution.

The fundamental approach of the Constitution Revision Assembly was to revise the present Constitution rather than write a new one. Sections considered obsolete or statutory were deleted from the proposed document. Those sections considered in need of some change were amended. The remainder were retained unchanged. As a result the proposed document contained approximately 13,000 words organized into 157 sections as compared with the amended 1891 Constitution of 21,500 words and 266 sections. Still, about seventy percent of the final Assembly draft was taken unchanged from the 1891 Constitution.

Generally, the proposed changes were:

1. Bill of Rights

While the original twenty-six sections of the Bill of Rights were retained unchanged, three new sections were added: (a) permitting waiver of pre-trial indictment; (b) prohibiting unreasonable detention of material witnesses; and (c) protecting citizens against wiretapping and mechanical or electrical eavesdropping.

2. Legislative Department

The proposed legislative article reflected the feeling of most delegates that the General Assembly is over-restricted by the 1891 Constitution and unable to perform its proper role as a coordinate branch of government.

The major proposals for the Legislative Department were: (a) designation of the General Assembly as a "continuing body," capable of working through committees even when not in session; (b) provision for annual, rather than biennial, sessions with an optional three-month extension if approved by two-thirds vote; and (c) lengthening terms of Senators from four to six years, and terms of Representatives from two to four years.

Another significant proposal was removing the $500,000 casual debt limit in the 1891 Constitution, and setting the limit at two percent of the preceding year's revenue.

3. Executive Department

Major proposals for the Executive Department of government were: (a) reducing the number of elected Constitutional State Officers to four: Governor, Lieutenant Governor, Attorney General, and Auditor of Public Accounts and allowing these officers to succeed themselves in office once; (b) allowing the Governor to limit the length of special legislative sessions as well as the subjects to be considered; (c) deleting the requirement that the Governor be dispossessed of office when absent from the state; and (d) extending from ten to twenty days the period following a legislative session during which the Governor could veto bills, but allowing the General Assembly to pass upon his veto at their next session.

4. Judicial Department

The Judicial Article of the Assembly draft called for a unified court system with general control resting in the "Supreme" Court, which was the Court of Appeals under the 1891 Constitution. Other major proposals called for: (a) creating an intermediate "Court of Appeals" of nine judges; (b) retention of the present circuit court system; and (c) consolidation of functions of the remaining inferior courts into a District Court in each county.

Changes were also proposed in the method of selection of judges and their terms of office. Judges of the two higher courts would be appointed for eight years, while judges of the lowest court, the District Court, would be elected for four years. Judges of the Circuit Courts would be elected or appointed for six years depending on the population of the districts, but in either case the voters could exercise their option to change the method of selection.

Each judge in the Commonwealth would be required to be a licensed attorney.

(Subsequently, most of these proposals were made a part of the Constitution by way of the Judicial Article Amendment of 1975.)

5. Local Government

Aiming toward more home rule at the local level, the CRA draft granted units of local government the power to create any form of government and exercise any powers not prohibited by their charters, general law or the Constitution. This is the opposite approach from that embodied in the 1891 Constitution which limits the powers of local government to those specifically set forth by the General Assembly or the Constitution. The proposal also removed most local officers from the Constitution, allowing more legislative discretion.

The CRA draft also limited the power of the General Assembly to abolish or consolidate units of local government without approval of the voters in the affected areas.

6. Education

The major objective of the proposed article on education was to remove the chief state school officer from politics and provide more continuity in the office. To accomplish this, and retain voter control over education, the new draft called for an elected, rather than appointed, State Board of Education, charged with the responsibility of appointing the Superintendent of Public Instruction.

7. Revision Process

The two methods of revision, amendment and convention, set forth in the 1891 Constitution were continued in the proposed Constitution, but with substantial changes.

The new proposal would allow a special session, rather than just a regular session, of the General Assembly to propose amendments, provided such amendments were included in the original call of the

session; and the number of amendments which could be submitted to the voters at one time was increased from two to five.

The procedure for calling a convention was completely rewritten. Instead of requiring the approval by two General Assembly sessions, plus the voters at the polls, before a convention could be called, the CRA draft stated that a convention could be called by a three-fifths vote of the General Assembly in regular session. In addition the proposal required that any document drawn up by the convention be submitted to the voters for approval or rejection. The 1891 Constitution does not require voter approval of the final document.

The Constitution Revision Assembly convened again on February 22, 1966, at the request of the General Assembly to adjust the election scheduled on a biennial rather than annual basis. The General Assembly then provided for a rather unique method for submitting the draft Constitution to the voters.

Senate Bill 161, 1966 Regular Session, provided for direct submission of the proposed Constitution to the voters under Section Four of the Bill of Rights, which states that all power is inherent in the people and they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may deem proper.

This method of submission was subsequently approved by the Court of Appeals, and the draft Constitution was placed on the ballot for the general election on November 8, 1967.

Once again the Kentucky voters displayed their reluctance to change their Constitution, and the document was defeated by an overwhelming vote of 517,034 to 143,133. It did not carry a single county.

After a review of past failures at general revision, the best approach well may be to present broad constitutional amendments to be enacted and approved in the precise manner set forth in the 1891 Constitution. The 1979 amendment of Section 256 makes such a procedure all the more feasible.

> Many Kentuckians are never aware they live under a Constitution. They never see it. They never feel it directly. The Constitution may exist as a vague conception of State government in the abstract, but it seems remote to every day life on rural mail routes and pleasant streets in little towns . . . . Yet without this set of fundamental principles to guide our local and State governments, the whole structure would fall down in confusion . . . .
>
> (Allen M. Trout, 1947)

CONSTITUTION OF KENTUCKY

PREAMBLE

We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution.

BILL OF RIGHTS

That the great and essential principles of liberty and free government may be recognized and established, we declare that:

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 1. Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, peaceable assembly, redress of grievances, bearing arms. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First: The right of enjoying and defending their lives and liberties.

Second: The right of worshipping Almighty God according to the dictates of their consciences.

Third: The right of seeking and pursuing their safety and happiness.

Fourth: The right of freely communicating their thoughts and opinions.

Fifth: The right of acquiring and protecting property.

Sixth: The right of assembling together in a peaceable manner for their common good, and of applying to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Free speech, right of, Const. 8; Religious freedom, right of, Const. 5.

Section 2. Absolute and arbitrary power denied. Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 3. Men are equal -- No exclusive grant except for public services -- Property not to be exempted from taxation -- Grants revocable. All men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services; but no property shall be exempt from taxation except as provided in this Constitution, and every grant of a franchise, privilege or exemption, shall remain subject to revocation, alteration or amendment.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Private and local legislation prohibited, Const. 59; Property exempt from taxation, Const. 170.

Section 4. Power inherent in the people -- Right to alter, reform, or abolish government. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, happiness and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may deem proper.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 5. Right of religious freedom. No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Freedom of worship, Const. 1; School money not to be used for sectarian schools, Const. 189.

Section 6. Elections to be free and equal. All elections shall be free and equal.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Elections, Const. 145 to 155.

Section 7. Right of trial by jury. The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Juries, Const. 248.

Section 8. Freedom of speech and of the press. Printing presses shall be free to every person who undertakes to examine the proceedings of the General Assembly or any branch of government, and no law shall ever be made to restrain the right thereof. Every person may freely and fully speak, write and print on any subject, being responsible for the abuse of that liberty.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Free speech, Const. 1.

Section 9. Truth may be given in evidence in prosecution for publishing matters proper for public information -- Jury to try law and facts in libel prosecutions. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libel the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 10. Security from search and seizure -- Conditions of issuance of warrant. The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 11. Rights of accused in criminal prosecution -- Change of venue. In all criminal prosecutions the accused has the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor. He cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land; and in prosecutions by indictment or information, he shall have a speedy public trial by an impartial jury of the vicinage; but the General Assembly may provide by a general law for a change of venue in such prosecutions for both the defendant and the Commonwealth, the change to be made to the most convenient county in which a fair trial can be obtained.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Local and special laws prohibited, Const. 59.

Section 12. Indictable offense not to be prosecuted by information -- Exceptions. No person, for an indictable offense, shall be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of court for oppression or misdemeanor in office.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 13. Double jeopardy -- Property not to be taken for public use without compensation. No person shall, for the same offense, be twice put in jeopardy of his life or limb, nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Eminent domain, Const. 242.

Section 14. Right of judicial remedy for injury -- Speedy trial. All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Courts, Const. 109, 124, 140-144.

Section 15. Laws to be suspended only by General Assembly. No power to suspend laws shall be exercised unless by the General Assembly or its authority.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 16. Right to bail -- Habeas corpus. All prisoners shall be bailable by sufficient securities, unless for capital offenses when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 17. Excessive bail or fine, or cruel punishment, prohibited. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 18. Imprisonment for debt restricted. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 19. Ex post facto law or law impairing contract forbidden -- Rules of construction for

mineral deeds relating to coal extraction. (1) No ex post facto law, nor any law impairing the obligation of contracts, shall be enacted.

(2) In any instrument heretofore or hereafter executed purporting to sever the surface and mineral estates or to grant a mineral estate or to grant a right to extract minerals, which fails to state or describe in express and specific terms the method of coal extraction to be employed, or where said instrument contains language subordinating the surface estate to the mineral estate, it shall be held, in the absence of clear and convincing evidence to the contrary, that the intention of the parties to the instrument was that the coal be extracted only by the method or methods of commercial coal extraction commonly known to be in use in Kentucky in the area affected at the time the instrument was executed, and that the mineral estate be dominant to the surface estate for the purposes of coal extraction by only the method or methods of commercial coal extraction commonly known to be in use in Kentucky in the area affected at the time the instrument was executed.

TEXT AS RATIFIED ON: November 8, 1988.

HISTORY: 1988 amendment was proposed by 1988 Ky. Acts ch. 117, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 20. Attainder, operation of restricted. No person shall be attainted of treason or felony by the General Assembly, and no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 21. Descent in case of suicide or casualty. The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 22. Standing armies restricted -- Military subordinate to civil -- Quartering soldiers restricted. No standing army shall, in time of peace, be maintained without the consent of the General Assembly; and the military shall, in all cases and at all times, be in strict subordination to the civil power; nor shall any soldier, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in a manner prescribed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Militia, Const. 219-225.

Section 23. No office of nobility or hereditary distinction, or for longer than a term of years. The General Assembly shall not grant any title of nobility or hereditary distinction, nor create any office the appointment of which shall be for a longer time than a term of years.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Term of office of county and district officers, Const. 99, 107; inferior state officers, Const. 91, 93.

Section 24. Emigration to be free. Emigration from the State shall not be prohibited.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 25. Slavery and involuntary servitude forbidden. Slavery and involuntary servitude in this State are forbidden, except as a punishment for crime, whereof the party shall have been duly convicted.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 26. General powers subordinate to Bill of Rights -- Laws contrary thereto are void. To guard against transgression of the high powers which we have delegated, We Declare that every thing in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

DISTRIBUTION OF THE POWERS OF GOVERNMENT

Section 27. Powers of government divided among legislative, executive, and judicial departments. The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 28. One department not to exercise power belonging to another. No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

THE LEGISLATIVE DEPARTMENT

Section 29. Legislative power vested in General Assembly. The legislative power shall be vested in a House of Representatives and a Senate, which,

together, shall be styled the General Assembly of the Commonwealth of Kentucky.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Power of pardon for treason vested in General Assembly, Const. 77.

Section 30. Term of office of Senators and Representatives. Members of the House of Representatives and Senators shall be elected at the general election in even-numbered years for terms of four years for Senators and two years for members of the House of Representatives. The term of office of Representatives and Senators shall begin upon the first day of January of the year succeeding their election.

TEXT AS RATIFIED ON: November 6, 1979.

HISTORY: 1979 amendment was proposed by 1978 Ky. Acts ch. 440, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 31. Time of election and term of office of Senators and Representatives. At the general election to be held in November, 1984, and every two years thereafter, there shall be elected for four years one Senator in each Senatorial District in which the term of his predecessor in office will then expire and in every Representative District one Representative for two years.

TEXT AS RATIFIED ON: November 6, 1979.

HISTORY: 1979 amendment was proposed by 1978 Ky. Acts ch. 440, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Vacancies, Const. 152.

Section 32. Qualifications of Senators and Representatives. No person shall be a Representative who, at the time of his election, is not a citizen of Kentucky, has not attained the age of twenty-four years, and who has not resided in this State two years next preceding his election, and the last year thereof in the county, town or city for which he may be chosen. No person shall be a Senator who, at the time of his election, is not a citizen of Kentucky, has not attained the age of thirty years, and has not resided in this State six years next preceding his election, and the last year thereof in the district for which he may be chosen.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Disqualification for dueling, using money or property to secure or influence election, receiving profit or public funds, or accepting free passes, Const. 150, 173, 197, 239; Special laws to legalize unauthorized acts prohibited, Const. 59.

Section 33. Senatorial and Representative districts. The first General Assembly after the adoption of this Constitution shall divide the State into thirty-eight Senatorial Districts, and one hundred Representative Districts, as nearly equal in population as may be without dividing any county, except where a county may include more than one district, which districts shall constitute the Senatorial and Representative Districts for ten years. Not more than two counties shall be joined together to form a Representative District: Provided, In doing so the principle requiring every district to be as nearly equal in population as may be shall not be violated. At the expiration of that time, the General Assembly shall then, and every ten years thereafter, redistrict the State according to this rule, and for the purposes expressed in this section. If, in making said districts, inequality of population should be unavoidable, any advantage resulting therefrom shall be given to districts having the largest territory. No part of a county shall be added to another county to make a district, and the counties forming a district shall be contiguous.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 34. Officers of Houses of General Assembly. The House of Representatives shall choose its Speaker and other officers, and the Senate shall have power to choose its officers biennially.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Senate President, Const. 85, 86; Employees of General Assembly, number and compensation, Const. 249.

Section 35. Number of Senators and Representatives. The number of Representatives shall be one hundred, and the number of Senators thirty-eight.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 36. Time and place of meetings of General Assembly. The General Assembly shall meet on the first Tuesday after the first Monday in January in odd-numbered years for a period not to exceed ten legislative days for the purposes of electing legislative leaders, adopting rules of procedure and the organizing of committees. The General Assembly shall then adjourn until the first Tuesday after the first Monday in January of the following even-numbered years, at which time the General Assembly shall convene in regular session, and its sessions shall be held at the seat of government, except in case of war, insurrection or pestilence, when it may, by proclamation of the Governor, assemble, for the time being, elsewhere.

TEXT AS RATIFIED ON: November 6, 1979.

HISTORY: 1979 amendment was proposed by 1978 Ky. Acts ch. 440, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

Extraordinary sessions, Governor may call, Const. 80.

Section 37. Majority constitutes quorum -- Powers of less than a quorum. Not less than a majority of the members of each House of the General Assembly shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be prescribed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 38. Each House to judge qualifications, elections, and returns of its members -- Contests. Each House of the General Assembly shall judge of the

qualifications, elections and returns of its members, but a contested election shall be determined in such manner as shall be directed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 39. Powers of each House as to rules and conduct of members -- Contempt -- Bribery. Each House of the General Assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause, and may punish for contempt any person who refuses to attend as a witness, or to bring any paper proper to be used as evidence before the General Assembly, or either House thereof, or a Committee of either, or to testify concerning any matter which may be a proper subject of inquiry by the General Assembly, or offers or gives a bribe to a member of the General Assembly, or attempts by other corrupt means or device to control or influence a member to cast his vote or withhold the same. The punishment and mode of proceeding for contempt in such cases shall be prescribed by law, but the term of imprisonment in any such case shall not extend beyond the session of the General Assembly.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 40. Journals -- When vote to be entered. Each House of the General Assembly shall keep and publish daily a journal of its proceedings; and the yeas and nays of the members on any question shall, at the desire of any two of the members elected, be entered on the journal.

TEXT AS RATIFIED ON: August 3, 1891 and revised September 28, 1891.

HISTORY: Not yet amended.

Record of votes on bills, Const. 46.

Section 41. Adjournment during session. Neither House, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Power of Governor to adjourn, Const. 80.

Section 42. Compensation of members -- Length of sessions -- Legislative day. The members of the General Assembly shall severally receive from the State Treasury compensation for their services: Provided, No change shall take effect during the session at which it is made; nor shall a session of the General Assembly continue beyond sixty legislative days, exclusive of Sundays, legal holidays or any day on which neither House meets, except that no regular session shall extend beyond April 15 of even-numbered years; but this limitation as to length of session shall not apply to the Senate when sitting as a court of impeachment. A legislative day shall be construed to mean a calendar day.

TEXT AS RATIFIED ON: November 6, 1979.

HISTORY: 1979 amendment was proposed by 1978 Ky. Acts ch. 440, sec. 3; original version ratified August 3, 1891, and revised September 28, 1891.

Extraordinary sessions, Governor may call, Const. 80.

SCHEDULE

As a part of this amendment and as a schedule of transitional provisions, for the purpose of this amendment:

1. The General Assembly shall convene in a regular session of 60 legislative days on the first Tuesday after the first Monday of January, 1980, and every two years thereafter.

2. The General Assembly shall convene as directed by this amendment for odd-numbered years on the first Tuesday after the first Monday of January, 1983, and every two years thereafter.

3. Representatives elected to office in November, 1979, shall serve a two year term, and their terms of office shall expire December 31, 1981.

4. Representatives elected to office in November, 1981, shall serve a three year term, and their terms of office shall expire December 31, 1984.

5. Senators elected to office in November, 1979, shall serve a four year term, and their terms of office shall expire December 31, 1983.

6. Senators elected to office in November, 1983, shall serve five years, and their terms of office shall expire December 31, 1988.

7. Senators elected to office in November, 1981, shall serve a five year term, and their terms of office shall expire December 31, 1986.

Section 43. Privileges from arrest and from questioning as to speech or debate. The members of the General Assembly shall, in all cases except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance on the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 44. Ineligibility of members to civil office created or given increased compensation during term. No Senator or Representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit in this Commonwealth, which shall have been created, or the emoluments of which shall have been

increased, during the said term, except to such offices as may be filled by the election of the people.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Incompatible office, Const. 165, 237.

Section 45. Collector of public money ineligible unless he has quietus. No person who may have been a collector of taxes or public moneys for the Commonwealth, or for any county, city, town or district, or the assistant or deputy of such collector, shall be eligible to the General Assembly, unless he shall have obtained a quietus six months before the election for the amount of such collection, and for all public moneys for which he may have been responsible.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 46. Bills must be reported by committee, printed, and read -- How bill called from committee -- Votes required for passage. No bill shall be considered for final passage unless the same has been reported by a committee and printed for the use of the members. Every bill shall be read at length on three different days in each House, but the second and third readings may be dispensed with by a majority of all the members elected to the House in which the bill is pending. But whenever a committee refuses or fails to report a bill submitted to it in a reasonable time, the same may be called up by any member, and be considered in the same manner it would have been considered if it had been reported. No bill shall become a law unless, on its final passage, it receives the votes of at least two-fifths of the members elected to each House, and a majority of the members voting, the vote to be taken by yeas and nays and entered in the journal: Provided, Any act or resolution for the appropriation of money or the creation of debt shall, on its final passage, receive the votes of a majority of all the members elected to each House.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

When vote to be entered in Journal, Const. 40.

Section 47. Bills to raise revenue must originate in House of Representatives. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments thereto: Provided, No new matter shall be introduced, under color of amendment, which does not relate to raising revenue.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Power to tax, Const. 174, 175, 180, 181, 182.

Section 48. Resources of Sinking Fund not to be diminished -- Preservation of fund. The General Assembly shall have no power to enact laws to diminish the resources of the Sinking Fund as now established by law until the debt of the Commonwealth be paid, but may enact laws to increase them; and the whole resources of said fund, from year to year, shall be sacredly set apart and applied to the payment of the interest and principal of the State debt, and to no other use or purpose, until the whole debt of the State is fully satisfied.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 49. Power to contract debts -- Limit. The General Assembly may contract debts to meet casual deficits or failures in the revenue; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars, and the moneys arising from loans creating such debts shall be applied only to the purpose or purposes for which they were obtained, or to repay such debts: Provided, The General Assembly may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Credit of state not to be loaned, exceptions, Const. 157a, 177; Debt of city or county not to be assumed, Const. 176.

Section 50. Purposes for which debt may be contracted -- Tax to discharge -- Public vote. No act of the General Assembly shall authorize any debt to be contracted on behalf of the Commonwealth except for the purposes mentioned in Section 49, unless provision be made therein to levy and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it: Provided, The General Assembly may contract debts by borrowing money to pay any part of the debt of the State, without submission to the people, and without making provision in the act authorizing the same for a tax to discharge the debt so contracted, or the interest thereon.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 51. Law may not relate to more than one subject, to be expressed in title -- Amendments must be at length. No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title, and no law shall be revised, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended or conferred, shall be reenacted and published at length.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 52. General Assembly may not release debt to State or to county or city. The General Assembly shall have no power to release, extinguish or authorize the releasing or extinguishing, in whole or in part, the indebtedness or liability of any corporation or

individual to this Commonwealth, or to any county or municipality thereof.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 53. Investigation of accounts of Treasurer and Auditor -- Report, publication, submission to Governor and General Assembly. The General Assembly shall provide by law for monthly investigations into the accounts of the Treasurer and Auditor of Public Accounts, and the result of these investigations shall be reported to the Governor, and these reports shall be semiannually published in two newspapers of general circulation in the State. The reports received by the Governor shall, at the beginning of each session, be transmitted by him to the General Assembly for scrutiny and appropriate action.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Statement of receipts and disbursements of public money to be published, Const. 230.

Section 54. No restriction on recovery for injury or death. The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 55. When laws to take effect -- Emergency legislation. No act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals, an act may become a law when approved by the Governor; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 56. Signing of bills -- Enrollment -- Presentation to Governor. No bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session; and before such officer shall have affixed his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that he will sign the same to the end that it may become a law. The bill shall then be read at length and compared; and, if correctly enrolled, he shall, in the presence of the House in open session, and before any other business is entertained, affix his signature, which fact shall be noted in the journal, and the bill immediately sent to the other House. When it reaches the other House, the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceeding shall thereupon be observed in every respect as in the House in which it was first signed. And thereupon the Clerk of the latter House shall immediately present the same to the Governor for his signature and approval.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Passage over veto, Const. 88; Concurrent orders and resolutions, Const. 89.

Section 57. Member having personal interest to make disclosure and not vote. A member who has a personal or private interest in any measure or bill proposed or pending before the General Assembly, shall disclose the fact to the House of which he is a member, and shall not vote thereon upon pain of expulsion.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 58. General Assembly not to audit nor allow private claim -- Exception -- Appropriations. The General Assembly shall neither audit nor allow any private claim against the Commonwealth, except for expenses incurred during the session at which the same was allowed; but may appropriate money to pay such claim as shall have been audited and allowed according to law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Suits against the state, Const. 231.

Section 59. Local and special legislation. The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely:

First: To regulate the jurisdiction, or the practice, or the circuits of the courts of justice, or the rights, powers, duties or compensation of the officers thereof; but the practice in circuit courts in continuous session may, by a general law, be made different from the practice of circuit courts held in terms.

Second: To regulate the summoning, impaneling or compensation of grand or petit jurors.

Third: To provide for changes of venue in civil or criminal causes.

Fourth: To regulate the punishment of crimes and misdemeanors, or to remit fines, penalties or forfeitures.

Fifth: To regulate the limitation of civil or criminal causes.

Sixth: To affect the estate of cestuis que trust, decedents, infants or other persons under disabilities, or to authorize any such persons to sell, lease, encumber or dispose of their property.

Seventh: To declare any person of age, or to relieve an infant or feme covert of disability, or to enable him to do acts allowed only to adults not under disabilities.

Eighth: To change the law of descent, distribution or succession.

Ninth: To authorize the adoption or legitimation of children.

Tenth: To grant divorces.

Eleventh: To change the names of persons.

Twelfth: To give effect to invalid deeds, wills or other instruments.

Thirteenth: To legalize, except as against the Commonwealth, the unauthorized or invalid act of any officer or public agent of the Commonwealth, or of any city, county or municipality thereof.

Fourteenth: To refund money legally paid into the State Treasury.

Fifteenth: To authorize or to regulate the levy, the assessment or the collection of taxes, or to give any indulgence or discharge to any assessor or collector of taxes, or to his sureties.

Sixteenth: To authorize the opening, altering, maintaining or vacating of roads, highways, streets, alleys, town plats, cemeteries, graveyards, or public grounds not owned by the Commonwealth.

Seventeenth: To grant a charter to any corporation, or to amend the charter of any existing corporation; to license companies or persons to own or operate ferries, bridges, roads or turnpikes; to declare streams navigable, or to authorize the construction of booms or dams therein, or to remove obstructions therefrom; to affect toll gates or to regulate tolls; to regulate fencing or the running at large of stock.

Eighteenth: To create, increase or decrease fees, percentages or allowances to public officers, or to extend the time for the collection thereof, or to authorize officers to appoint deputies.

Nineteenth: To give any person or corporation the right to lay a railroad track or tramway, or to amend existing charters for such purposes.

Twentieth: To provide for conducting elections, or for designating the places of voting, or changing the boundaries of wards, precincts or districts, except when new counties may be created.

Twenty-first: To regulate the rate of interest.

Twenty-second: To authorize the creation, extension, enforcement, impairment or release of liens.

Twenty-third: To provide for the protection of game and fish.

Twenty-fourth: To regulate labor, trade, mining or manufacturing.

Twenty-fifth: To provide for the management of common schools.

Twenty-sixth: To locate or change a county seat.

Twenty-seventh: To provide a means of taking the sense of the people of any city, town, district, precinct or county, whether they wish to authorize, regulate or prohibit therein the sale of vinous, spirituous or malt liquors, or alter the liquor laws.

Twenty-eighth: Restoring to citizenship persons convicted of infamous crimes.

Twenty-ninth: In all other cases where a general law can be made applicable, no special law shall be enacted.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 60. General law not to be made special or local by amendment -- No special powers or privileges -- Law not to take effect on approval of other authority than General Assembly -- Exceptions. The General Assembly shall not indirectly enact any special or local act by the repeal in part of a general act, or by exempting from the operation of a general act any city, town, district or county; but laws repealing local or special acts may be enacted. No law shall be enacted granting powers or privileges in any case where the granting of such powers or privileges shall have been provided for by a general law, nor where the courts have jurisdiction to grant the same or to give the relief asked for. No law, except such as relates to the sale, loan or gift of vinous, spirituous or malt liquors, bridges, turnpikes or other public roads, public buildings or improvements, fencing, running at large of stock, matters pertaining to common schools, paupers, and the regulation by counties, cities, towns or other municipalities of their local affairs, shall be enacted to take effect upon the approval of any other authority than the General Assembly, unless otherwise expressly provided in this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 61. Provision to be made for local option on sale of liquor -- Time of elections. The General Assembly shall, by general law, provide a means whereby the sense of the people of any county, city, town, district or precinct may be taken, as to whether or not spirituous, vinous or malt liquors shall be sold, bartered or loaned therein, or the sale thereof regulated. But nothing herein shall be construed to interfere with or to repeal any law in force relating to the sale or gift of such liquors. All elections on this question may be held on a day other than the regular election days.

TEXT AS RATIFIED ON: November 5, 1935.

HISTORY: 1935 reenactment was proposed by 1934 Ky. Acts ch. 58, sec. 1; repeal (by implication) was proposed by 1918 Ky. Acts ch. 63, sec. 1, and ratified on November 4, 1919, effective July 1, 1920; original version ratified August 3, 1891, and revised September 28, 1891.

Local and special laws prohibited, Const. 59. This section was impliedly repealed by the enactment in 1919 of Const. 226a, which prohibited the manufacture, sale or transportation of intoxicating liquors. Const. 226a was repealed in 1935.

Section 62. Style of laws. The style of the laws of this Commonwealth shall be as follows: "Be it enacted by the General Assembly of the Commonwealth of Kentucky."

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Other sections relating to the General Assembly: 1, 11, 15, 20, 22, 23, 63, 66, 67, 68, 70, 74, 75, 77, 79, 80, 84, 85, 86, 87, 88, 89, 90, 91, 93, 98, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 115, 117, 118, 120, 139, 140, 141, 142, 143, 145, 147, 148, 150, 151, 152, 153, 154, 155, 156, 160, 165, 166, 169, 170, 171, 172, 172a, 173, 174, 179, 180, 181, 182, 183, 185, 186, 188, 194, 196, 197, 198, 199, 205, 206, 209, 210, 220, 222, 223, 224, 225, 226, 227, 228, 231, 232, 233, 234, 235, 236, 238, 239, 241, 242, 243, 244, 244a, 245, 246, 247, 248, 249, 250, 252, 253, 255, 256, 258, 261, 262, 263.

COUNTIES AND COUNTY SEATS

Section 63. Area of counties -- Boundaries -- Creation and abolishment of counties. No new county shall be created by the General Assembly which will reduce the county or counties, or either of them, from which it shall be taken, to less area than four hundred square miles; nor shall any county be formed of less area; nor shall any boundary line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided. Nothing contained herein shall prevent the General Assembly from abolishing any county.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 64. Division of county or removal of county seat, election required -- Minimum population of county. No county shall be divided, or have any part stricken therefrom, except in the formation of new counties, without submitting the question to a vote of the people of the county, nor unless the majority of all the legal voters of the county voting on the question shall vote for the same. The county seat of no county as now located, or as may hereafter be located, shall be moved, except upon a vote of two-thirds of those voting; nor shall any new county be established which will reduce any county to less than twelve thousand inhabitants, nor shall any county be created containing a less population.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Local and special laws prohibited, Const. 59.

Section 65. Striking territory from county -- Liability for indebtedness. There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition for such division. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be bound for its proportion of the indebtedness of the county from which it has been taken.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

County officers, Const. 97-108, 140-144. Other sections relating to counties: 52, 59, 60, 139, 147, 148, 152, 157, 157a, 158, 159, 161, 162, 164, 165, 171, 173, 176, 178, 179, 180, 181, 197, 227, 234, 253.

IMPEACHMENTS

Section 66. Power of impeachment vested in House. The House of Representatives shall have the sole power of impeachment.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 67. Trial of impeachments by Senate. All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the Senators present.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Chief Justice shall preside, Const. 84.

Section 68. Civil officers liable to impeachment -- Judgment -- Criminal liability. The Governor and all civil officers shall be liable to impeachment for any misdemeanors in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial and punishment by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Reprieves and pardons not allowed, Const. 77.

THE EXECUTIVE DEPARTMENT

Officers for the State at Large

Section 69. Executive power vested in Governor. The supreme executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the "Governor of the Commonwealth of Kentucky."

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 70. Election of Governor and Lieutenant Governor -- Term -- Tie vote. The Governor and Lieutenant Governor shall be elected for the term of four years by the qualified voters of the State. They shall be elected jointly by the casting by each voter of a single vote applicable to both offices, as shall be provided by law. The slate of candidates having the highest number of votes cast jointly for them for Governor and Lieutenant Governor shall be elected; but if two or more slates of candidates shall be equal and highest in votes, the election shall be determined by lot in such manner as the General Assembly may direct.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Time of elections, Const. 95.

Section 71. Gubernatorial succession. The Governor shall be ineligible for the succeeding four years after the expiration of any second consecutive term for which he shall have been elected.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

Section 72. Qualifications of Governor and Lieutenant Governor -- Duties of Lieutenant Governor. The Governor and the Lieutenant Governor shall be at least thirty years of age, and have been citizens and residents of Kentucky for at least six years next preceding their election. The duties of the Lieutenant Governor shall be prescribed by law, and he shall have such other duties as delegated by the Governor.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 3; original version ratified August 3, 1891, and revised September 28, 1891.

Disqualification for dueling, using money or property to secure or influence election, receiving profit on public funds, or accepting free passes, Const. 150, 173, 197, 239; Special laws to legalize unauthorized acts prohibited, Const. 59.

Section 73. When terms of Governor and Lieutenant Governor begin. The Governor and the Lieutenant Governor shall commence the execution of the duties of their offices on the fifth Tuesday succeeding their election, and shall continue in the execution thereof until a successor shall have qualified.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 4; original version ratified August 3, 1891, and revised September 28, 1891.

Section 74. Compensation of Governor and Lieutenant Governor. The Governor and Lieutenant Governor shall at stated times receive for the performance of the duties of their respective offices compensation to be fixed by law.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 5; original version ratified August 3, 1891, and revised September 28, 1891.

S**ection 75. Governor is Commander-in-Chief of army, navy and militia.** He shall be Commander-in-Chief of the army and navy of this Commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless advised so to do by a resolution of the General Assembly.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 76. Power of Governor to fill vacancies. He shall have the power, except as otherwise provided in this Constitution, to fill vacancies by granting commissions, which shall expire when such vacancies shall have been filled according to the provisions of this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Vacancies to be filled by Governor, Const. 152.

Section 77. Power of Governor to remit fines and forfeitures, grant reprieves and pardons -- No power to remit fees. He shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the Clerk, Sheriff or Commonwealth's Attorney in penal or criminal cases.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Pardon of person convicted of dueling, Const. 240.

Section 78. Governor may require information from state officers. He may require information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 79. Reports and recommendations to General Assembly. He shall, from time to time, give to the General Assembly information of the state of the Commonwealth, and recommend to their consideration such measures as he may deem expedient.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 80. Governor may call extraordinary session of General Assembly, adjourn General Assembly. He may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if that should have become dangerous from an enemy or from contagious diseases. In case of disagreement between the two Houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not exceeding four months. When he shall convene the General Assembly it shall be by proclamation, stating the subjects to be considered, and no other shall be considered.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Regular sessions, time and place of, length, Const. 36, 42.

Section 81. Governor to enforce laws. He shall take care that the laws be faithfully executed.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Other sections relating to Governor: 36, 53, 68, 84, 85, 87, 88, 89, 90, 95, 96, 110, 18, 121, 140, 142, 150, 152, 171, 222, 225, 240, 245, 246, 247, 256.

Section 82. Succession of Lieutenant Governor. The Lieutenant Governor shall be ineligible to the office of Lieutenant Governor for the succeeding four (4) years after the expiration of any second consecutive term for which he shall have been elected.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 6; original version ratified August 3, 1891, and revised September 28, 1891.

Time of election, Const. 95; Disqualification for dueling, using money or property to secure or influence election, receiving profit on public funds, or accepting free passes, Const. 150, 173, 197, 239; Special laws to legalize unauthorized acts prohibited, Const. 59.

Section 83. (Repealed 1992) Catchline read at time of repeal: "Lieutenant Governor is President of Senate -- Right to vote."

REPEAL RATIFIED ON: November 3, 1992.

HISTORY: Repeal was proposed by 1992 Ky. Acts ch. 168, sec. 18; original version ratified August 3, 1891, and revised September 28, 1891.

Section 84. When Lieutenant Governor to act as Governor -- President of the Senate not to preside at impeachment of Governor -- Certification of disability of Governor. Should the Governor be impeached and removed from office, die, refuse to qualify, resign, certify by entry on his Journal that he is unable to discharge the duties of his office, or be, from any cause, unable to discharge the duties of his office, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor until another be duly elected and qualified, or the Governor shall be able to discharge the duties of his office. On the trial of the Governor, the President of the Senate shall not preside over the proceedings, but the Chief Justice of the Supreme Court shall preside during the trial.

If the Governor, due to physical or mental incapacitation, is unable to discharge the duties of his office, the Attorney General may petition the Supreme Court to have the Governor declared disabled. If the Supreme Court determines in a unanimous decision that the Governor is unable to discharge the duties of his office, the Chief Justice shall certify such disability to the Secretary of State who shall enter same on the Journal of the Acts of the Governor, and the Lieutenant Governor shall assume the duties of the Governor, and shall act as Governor until the Supreme Court determines that the disability of the Governor has ceased to exist. Before the Governor resumes his duties, the finding of the Court that the disability has ceased shall be certified by the Chief Justice to the Secretary of State who shall enter such finding on the Journal of the Acts of the Governor.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 7; original version ratified August 3, 1891, and revised September 28, 1891.

Section 85. President of Senate -- Election -- Powers. A President of the Senate shall be elected by each Senate as soon after its organization as possible and as often as there is a vacancy in the office of President, another President of the Senate shall be elected by the Senate, if in session. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached and removed from office,

refuse to qualify, resign, or die, the President of the Senate shall in like manner administer the government.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 8; original version ratified August 3, 1891, and revised September 28, 1891.

Section 86. Compensation of President of the Senate. The President of the Senate shall receive for his services the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and during the time he administers the government as Governor, he shall receive the same compensation which the Governor would have received had he been employed in the duties of his office.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 9; original version ratified August 3, 1891, and revised September 28, 1891.

Maximum limit on compensation, Const. 246.

Section 87. Who to act as Governor in absence of Lieutenant Governor and President of the Senate. If the Lieutenant Governor shall be called upon to administer the government in place of the Governor, and shall, while in such administration, resign, or die during the recess of the General Assembly, if there be no President of the Senate, it shall be the duty of the Attorney General, for the time being, to convene the Senate for the purpose of choosing a President; and until a President is chosen, the Attorney General shall administer the government. If there be no Attorney General to perform the duties devolved upon him by this section, then the Auditor, for the time being, shall convene the Senate for the purpose of choosing a President, and shall administer the government until a President is chosen.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 10; original version ratified August 3, 1891, and revised September 28, 1891.

Section 88. Signature of bills by Governor -- Veto -- Passage over veto -- Partial veto. Every bill which shall have passed the two Houses shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter the objections in full upon its journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be considered, and if approved by a majority of all the members elected to that House, it shall be a law; but in such case the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless disapproved by him within ten days after the adjournment, in which case his veto message shall be spread upon the register kept by

the Secretary of State. The Governor shall have the power to disapprove any part or parts of appropriation bills embracing distinct items, and the part or parts disapproved shall not become a law unless reconsidered and passed, as in case of a bill.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Bill proposing Constitutional amendment or submitting classification of property to referendum not subject to veto, Const. 171, 256.

Section 89. Concurrent orders and resolutions on same footing as bill. Every order, resolution or vote, in which the concurrence of both Houses may be necessary, except on a question of adjournment, or as otherwise provided in this Constitution, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by a majority of the members elected to both Houses, according to the rules and limitations prescribed in case of a bill.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 90. Contest of election for Governor or Lieutenant Governor. Contested elections for Governor and Lieutenant Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Tie vote, how determined, Const. 70.

Section 91. Constitutional State officers -- Election -- Qualification -- Term of office -- Duties -- Secretary of State to record acts of Governor and report them to General Assembly. A Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, Labor and Statistics, Secretary of State, and Attorney-General, shall be elected by the qualified voters of the State at the same time the Governor and Lieutenant Governor are elected, for the term of four years, each of whom shall be at least thirty years of age at the time of his election, and shall have been a resident citizen of the State at least two years next before his election. The duties of all these officers shall be such as may be prescribed by law, and the Secretary of State shall keep a fair register of and attest all the official acts of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before either House of the General Assembly. The officers named in this section shall enter upon the discharge of their duties the first Monday in January after their election, and shall hold their offices until their successors are elected and qualified.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 11; original version ratified August 3, 1891, and revised September 28, 1891.

Disqualification for dueling, using money or property to secure or influence election, receiving profit on public funds, or accepting free passes, Const. 150, 173, 197, 239; Special laws to legalize unauthorized acts prohibited, Const. 59.

Section 92. Qualifications of Attorney General. The Attorney-General shall have been a practicing lawyer eight years before his election.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 93. Succession of elected Constitutional State Officers -- Duties -- Inferior officers and members of boards and commissions. The Treasurer, Auditor of Public Accounts, Secretary of State, Commissioner of Agriculture, Labor and Statistics, and Attorney General shall be ineligible to reelection for the succeeding four years after the expiration of any second consecutive term for which they shall have been elected. The duties and responsibilities of these officers shall be prescribed by law, and all fees collected by any of said officers shall be covered into the treasury. Inferior State officers and members of boards and commissions, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law, which may include a requirement of consent by the Senate, for a term not exceeding four years, and until their successors are appointed or elected and qualified.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 12; original version ratified August 3, 1891, and revised September 28, 1891.

Section 94. (Repealed 1992) Catchline at time of repeal: "Register of Land Office may be abolished."

REPEAL RATIFIED ON: November 3, 1992.

HISTORY: Repeal was proposed by 1992 Ky. Acts ch. 168, sec. 18; original version ratified August 3, 1891, and revised September 28, 1891.

Secretary of State to perform the duties, KRS 56.020.

Section 95. Time of election of elected Constitutional State officers. The election under this Constitution for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Attorney General, Secretary of State, and Commissioner of Agriculture, Labor and Statistics, shall be held on the first Tuesday after the first Monday in November, eighteen hundred and ninety-five, and the same day every four years thereafter.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 13; original version ratified August 3, 1891, and revised September 28, 1891.

Time of election of public officers generally, Const. 148.

Section 96. Compensation of Constitutional State officers. All officers mentioned in Section 95 shall be paid for their services by salary, and not otherwise.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Maximum limit on salaries, Const. 246.

Officers for Districts and Counties

Section 97. Commonwealth's Attorney and Circuit Court Clerk -- Election -- Term. In the year two thousand, and every six years thereafter, there shall be an election in each county for a Circuit Court

Clerk, and for a Commonwealth's Attorney, in each circuit court district, unless that office be abolished, who shall hold their respective offices for six years from the first Monday in January after their election, and until the election and qualification of their successors.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 14; original version ratified August 3, 1891, and revised September 28, 1891.

Abolishment of Office of Commonwealth's Attorney, Const. 108; Clerks of Courts, Const. 114.

Section 98. Compensation of Commonwealth's Attorney. The compensation of the Commonwealth's Attorney shall be by salary and such percentage of fines and forfeitures as may be fixed by law, and such salary shall be uniform in so far as the same shall be paid out of the State Treasury, and not to exceed the sum of five hundred dollars per annum; but any county may make additional compensation, to be paid by said county. Should any percentage of fines and forfeitures be allowed by law, it shall not be paid except upon such proportion of fines and forfeitures as have been collected and paid into the State Treasury, and not until so collected and paid.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Maximum limit on compensation, Const. 246.

Section 99. County officers, justices of the peace, and constables -- Election -- Term. At the regular election in nineteen hundred and ninety-eight and every four years thereafter, there shall be elected in each county a Judge of the County Court, a County Court Clerk, a County Attorney, Sheriff, Jailer, Coroner, Surveyor and Assessor, and in each Justice's District one Justice of the Peace and one Constable, who shall enter upon the discharge of the duties of their offices on the first Monday in January after their election, and who shall hold their offices four years until the election and qualification of their successors.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 15; 1984 amendment was proposed by 1984 Ky. Acts ch. 35, sec. 1, and ratified November 6, 1984; original version ratified August 3, 1891, and revised September 28, 1891.

Justices of the Peace, Const. 142.

Section 100. Qualifications of officers for counties and districts. No person shall be eligible to the offices mentioned in Sections 97 and 99 who is not at the time of his election twenty-four years of age (except Clerks of County and Circuit Courts, who shall be twenty-one years of age), a citizen of Kentucky, and who has not resided in the State two years, and one year next preceding his election in the county and district in which he is a candidate. No person shall be eligible to the office of Commonwealth's Attorney unless he shall have been a licensed practicing lawyer four years. No person shall be eligible to the office of County Attorney unless he shall have been a licensed practicing lawyer two years. No person shall be eligible to the office of Clerk unless he shall have procured from a Judge of the Court of Appeals, or a Judge of a Circuit Court, a certificate that he has been examined by the Clerk of his Court under his supervision, and that he is qualified for the office for which he is a candidate.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 101. Qualifications and jurisdiction of constables. Constables shall possess the same qualifications as Sheriffs, and their jurisdictions shall be coextensive with the counties in which they reside. Constables now in office shall continue in office until their successors are elected and qualified.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 102. Officers for new counties. When a new county shall be created, officers for the same, to serve until the next regular election, shall be elected or appointed in such way and at such times as the General Assembly may prescribe.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 103. Bonds of county officers and other officers. The Judges of County Courts, Clerks, Sheriffs, Surveyors, Coroners, Jailers, Constables, and such other officers as the General Assembly may, from time to time, require, shall before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as may be prescribed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

What officers to give bond, liability on, Const. 224.

Section 104. Abolishment of office of assessor -- Assessor may not succeed himself. The General Assembly may abolish the office of Assessor and provide that the assessment of property shall be made by other officers; but it shall have power to reestablish the office of Assessor and prescribe his duties. No person shall be eligible to the office of Assessor two consecutive terms.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Property valuation administrator in lieu of assessor, KRS 132.370.

Section 105. Consolidation of offices of sheriff and jailer. The General Assembly may, at any time, consolidate the offices of Jailer and Sheriff in any county or counties, as it shall deem most expedient; but in the event such consolidation be made, the office of Sheriff shall be retained, and the Sheriff shall be required to perform the duties of Jailer.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 106. Fees of county officers -- Fees in counties having seventy-five thousand population or more. The fees of county officers shall be regulated by law. In counties or cities having a population of seventy-five thousand or more, the Clerks of the

respective Courts thereof (except the Clerk of the City Court), the Marshals, the Sheriffs and the Jailers, shall be paid out of the State Treasury, by salary to be fixed by law, the salaries of said officers and of their deputies and necessary office expenses not to exceed seventy-five per centum of the fees collected by said officers, respectively, and paid into the Treasury.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Maximum compensation, Const. 246; Local and special laws prohibited, Const. 59.

Section 107. Additional county or district offices may be created. The General Assembly may provide for the election or appointment, for a term not exceeding four years, of such other county or district ministerial and executive officers as may, from time to time, be necessary.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 108. Abolishment of office of Commonwealth's Attorney. The General Assembly may, at any time after the expiration of six years from the adoption of this Constitution, abolish the office of Commonwealth's Attorney, to take effect upon the expiration of the term of the incumbents, in which event the duties of said office shall be discharged by the County Attorneys.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

THE JUDICIAL DEPARTMENT

Section 109. The judicial power -- Unified system -- Impeachment. The judicial power of the Commonwealth shall be vested exclusively in one Court of Justice which shall be divided into a Supreme Court, a Court of Appeals, a trial court of general jurisdiction known as the Circuit Court and a trial court of limited jurisdiction known as the District Court. The court shall constitute a unified judicial system for operation and administration. The impeachment powers of the General Assembly shall remain inviolate.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Local and special laws prohibited, Const. 59.

The Supreme Court

Section 110. Composition -- Jurisdiction -- Quorum -- Special justices -- Districts -- Chief Justice. (1) The Supreme Court shall consist of the Chief Justice of the Commonwealth and six associate Justices.

(2)(a) The Supreme Court shall have appellate jurisdiction only, except it shall have the power to issue all writs necessary in aid of its appellate jurisdiction, or the complete determination of any cause, or as may be required to exercise control of the Court of Justice.

(b) Appeals from a judgment of the Circuit Court imposing a sentence of death or life imprisonment or imprisonment for twenty years or more shall be taken directly to the Supreme Court. In all other cases, criminal and civil, the Supreme Court shall exercise appellate jurisdiction as provided by its rules.

(3) A majority of the Justices of the Supreme Court shall constitute a quorum for the transaction of business. If as many as two Justices decline or are unable to sit in the trial of any cause, the Chief Justice shall certify that fact to the Governor, who shall appoint to try the particular cause a sufficient number of Justices to constitute a full court for the trial of the cause.

(4) The Court of Appeals districts existing on the effective date of this amendment to the Constitution shall constitute the initial Supreme Court districts. The General Assembly thereafter may redistrict the Commonwealth, by counties, into seven Supreme Court districts as nearly equal in population and as compact in form as possible. There shall be one Justice from each Supreme Court district.

(5)(a) The Justices of the Supreme Court shall elect one of their number to serve as Chief Justice for a term of four years.

(b) The Chief Justice of the Commonwealth shall be the executive head of the Court of Justice and he shall appoint such administrative assistants as he deems necessary. He shall assign temporarily any justice or judge of the Commonwealth, active or retired, to sit in any court other than the Supreme Court when he deems such assignment necessary for the prompt disposition of causes. The Chief Justice shall submit the budget for the Court of Justice and perform all other necessary administrative functions relating to the court.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

The Court of Appeals

Section 111. Composition -- Jurisdiction -- Administration -- Panels. (1) The Court of Appeals shall consist initially of fourteen judges, an equal number to be selected from each Supreme Court district. The number of judges thereafter shall be determined from time to time by the General Assembly upon certification of necessity by the Supreme Court.

(2) The Court of Appeals shall have appellate jurisdiction only, except that it may be authorized by rules of the Supreme Court to review directly decisions of administrative agencies of the Commonwealth, and it may issue all writs necessary in aid of its appellate

jurisdiction, or the complete determination of any cause

within its appellate jurisdiction. In all other cases, it shall exercise appellate jurisdiction as provided by law.

(3) The judges of the Court of Appeals shall elect one of their number to serve as Chief Judge for a term of four years. The Chief Judge shall exercise such authority and perform such duties in the administration of the Court of Appeals as are prescribed in this section or as may be prescribed by the Supreme Court.

(4) The Court of Appeals shall divide itself into panels of not less than three judges. A panel may decide a cause by the concurring vote of a majority of its judges. The Chief Judge shall make assignments of judges to panels. The Court of Appeals shall prescribe the times and places in the Commonwealth at which each panel shall sit.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

The Circuit Court

Section 112. Location -- Circuits -- Composition -- Administration -- Jurisdiction. (1) Circuit Court shall be held in each county.

(2) The Circuit Court districts existing on the effective date of this amendment to the Constitution shall continue under the name Judicial Circuits, the General Assembly having power upon certification of the necessity therefor by the Supreme Court to reduce, increase or rearrange the judicial districts. A judicial circuit composed of more than one county shall be as compact in form as possible and of contiguous counties. No county shall be divided in creating a judicial circuit.

(3) The number of circuit judges in each district existing on the effective date of this amendment shall continue, the General Assembly having power upon certification of the necessity therefor by the Supreme Court, to change the number of circuit judges in any judicial circuit.

(4) In a judicial circuit having only one judge, he shall be the chief judge. In judicial circuits having two or more judges, they shall select biennially a chief judge, and if they fail to do so within a reasonable time, the Supreme Court shall designate the chief judge. The chief judge shall exercise such authority and perform such duties in the administration of his judicial circuit as may be prescribed by the Supreme Court. The Supreme Court may provide by rules for administration of judicial circuits by regions designated by it.

(5) The Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court. It shall have such appellate jurisdiction as may be provided by law.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

The District Court

Section 113. Location -- Districts -- Composition -- Administration -- Trial commissioners -- Jurisdiction. (1) District Court shall be held in each county.

(2) The Circuit Court districts existing on the effective date of this amendment shall continue for District Court purposes under the name "Judicial Districts," the General Assembly having power upon certification of the necessity therefor by the Supreme Court to reduce, increase or rearrange the districts. A judicial district composed of more than one county shall be as compact in form as possible and of contiguous counties. No county shall be divided in creating a judicial district.

(3) Each judicial district created by this amendment initially shall have at least one district judge who shall serve as chief judge and there shall be such other district judges as the General Assembly shall determine. The number of district judges in each judicial district thereafter shall be determined by the General Assembly upon certification of necessity therefor by the Supreme Court.

(4) In a judicial district having only one judge he shall be the chief judge. In those districts having two or more judges they shall select biennially a chief judge and if they fail to do so within a reasonable time, the Supreme Court shall designate the chief judge. The chief judge shall exercise such authority and perform such duties in the administration of his district as may be prescribed by the Supreme Court.

(5) In any county in which no district judge resides the chief judge of the district shall appoint a trial commissioner who shall be a resident of such county and who shall be an attorney if one is qualified and available. Other trial commissioners with like qualifications may be appointed by the chief judge in any judicial district upon certification of the necessity therefor by the Supreme Court. All trial commissioners shall have power to perform such duties of the district court as may be prescribed by the Supreme Court.

(6) The district court shall be a court of limited jurisdiction and shall exercise original jurisdiction as may be provided by the General Assembly.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Clerks of Courts

Section 114. Selection -- Removal. (1) The Supreme Court shall appoint a clerk to serve as it shall determine.

(2) The Court of Appeals shall appoint a clerk to serve as it shall determine.

(3) The clerks of the Circuit Court shall be elected in the manner provided elsewhere in this Constitution. The clerks of the Circuit Court shall serve as the clerks of the District Court. The clerks of the Circuit Court shall be removable from office by the Supreme Court upon good cause shown.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Appellate Policy -- Rule-Making Power

Section 115. Right of appeal -- Procedure. In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court, except that the Commonwealth may not appeal from a judgment of acquittal in a criminal case, other than for the purpose of securing a certification of law, and the General Assembly may prescribe that there shall be no appeal from that portion of a judgment dissolving a marriage. Procedural rules shall provide for expeditious and inexpensive appeals. Appeals shall be upon the record and not by trial de novo.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 116. Rules governing jurisdiction, personnel, procedure, bar membership. The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel, and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Offices of Justices and Judges

Section 117. Election. Justices of the Supreme Court and judges of the Court of Appeals, Circuit and District Court shall be elected from their respective districts or circuits on a nonpartisan basis as provided by law.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 118. Vacancies. (1) A vacancy in the office of a justice of the Supreme Court, or of a judge of the Court of Appeals, Circuit or District Court which under Section 152 of this Constitution is to be filled by appointment by the Governor shall be filled by the Governor from a list of three names presented to him by the appropriate judicial nominating commission. If the Governor fails to make an appointment from the

list within sixty days from the date it is presented to him, the appointment shall be made from the same list by the chief justice of the Supreme Court.

(2) There shall be one Judicial Nominating Commission for the Supreme Court and the Court of Appeals, one for each judicial circuit, and one for each judicial district, except that a circuit and district having the same boundary shall have but one judicial nominating commission. Each commission shall consist of seven members, one of whom shall be the chief justice of the Supreme Court, who shall be chairman. Two members of each commission shall be members of the bar, who shall be elected by their fellow members. The other four members shall be appointed by the Governor from among persons not members of the bar, and these four shall include at least two members of each of the two political parties of the Commonwealth having the largest number of voters. Members of a judicial circuit or judicial district nominating commission must be residents of the circuit or district, respectively, and the lawyer members of the commission shall be elected by the members of the bar residing in the circuit or district, respectively. The terms of office of members of judicial nominating commissions shall be fixed by the General Assembly. No person shall be elected or appointed a member of a judicial nominating commission who holds any other public office or any office in a political party or organization.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 119. Terms of office. Justices of the Supreme Court and judges of the Court of Appeals and Circuit Court shall severally hold their offices for terms of eight years, and judges of the District Court for terms of four years. All terms commence on the first Monday in January next succeeding the regular election for the office. No justice or judge may be deprived of his term of office by redistricting, or by a reduction in the number of justices or judges.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 120. Compensation -- Expenses. All justices and judges shall be paid adequate compensation which shall be fixed by the General Assembly. All compensation and necessary expenses of the Court of Justice shall be paid out of the State Treasury. The compensation of a justice or judge shall not be reduced during his term.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Maximum limit on compensation, Const. 246.

Section 121. Retirement and removal. Subject to rules of procedure to be established by the Supreme

Court, and after notice and hearing, any justice of the Supreme Court or judge of the Court of Appeals, Circuit Court or District Court may be retired for disability or suspended without pay or removed for good cause by a commission composed of one judge of the Court of Appeals, selected by that court, one circuit judge and one district judge selected by a majority vote of the circuit judges and district judges, respectively, one member of the bar appointed by its governing body, and two persons, not members of the bench or bar, appointed by the Governor. The commission shall be a state body whose members shall hold office for four-year terms. Its actions shall be subject to judicial review by the Supreme Court.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 122. Eligibility. To be eligible to serve as a justice of the Supreme Court or a judge of the Court of Appeals, Circuit Court or District Court a person must be a citizen of the United States, licensed to practice law in the courts of this Commonwealth, and have been a resident of this Commonwealth and of the district from which he is elected for two years next preceding his taking office. In addition, to be eligible to serve as a justice of the Supreme Court or judge of the Court of Appeals or Circuit Court a person must have been a licensed attorney for at least eight years. No district judge shall serve who has not been a licensed attorney for at least two years.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Disqualification for dueling, using money or property to secure or influence election, receiving profit on public funds, or accepting free passes, Const. 150, 173, 197, 239; Special laws to legalize unauthorized acts prohibited, Const. 59.

Section 123. Prohibited activities. During his term of office, no justice of the Supreme Court or judge of the Court of Appeals, Circuit Court or District Court shall engage in the practice of law, or run for elective office other than judicial office, or hold any office in a political party or organization.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 124. Conflicting provisions. Any remaining sections of the Constitution of Kentucky as it existed prior to the effective date of this amendment which are in conflict with the provisions of amended Sections 110 through 125 are repealed to the extent of the conflict, but such amended sections are not intended to repeal those parts of Sections 140 and 142 conferring nonjudicial powers and duties upon county judges and justices of the peace. Nothing in such amended sections 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, or to limit the powers otherwise granted by the Constitution to the justices of the peace or county commissioners as executive, administrative and fiscal officers of a county, or of the fiscal court as a governing body of a county.

TEXT AS RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

SCHEDULE

As a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment:

1. The Judges of the Court of Appeals in office on the effective date of this amendment shall become Justices of the Supreme Court, for the duration of their terms, and the election of successors shall be in accordance with those terms.

2. The Circuit Judges in office on the effective date of this amendment shall be continued therein for the duration of their terms. The term of office of eight years provided in this amendment for Circuit Judges shall apply to the Circuit Judges elected at the election at which this amendment is adopted.

3. The term of office of Judges of the Court of Appeals created by this amendment shall be deemed to commence as of the first Monday, in January, 1976. The vacancies existing on that date by virtue of no election having been held for the office in November, 1975 shall be filled in accordance with Section 152 of the present Constitution and Section 118 as created by this amendment.

4. The term of office of Judges of the District Court shall be deemed to commence as of the First Monday in January, 1978, and judges shall be elected at the regular election next preceding that date. The District Court shall be constituted and organized as of the first Monday in January, 1978.

5. The quarterly courts, county courts as judicial bodies, justices courts and police courts in existence on the effective date of this amendment shall continue in existence until the first Monday in January, 1978. For that period those courts shall continue to be governed by the present Constitution and none of the provisions of this amendment shall apply to them, except that those courts shall be deemed a part of the unified judicial system and shall be subject to the general control and rulemaking power of the Supreme Court. The terms of any police court judges which commence on the first Monday in January, 1976, shall be reduced to two years from that date.

6. The Clerk of the Court of Appeals elected at the election at which this amendment is adopted shall serve as Clerk of the Supreme Court for the term for which he was elected, subject to removal by the Supreme Court for good cause.

7. Until otherwise provided by law the statutes applicable to the present Court of Appeals and not inconsistent with this amendment shall apply to the Supreme Court.

8. All causes and proceedings pending in the present Court of Appeals on the effective date of this amendment are transferred to and shall be decided or otherwise disposed of by the Supreme Court.

9. All causes and proceedings pending in the quarterly courts, county courts as judicial bodies, justices courts and police courts, on the first Monday in January, 1978, shall then be transferred to and decided by the Circuit Court or the District Court of the area, in accordance with the respective jurisdictions prescribed for the latter courts.

Section 125. (Repealed 1975) Catchline read at time of repeal: "Circuit Court for each county."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 126. (Repealed 1975) Catchline read at time of repeal: "Jurisdiction of Circuit Courts."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 127. (Repealed 1975) Catchline read at time of repeal: "Appeal from Circuit Court."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 128. (Repealed 1975) Catchline read at time of repeal: "Circuit Court districts."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 129. (Repealed 1975) Catchline read at time of repeal: "Election of Circuit Judges -- Term -- Commissions -- Removal."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 130. (Repealed 1975) Catchline read at time of repeal: "Qualifications of Circuit Judges."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 131. (Repealed 1975) Catchline read at time of repeal: "Terms of Circuit Courts."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 132. (Repealed 1975) Catchline read at time of repeal: "Additional Circuit Court districts -- Population limits."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 133. (Repealed 1975) Catchline read at time of repeal: "Compensation of Circuit Judges."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 134. (Repealed 1975) Catchline read at time of repeal: "When districts may be changed."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 135. (Repealed 1975) Catchline read at time of repeal: "Only Constitutional Courts permitted."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 136. (Repealed 1975) Catchline read at time of repeal: "Special Judges of Circuit Courts."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 137. (Repealed 1975) Catchline read at time of repeal: "Circuit Court in county having population of 150,000 or more -- Separate district -- Additional judges -- Branches -- General Term -- Clerk -- Criminal cases."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 138. (Repealed 1975) Catchline read at time of repeal: "Certain counties may constitute separate district -- Additional judges -- Practice."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 139. (Repealed 1975) Catchline read at time of repeal: "Quarterly Court for each county -- Jurisdiction -- County Judge to preside."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

County Courts

Section 140. County Court for each county -- Judge -- Compensation -- Commission -- Removal. There shall be established in each county now existing, or which may be hereafter created, in this State, a Court, to be styled the County Court, to consist of a Judge, who shall be a conservator of the peace, and shall receive such compensation for his services as may be prescribed by law. He shall be commissioned by the Governor, and shall vacate his office by removal from the county in which he may have been elected.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Conflicting provisions, Const. 124.

Section 141. (Repealed 1975) Catchline read at time of repeal: "Jurisdiction of County Courts."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Justices of the Peace

Section 142. Justices' districts -- One Justice for each district -- Jurisdiction and powers of Justices -- Commissions -- Removal. Each county now existing, or which may hereafter be created, in this State, shall be laid off into districts in such manner as the General Assembly may direct; but no county shall have less than three nor more than eight districts, in each of which districts one Justice of the Peace shall be elected as provided in Section 99. The General Assembly shall make provisions for regulating the number of said districts from time to time within the limits herein prescribed, and for fixing the boundaries thereof. The jurisdiction of Justices of the Peace shall be coextensive with the county, and shall be equal and uniform throughout the State. Justices of the Peace shall be conservators of the peace. They shall be commissioned by the Governor, and shall vacate their offices by removal from the districts, respectively, in which they may have been elected.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Conflicting provisions, Const. 124.

Section 143. (Repealed 1975) Catchline read at time of repeal: "Police Court may be established in each city -- Jurisdiction."

REPEAL RATIFIED ON: November 4, 1975, effective January 1, 1976.

HISTORY: Repeal was proposed by 1974 Ky. Acts ch. 84, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Fiscal Courts

Section 144. Fiscal Court for each county -- To consist of Justices of the Peace or Commissioners, and County Judge -- Quorum. Counties shall have a Fiscal Court, which may consist of the Judge of the County Court and the Justices of the Peace, in which Court the Judge of the County Court shall preside, if present; or a county may have three Commissioners, to be elected from the county at large, who, together with the Judge of the County Court, shall constitute the Fiscal Court. A majority of the members of said Court shall constitute a Court for the transaction of business. But where, for county governmental purposes, a city is by law separated from the remainder of the county, such Commissioners may be elected from the part of the county outside of such city.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

SUFFRAGE AND ELECTIONS

Section 145. Persons entitled to vote. Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere but the following persons are excepted and shall not have the right to vote.

1. Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.

2. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.

3. Idiots and insane persons.

TEXT AS RATIFIED ON: November 8, 1955.

HISTORY: 1955 amendment was proposed by 1954 Ky. Acts ch. 2, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Right of suffrage not to be abridged on account of sex, U. S. Const., 19th Amendment.

Section 146. Soldiers or sailors stationed in State are not residents. No person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed within the same.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 147. Registration of voters Manner of voting -- Absent voting -- Voting machines -- Election defined -- Election laws -- Illiterate and disabled voters. The General Assembly shall provide by law for the registration of all persons entitled to vote in cities and towns having a population of five thousand or more; and may provide by general law for the registration of other voters in the state. Where registration is required, only persons registered shall have the right to vote. The mode of registration shall be prescribed by the General Assembly. In all elections

by persons in a representative capacity, the voting shall be

viva voce and made a matter of record; but all elections by the people shall be by secret official ballot, furnished by public authority to the voters at the polls, and marked by each voter in private at the polls, and then and there deposited, or any person absent from the county of his legal residence, or from the state, may be permitted to vote in a manner provided by law. Counties so desiring may use voting machines, these machines to be installed at the expense of such counties. The word elections in this section includes the decision of questions submitted to the voters, as well as the choice of officers by them. The General Assembly shall pass all necessary laws to enforce this section, and shall provide that persons illiterate, blind, or in any way disabled may have their ballots marked or voted as herein required.

TEXT AS RATIFIED ON: November 6, 1945.

HISTORY: 1945 amendment was proposed by 1944 Ky. Acts ch. 5, sec. 1; 1941 amendment was proposed by 1940 Ky. Acts ch. 74, sec. 1, and ratified on November 4, 1941; original version ratified August 3, 1891, and revised September 28, 1891.

Section 148. Number of elections -- Day and hours of election -- Qualifications of officers -- Employees to be given time to vote. Not more than one election each year shall be held in this State or in any city, town, district, urban-county or county thereof, except as otherwise provided in this Constitution. All regular elections of State, county, city, town, urban-county, or district officers shall be held on the first Tuesday after the first Monday in November. All elections by the people shall be between the hours of six oclock a.m. and seven oclock p.m., but the General Assembly may change said hours, and all officers of any election shall be residents and voters in the precinct in which they act. The General Assembly shall provide by law that all employers shall allow employees, under reasonable regulations, at least four hours on election days, in which to cast their votes.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 16; original version ratified August 3, 1891, and revised September 28, 1891.

Time of election of Constitutional state officers, Const. 95.

Section 149. Privilege from arrest during voting. Voters, in all cases except treason, felony, breach of surety of the peace, or violation of the election laws, shall be privileged from arrest during their attendance at elections, and while they are going to and returning therefrom.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 150. Disqualification from office for using money or property to secure or influence election -- Corporation not to use money or other thing of value to influence election -- Exclusion from office for conviction of felony or high misdemeanor -- Laws to regulate elections. Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected who shall be convicted of having given, or consented to the giving, offer or promise of any money or other thing of value, to procure his election, or to influence the vote of any voter at such election; and if any corporation shall, directly or indirectly, offer, promise or give, or shall authorize, directly or indirectly, any person to offer, promise or give any money or any thing of value to influence the result of any election in this State, or the vote of any voter authorized to vote therein, or who shall afterward reimburse or compensate, in any manner whatever, any person who shall have offered, promised or given any money or other thing of value to influence the result of any election or the vote of any such voter, such corporation, if organized under the laws of this Commonwealth, shall, on conviction thereof, forfeit its charter and all rights, privileges and immunities thereunder; and if chartered by another State and doing business in this State, whether by license, or upon mere sufferance, such corporation, upon conviction of either of the offenses aforesaid, shall forfeit all right to carry on any business in this State; and it shall be the duty of the General Assembly to provide for the enforcement of the provisions of this section. All persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or of such high misdemeanor as may be prescribed by law, but such disability may be removed by pardon of the Governor. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult or other improper practices.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 151. Person guilty of fraud, intimidation, bribery, or corrupt practice to be deprived of office by suitable statutory means. The General Assembly shall provide suitable means for depriving of office any person who, to procure his nomination or election, has, in his canvass or election, been guilty of any unlawful use of money, or other thing of value, or has been guilty of fraud, intimidation, bribery, or any other corrupt practice, and he shall be held responsible for acts done by others with his authority, or ratified by him.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 152. Vacancies -- When filled by appointment, when by election -- Who to fill. Except as otherwise provided in this Constitution, vacancies in all elective offices shall be filled by election or appointment, as follows: If the unexpired term will end at the next succeeding annual election at which either city, town, county, district or State officers are to be elected, the office shall be filled by appointment for the remainder of the term. If the unexpired term will not end at the next succeeding annual election at which either city, town, county, district or State officers are to be elected, and if three months intervene before said succeeding annual election at which either city, town, county, district or State officers are to be elected, the office shall be filled by appointment until said election, and then said vacancy shall be filled by election for the

remainder of the term. If three months do not intervene between the happening of said vacancy and the next succeeding election at which city, town, county, district or State officers are to be elected, the office shall be filled by appointment until the second succeeding annual election at which city, town, county, district or State officers are to be elected; and then, if any part of the term remains unexpired, the office shall be filled by election until the regular time for the election of officers to fill said offices. Vacancies in all offices for the State at large, or for districts larger than a county, shall be filled by appointment of the Governor; all other appointments shall be made as may be prescribed by law. No person shall ever be appointed a member of the General Assembly, but vacancies therein may be filled at a special election, in such manner as may be provided by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

How and by whom vacancies filled, Const. 76, 85, 87, 118, 160, 209, 222.

Section 153. Power of General Assembly as to elections. Except as otherwise herein expressly provided, the General Assembly shall have power to provide by general law for the manner of voting, for ascertaining the result of elections and making due returns thereof, for issuing certificates or commissions to all persons entitled thereto, and for the trial of contested elections.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Local and special laws prohibited, Const. 59.

Section 154. Laws as to sale or gift of liquor on election days. The General Assembly shall prescribe such laws as may be necessary for the restriction or prohibition of the sale or gift of spirituous, vinous or malt liquors on election days.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 155. School elections not governed by Constitution. The provisions of Sections 145 to 154, inclusive, shall not apply to the election of school trustees and other common school district elections. Said elections shall be regulated by the General Assembly, except as otherwise provided in this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

MUNICIPALITIES

Section 156. (Repealed 1994) Catchline read at time of repeal: "Cities divided into six classes -- General laws to be made for each class -- Population limits for classes -- Assignment to classes -- Organization of cities."

REPEAL RATIFIED ON: November 8, 1994

HISTORY: Repeal was proposed by 1994 Ky. Acts ch. 168, secs. 1 and 6; original version ratified August 3, 1891, and revised September 28, 1891.

Section 156a. General Assembly authorized to provide for creation, governmental structure, and classification of cities. The General Assembly may provide for the creation, alteration of boundaries, consolidation, merger, dissolution, government, functions, and officers of cities. The General Assembly shall create such classifications of cities as it deems necessary based on population, tax base, form of government, geography, or any other reasonable basis and enact legislation relating to the classifications. All legislation relating to cities of a certain classification shall apply equally to all cities within the same classification. The classification of all cities and the law pertaining to the classifications in effect at the time of adoption of this section shall remain in effect until otherwise provided by law.

TEXT AS RATIFIE|D ON: November 8, 1994.

HISTORY: Creation proposed by 1994 Ky. Acts ch. 168, sec. 1.

Urban-county government, KRS Chapter 67A.

Section 156b. General Assembly authorized to permit municipal home rule for cities. The General Assembly may provide by general law that cities may exercise any power and perform any function within their boudaries that is in furtherance of a public purpose of a city and not in conflict with a constitutional provision or statute.

TEXT AS RATIFIED ON: November 2, 1994.

HISTORY: Creation proposed by 1994 Ky. Acts ch. 168, sec. 1.

Section 157. Maximum tax rate for cities, counties, and taxing districts. The tax rate of cities, counties, and taxing districts, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein: For all cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars.

TEXT AS RATIFIED ON: November 8, 1994

HISTORY: 1994 amendment was proposed by 1994 Ky. Acts ch. 168, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

Taxation by cities and counties, Const. 181.

Section 157a. Credit of Commonwealth may be loaned or given to county for roads -- County may vote to incur indebtedness and levy additional tax for roads. The credit of the Commonwealth may be given, pledged or loaned to any county of the Commonwealth for public road purposes, and any county may be permitted to incur an indebtedness in any amount fixed by the county, not in excess of five per centum of the value of the taxable property therein, for public road purposes in said county, provided said additional indebtedness is submitted to the voters of the county for their ratification or rejection at a special election held for said purpose, in such manner as may be provided by law and when any such indebtedness is incurred by any county said county may levy, in addition to the tax rate allowed under Section 157 of

the Constitution of Kentucky, an amount not exceeding twenty cents on the one hundred dollars of the assessed valuation of said county for the purpose of paying the interest on said indebtedness and providing a sinking fund for the payment of said indebtedness.

TEXT AS RATIFIED ON: November 2, 1909.

HISTORY: Creation proposed by 1908 Ky. Acts ch. 36, sec. 1.

Credit of Commonwealth not to be loaned, Const. 177.

Section 157b. Adoption of budget required for cities, counties, and taxing districts -- Expenditures not to exceed revenues for fiscal year. Prior to each fiscal year, the legislative body of each city, county, and taxing district shall adopt a budget showing total expected revenues and expenditures for the fiscal year. No city, county, or taxing district shall expend any funds in any fiscal year in excess of the revenues for that fiscal year. A city, county, or taxing district may amend its budget for a fiscal year, but the revised expenditures may not exceed the revised revenues. As used in this section, "revenues" shall mean all income from every source, including unencumbered reserves carried over from the previous fiscal year, and "expenditures" shall mean all funds to be paid out for expneses of the city, county, or taxing distirict due during the fiscal year, including amounts necessary to pay the principal and interest due during the fiscal year on any debt.

TEXT AS RATIFIED ON: November 8,1994..

HISTORY: Creation proposed by 1994 Ky. Acts ch. 168, sec. 3

Section 158. Maximum indebtedness of cities, counties, and taxing districts -- General Assembly authorized to set additional limits and conditions. Cities, towns, counties, and taxing districts shall not incur indebtedness to an amount exceeding the following maximum percentages on the value of the taxable property therein, to be estimated by the last assessment previous to the incurring of the indebtedness: Cities having a population of fifteen thousand or more, ten percent (10%); cities having a population of less than fifteen thousand but not less than three thousand, five percent (5%); cities having a population of less than three thousand, three percent (3%); and counties and taxing districts, two percent (2%), unless in case of emergency, the public health or safety should so require. Nothing shall prevent the issue of renewal bonds, or bonds to fund the floating indebtedness of any city, county, or taxing district. Subject to the limits and conditions set forth in this section and elsewhere in this Constitution, the General Assembly shall have the power to establish additional limits on indebtedness and conditions under which debt may be incurred by cities, counties, and taxing districts.

TEXT AS RATIFIED ON: November 8, 1994.

HISTORY: 1994 amendment was proposed by 1994 Ky. Acts ch. 168, sec. 4; original version ratified August 3, 1891, and revised September 28, 1891.

Law for borrowing money must specify purpose, Const. 178.

Section 159. Tax to pay indebtedness in not more than forty years must be levied. Whenever any city, town, county, taxing district or other municipality is authorized to contract an indebtedness, it shall be required, at the same time, to provide for the collection of an annual tax sufficient to pay the interest on said indebtedness, and to create a sinking fund for the payment of the principal thereof, within not more than forty years from the time of contracting the same.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 160. Municipal officers -- Election and term of office -- Officers ineligible -- Fiscal officers. The Mayor or Chief Executive, Police Judges, members of legislative boards or councils of towns and cities shall be elected by the qualified voters thereof: Provided, The Mayor or Chief Executive and Police Judges of the towns of the fourth, fifth and sixth classes may be appointed or elected as provided by law. The terms of office of Mayors or Chief Executives and Police Judges shall be four years, and until their successors shall be qualified, and of members of legislative boards, two years. When any city of the first or second class is divided into wards or districts, members of legislative boards shall be elected at large by the qualified voters of said city, but so selected that an equal proportion thereof shall reside in each of the said wards or districts; but when in any city of the first, second or third class, there are two legislative boards, the less numerous shall be selected from and elected by the voters at large of said city; but other officers of towns or cities shall be elected by the qualified voters therein, or appointed by the local authorities thereof, as the General Assembly may, by a general law, provide; but when elected by the voters of a town or city, their terms of office shall be four years, and until their successors shall be qualified. No Mayor or Chief Executive of any city of the first or second class, after the expiration of three successive terms of office to which he has been elected under this Constitution shall be eligible for the succeeding term. No fiscal officer of any city of the first or second class, after the expiration of the term of office to which he has been elected under this Constitution, shall be eligible for the succeeding term. "Fiscal officer" shall not include an Auditor or Assessor, or any other officer whose chief duty is not the collection or holding of public moneys. The General Assembly shall prescribe the qualifications of all officers of towns and cities, the manner in and causes for which they may be removed from office, and how vacancies in such offices may be filled.

TEXT AS RATIFIED ON: November 6, 1986.

HISTORY: 1986 amendment was proposed by 1986 Ky. Acts ch. 140, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Disqualification for dueling, using money or property to secure or influence election, receiving profit on public funds, or accepting free passes, Const. 150, 173, 197, 239; Special laws to legalize unauthorized act prohibited, Const. 59; Conflict with Judicial Article, Const. 124 and Judicial Article Schedule 5.

Section 161. Compensation of city, county, or municipal officer not to be changed after election or appointment or during term, nor term extended. The compensation of any city, county, town or municipal officer shall not be changed after his election or appointment, or during his term of office; nor shall the term of any such officer be extended

beyond the period for which he may have been elected or appointed.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Maximum compensation of officers, Const. 246; Salaries of officers not to be changed during term, Const. 235.

Section 162. Unauthorized contracts of cities, counties, and municipalities are void. No county, city, town or other municipality shall ever be authorized or permitted to pay any claim created against it, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 163. Public utilities must obtain franchise to use streets. No street railway, gas, water, steam heating, telephone, or electric light company, within a city or town, shall be permitted or authorized to construct its tracks, lay its pipes or mains, or erect its poles, posts or other apparatus along, over, under or across the streets, alleys or public grounds of a city or town, without the consent of the proper legislative bodies or boards of such city or town being first obtained; but when charters have been heretofore granted conferring such rights, and work has in good faith been begun thereunder, the provisions of this section shall not apply.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 164. Term of franchises limited -- Advertisement and bids. No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding twenty years. Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder; but it shall have the right to reject any or all bids. This section shall not apply to a trunk railway.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 165. Incompatible offices and employments. No person shall, at the same time, be a State officer or a deputy officer or member of the General Assembly, and an officer of any county, city, town, or other municipality, or an employee thereof; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities, except as may be otherwise provided in this Constitution; but a Notary Public, or an officer of the militia, shall not be ineligible to hold any other office mentioned in this section.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Incompatible offices, Const. 44, 237.

Section 166. Expiration of city charters granted prior to Constitution. All acts of incorporation of cities and towns heretofore granted, and all amendments thereto, except as provided in Section 167, shall continue in force under this Constitution, and all City and Police Courts established in any city or town shall remain, with their present powers and jurisdictions, until such time as the General Assembly shall provide by general laws for the government of towns and cities, and the officers and courts thereof; but not longer than four years from and after the first day of January, one thousand eight hundred and ninety-one, within which time the General Assembly shall provide by general laws for the government of towns and cities, and the officers and courts thereof, as provided in this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 167. Time of election of city, urban-county, and town officers. All officers required to be elected in cities, urban-counties, and towns by this Constitution, or by general laws enacted in conformity to its provisions, shall be elected at the general elections in November in even-numbered years.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 168, sec. 17; original version ratified August 3, 1891, and revised September 28, 1891.

Section 168. Ordinance not to fix less penalty than statute for same offense -- Prosecution under one a bar. No municipal ordinance shall fix a penalty for a violation thereof at less than that imposed by statute for the same offense. A conviction or acquittal under either shall constitute a bar to another prosecution for the same offense.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Other sections relating to municipalities: 52, 59, 60, 143, 147, 148, 152, 170, 171, 173, 176, 178, 179, 180, 181, 197, 199, 201, 234, 242.

REVENUE AND TAXATION

Section 169. Fiscal year. The fiscal year shall commence on the first day of July in each year, unless otherwise provided by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 170. Property exempt from taxation -- Cities may exempt factories for five years. There shall be exempt from taxation public property used for public purposes; places of burial not held for private or corporate profit; real property owned and occupied by, and personal property both tangible and intangible owned by, institutions of religion; institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education, public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; household goods of a person used in his home; crops grown in the year in which the assessment is made, and in the hands of the producer; and real

property maintained as the permanent residence of the owner, who is sixty-five years of age or older, or is classified as totally disabled under a program authorized or administered by an agency of the United States government or by the railroad retirement system, provided the property owner received disability payments pursuant to such disability classification, has maintained such disability classification for the entirety of the particular taxation period, and has filed with the appropriate local assessor by December 31 of the taxation period, on forms provided therefor, a signed statement indicating continuing disability as provided herein made under penalty of perjury, up to the assessed valuation of sixty-five hundred dollars on said residence and contiguous real property, except for assessment for special benefits. The real property may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemptions shall apply only to the value of the real property assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which his interest in the corporation bears to the assessed value of the property. All laws exempting or omitting property from taxation other than the property above mentioned shall be void. The General Assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location.

TEXT AS RATIFIED ON: November 6, 1990.

HISTORY: 1990 amendment was proposed by 1990 Ky. Acts ch. 151, sec. 1; 1981 amendment was proposed by 1980 Ky. Acts ch. 113, sec. 1, and ratified on November 3, 1981; 1975 amendment was proposed by 1974 Ky. Acts ch. 105, sec. 1, and ratified on November 4, 1975; 1971 amendment was proposed by 1970 Ky. Acts ch. 186, sec. 1, and ratified on November 2, 1971; 1955 amendment was proposed by 1954 Ky. Acts ch. 111, sec. 1, and ratified on November 8, 1955; original version was ratified on August 3, 1891, and revised on September 28, 1891.

Property not to be exempted by General Assembly, Const. 3.

Section 171. State tax to be levied -- Taxes to be levied and collected for public purposes only and by general laws, and to be uniform within classes -- Classification of property for taxation -- Bonds exempt -- Referendum on act classifying property. The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

The General Assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation.

Any law passed or enacted by the General Assembly pursuant to the provisions of or under this amendment, or amended section of the Constitution, classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate shall be subject to the referendum power of the people, which is hereby declared to exist to apply only to this section, or amended section. The referendum may be demanded by the people against one or more items, sections, or parts of any act enacted pursuant to or under the power granted by this amendment, or amended section. The referendum petition shall be filed with the Secretary of State not more than four months after the final adjournment of the Legislative Assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people under this section. All elections on measures referred to the people under this act shall be at the regular general election, except when the Legislative Assembly shall order a special election. Any measure referred to the people shall take effect and become a law when approved by the majority of the votes cast thereon, and not otherwise. The whole number of votes cast for the candidates for Governor at the regular election, last preceding the filing of any petition, shall be the basis upon which the legal voters necessary to sign such petition shall be counted. The power of the referendum shall be ordered by the Legislative Assembly at any time any acts or bills are enacted, pursuant to the power granted under this section or amended section, prior to the year of one thousand nine hundred and seventeen. After that time the power of the referendum may be ordered either by the petition signed by five percent of the legal voters or by the Legislative Assembly at the time said acts or bills are enacted. The General Assembly enacting the bill shall provide a way by which the act shall be submitted to the people. The filing of a referendum petition against one or more items, sections or parts of an act, shall not delay the remainder of that act from becoming operative.

TEXT AS RATIFIED ON: November 2, 1915.

HISTORY: 1915 amendment was proposed by 1914 Ky. Acts ch. 94, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Local and special laws prohibited, Const. 59.

Section 172. Property to be assessed at fair cash value -- Punishment of assessor for willful error. All property, not exempted from taxation by this Constitution, shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values for taxation, who shall commit any willful error in the performance of his duty, shall be deemed guilty of misfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Property to be taxed according to value, Const. 174.

Section 172A. Assessment for ad valorem tax purposes of agricultural and horticultural land. Notwithstanding contrary provisions of Sections 171, 172, or 174 of this Constitution --

The General Assembly shall provide by general law for the assessment for ad valorem tax purposes of agricultural and horticultural land according to the land's value for agricultural or horticultural use. The General Assembly may provide that any change in land use from agricultural or horticultural to another use shall require the levy of an additional tax not to exceed the additional amount that would have been owing had the land been assessed under Section 172 of this Constitution for the current year and the two next preceding years.

The General Assembly may provide for reasonable differences in the rate of ad valorem taxation within different areas of the same taxing districts on that class of property which includes the surface of the land. Those differences shall relate directly to differences between nonrevenue-producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district.

TEXT AS RATIFIED ON: November 4, 1969.

HISTORY: Creation proposed by 1968 Ky. Acts. ch. 103, sec. 1.

Section 172B. Property assessment or reassessment moratoriums. Notwithstanding contrary provisions of Sections 170, 171, 172, or 174 of this Constitution, the General Assembly may provide by general law that the governing bodies of county, municipal, and urban-county governments may declare property assessment or reassessment moratoriums for qualifying units of real property for the purpose of encouraging the repair, rehabilitation, or restoration of existing improvements thereon. Prior to the enactment of any property assessment or reassessment moratorium program, the General Assembly shall provide or direct the local governing authority to provide property qualification standards for participation in the program and a limitation on the duration of any assessment or reassessment moratorium. In no instance shall any such moratorium extend beyond five years for any particular unit of real property and improvements thereon.

TEXT AS RATIFIED ON: November 3, 1981.

HISTORY: Creation proposed by 1980 Ky. Acts ch. 113, sec. 2.

Section 173. Officer receiving profit on public funds guilty of felony. The receiving, directly or indirectly, by any officer of the Commonwealth, or of any county, city or town, or member or officer of the General Assembly, of any interest, profit or perquisites arising from the use or loan of public funds in his hands, or moneys to be raised through his agency for State, city, town, district, or county purposes shall be deemed a felony. Said offense shall be punished as may be prescribed by law, a part of which punishment shall be disqualification to hold office.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 174. Property to be taxed according to value, whether corporate or individual -- Income, license, and franchise taxes. All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

License and franchise taxes of counties and cities, Const. 181; Property to be assessed at fair cash value, Const. 172.

Section 175. Power to tax property not to be surrendered. The power to tax property shall not be surrendered or suspended by any contract or grant to which the Commonwealth shall be a party.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 176. Commonwealth not to assume debt of county or city -- Exception. The Commonwealth shall not assume the debt of any county, municipal corporation or political subdivision of the State, unless such debt shall have been contracted to defend itself in time of war, to repel invasion or to suppress insurrection.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 177. Commonwealth not to lend credit, nor become stockholder in corporation, nor build railroad or highway. The credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality, or political subdivision of the State; nor shall the Commonwealth become an owner or stockholder in, nor make donation to, any company, association or corporation; nor shall the Commonwealth construct a railroad or other highway.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Credit may be loaned for roads, Const. 157a.

Section 178. Law for borrowing money to specify purpose, for which alone money may be used. All laws authorizing the borrowing of money by and on behalf of the Commonwealth, county or other political subdivision of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Maximum indebtedness limited, Const. 49, 158.

Section 179. Political subdivision not to become stockholder in corporation, or appropriate money or lend credit to any person, except for roads or State Capitol. The General Assembly shall not authorize any county or subdivision thereof, city, town

or incorporated district, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads: Provided, If any municipal corporation shall offer to the Commonwealth any property or money for locating or building a Capitol, and the Commonwealth accepts such offer, the corporation may comply with the offer.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 180. Act or ordinance levying any tax must specify purpose, for which alone money may be used. Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.

TEXT AS RATIFIED ON: November 5, 1996.

HISTORY: 1996 amendment was proposed by 1996 Ky. Acts ch. 98, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 181. General Assembly may not levy tax for political subdivision, but may confer power -- License and excise taxes -- City taxes in lieu of ad valorem taxes. The General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes. The General Assembly may, by general laws only, provide for the payment of license fees on franchises, stock used for breeding purposes, the various trades, occupations and professions, or a special or excise tax; and may, by general laws, delegate the power to counties, towns, cities and other municipal corporations, to impose and collect license fees on stock used for breeding purposes, on franchises, trades, occupations and professions. And the General Assembly may, by general laws only, authorize cities or towns of any class to provide for taxation for municipal purposes on personal property, tangible and intangible, based on income, licenses or franchises, in lieu of an ad valorem tax thereon: Provided, Cities of the first class shall not be authorized to omit the imposition of an ad valorem tax on such property of any steam railroad, street railway, ferry, bridge, gas, water, heating, telephone, telegraph, electric light or electric power company.

TEXT AS RATIFIED ON: November 3, 1903.

HISTORY: 1903 amendment was proposed by 1902 Ky. Acts ch. 50, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Cities are authorized to levy all taxes provided for in Const. 181.

Section 182. Railroad taxes -- How assessed and collected. Nothing in this Constitution shall be construed to prevent the General Assembly from providing by law how railroads and railroad property shall be assessed and how taxes thereon shall be collected. And until otherwise provided, the present law on said subject shall remain in force.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Cities, counties and taxing districts, Const. 157, 157a, 158, 159. Other sections relating to revenue and taxation: 3, 50, 59, 184, 189, 230.

EDUCATION

Section 183. General Assembly to provide for school system. The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Local and special laws prohibited, Const. 59.

Section 184. Common school fund -- What constitutes -- Use -- Vote on tax for education other than in common schools. The bond of the Commonwealth issued in favor of the Board of Education for the sum of one million three hundred and twenty-seven thousand dollars shall constitute one bond of the Commonwealth in favor of the Board of Education, and this bond and the seventy-three thousand five hundred dollars of the stock in the Bank of Kentucky, held by the Board of Education, and its proceeds, shall be held inviolate for the purpose of sustaining the system of common schools. The interest and dividends of said fund, together with any sum which may be produced by taxation or otherwise for purposes of common school education, shall be appropriated to the common schools, and to no other purpose. No sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to the legal voters, and the majority of the votes cast at said election shall be in favor of such taxation: Provided, The tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 185. Interest on school fund -- Investment. The General Assembly shall make provision, by law, for the payment of the interest of said school fund, and may provide for the sale of the stock in the Bank of Kentucky; and in case of a sale of all or any part of said stock, the proceeds of sale shall be invested by the Sinking Fund Commissioners in other good interest-bearing stocks or bonds, which shall be subject to sale and reinvestment, from time to time, in like manner, and with the same restrictions, as provided with reference to the sale of the said stock in the Bank of Kentucky.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 186. Distribution and use of school fund. All funds accruing to the school fund shall be used for the maintenance of the public schools of the Commonwealth, and for no other purpose, and the General Assembly shall by general law prescribe the manner of the distribution of the public school fund among the school districts and its use for public school purposes.

TEXT AS RATIFIED ON: November 3, 1953.

HISTORY: 1953 amendment was proposed by 1952 Ky. Acts ch. 89, sec. 1; 1949 amendment was proposed by 1948 Ky. Acts ch. 163, sec. 1, and ratified on November 8, 1949; 1941 amendment was proposed by 1940 Ky. Acts ch. 64, sec. 1, and ratified on November 4, 1941; original version ratified August 3, 1891, and revised September 28, 1891.

The 1953 amendment nullified a 1949 amendment which changed the percentage of school funds to be distributed on a per capita basis.

Section 187. Race or color not to affect distribution of fund. In distributing the school fund no distinction shall be made on account of race or color.

TEXT AS RATIFIED ON: November 5, 1996.

HISTORY: 1996 amendment was proposed by 1996 Ky. Acts ch. 98, sec.2; original version ratified August 3, 1891, and revised September 28, 1891.

Section 188. Refund of Federal direct tax part of school fund -- Irredeemable bond. So much of any moneys as may be received by the Commonwealth from the United States under the recent act of Congress refunding the direct tax shall become a part of the school fund, and be held as provided in Section 184; but the General Assembly may authorize the use, by the Commonwealth, of moneys so received or any part thereof, in which event a bond shall be executed to the Board of Education for the amount so used, which bond shall be held on the same terms and conditions, and subject to the provisions of Section 184, concerning the bond therein referred to.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 189. School money not to be used for church, sectarian, or denominational school. No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denominational school.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

CORPORATIONS

Section 190. Corporations must accept Constitution. No corporation in existence at the time of the adoption of this Constitution shall have the benefit of future legislation without first filing in the office of the Secretary of State an acceptance of the provisions of this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 191. Unexercised charters granted prior to Constitution revoked. All existing charters orgrants of special or exclusive privileges, under which a bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter be void and of no effect.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 192. Corporations restricted to charter authority -- Holding of real estate limited. No corporation shall engage in business other than that expressly authorized by its charter, or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate, except such as may be proper and necessary for carrying on its legitimate business, for a longer period than five years, under penalty of escheat.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Local and special laws prohibited, Const. 59.

Section 193. Stock or bonds to be issued only for money or for property or labor at market value -- Watered stock void. No corporation shall issue stock or bonds, except for an equivalent in money paid or labor done, or property actually received and applied to the purposes for which such corporation was created, and neither labor nor property shall be received in payment of stock or bonds at a greater value than the market price at the time such labor was done or property delivered, and all fictitious increase of stock or indebtedness shall be void.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 194. Corporations to have place of business and process agent in State. All corporations formed under the laws of this State, or carrying on business in this State, shall, at all times, have one or more known places of business in this State, and an authorized agent or agents there, upon whom process may be executed, and the General Assembly shall enact laws to carry into effect the provisions of this section.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 195. Corporation property subject to eminent domain; corporations not to infringe upon individuals. The Commonwealth, in the exercise of the right of eminent domain, shall have and retain the same powers to take the property and franchises of incorporated companies for public use which it has and retains to take the property of individuals, and the exercise of the police powers of this Commonwealth shall never be abridged nor so construed as to permit corporations to conduct their business in such manner as to infringe upon the equal rights of individuals.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Taking private property for public use, Const. 13, 242.

Section 196. Regulation of common carriers -- No relief from common-law liability. Transportation of freight and passengers by railroad, steamboat or other common carrier, shall be so regulated, by general law, as to prevent unjust discrimination. No common carrier shall be permitted to contract for relief from its common law liability.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Railroads, traffic with connecting carriers, discrimination prohibited, Const. 213, 215.

Section 197. Free passes or reduced rates to officers forbidden. No railroad, steamboat or other common carrier, under heavy penalty to be fixed by the General Assembly, shall give a free pass or passes, or shall, at reduced rates not common to the public, sell tickets for transportation to any State, district, city, town or county officer, or member of the General Assembly, or Judge; and any State, district, city, town or county officer, or member of the General Assembly, or Judge, who shall accept or use a free pass or passes, or shall receive or use tickets or transportation at reduced rates not common to the public, shall forfeit his office. It shall be the duty of the General Assembly to enact laws to enforce the provisions of this section.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 198. Trusts and combinations in restraint of trade to be prevented. It shall be the duty of the General Assembly from time to time, as necessity may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations, from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 199. Telegraph and telephone companies -- Right to construct lines -- Exchange of messages. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines, and said companies shall receive and transmit each other's messages without unreasonable delay or discrimination, and all such companies are hereby declared to be common carriers and subject to legislative control. Telephone companies operating exchanges in different towns or cities, or other public stations, shall receive and transmit each other's messages without unreasonable delay or discrimination. The General Assembly shall, by general laws of uniform operation, provide reasonable regulations to give full effect to this section. Nothing herein shall be construed to interfere with the rights of cities or towns to arrange and control their streets and alleys, and to designate the places at which, and the manner in which, the wires of such companies shall be erected or laid within the limits of such city or town.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 200. Domestic corporation consolidating with foreign does not become foreign. If any railroad, telegraph, express, or other corporation, organized under the laws of this Commonwealth, shall consolidate by sale or otherwise, with any railroad, telegraph, express or other corporation organized under the laws of any other State, the same shall not thereby become a foreign corporation, but the courts of this Commonwealth shall retain jurisdiction over that part of the corporate property within the limits of this State in all matters which may arise, as if said consolidation had not taken place.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 201. Public utility company not to consolidate with, acquire or operate competing or parallel system -- Common carriers not to share earnings with one not carrying -- Telephone companies excepted under certain conditions. No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company owning a parallel or competing line or structure, or acquire by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same; nor shall any railroad company or other common carrier combine or make any contract with the owners of any vessel that leaves or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying: Provided, however, That telephone companies may acquire by purchase or lease, or otherwise, and operate, parallel or competing exchanges, lines and structures, and the property of other telephone companies, if the Railroad Commission or such other State commission as may have jurisdiction over such matters shall first consent thereto, and if, further, each municipality wherein such property or any part thereof is located shall also first consent thereto as to the property within its limits, but under any such acquisition and operation toll line connections with the property so acquired shall be continued and maintained under an agreement between the purchasing company and the toll line companies then furnishing such service, and in the event they are unable to agree as to the terms of such an agreement the Railroad Commission or such other State commission as may have jurisdiction over such matters, shall fix the term of such agreement.

TEXT AS RATIFIED ON: November 6, 1917.

HISTORY: 1917 amendment was proposed by 1916 Ky. Acts ch. 125, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 202. Foreign corporations not to be given privileges over domestic. No corporation organized outside the limits of this State shall be allowed to transact business within the State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this Commonwealth.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 203. Liabilities under corporate franchise not released by lease or alienation. No corporation shall lease or alienate any franchise so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 204. Bank officer liable for receiving deposit for insolvent bank. Any President, Director, Manager, Cashier or other officer of any banking institution or association for the deposit or loan of money, or any individual banker, who shall receive or assent to the receiving of deposits after he shall have knowledge of the fact that such banking institution or association or individual banker is insolvent, shall be individually responsible for such deposits so received, and shall be guilty of felony and subject to such punishment as shall be prescribed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 205. Forfeiture of corporate charters in case of abuse or detrimental use. The General Assembly shall, by general laws, provide for the revocation or forfeiture of the charters of all corporations guilty of abuse or misuse of their corporate powers, privileges or franchises, or whenever said corporations become detrimental to the interest and welfare of the Commonwealth or its citizens.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 206. Warehouses subject to legislative control -- Inspection -- Protection of patrons. All elevators or storehouses, where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses, subject to legislative control, and the General Assembly shall enact laws for the inspection of grain, tobacco and other produce, and for the protection of producers, shippers and receivers of grain, tobacco and other produce.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 207. Cumulative voting for directors of corporations -- Proxies. In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates, and such directors or managers shall not be elected in any other manner.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 208. "Corporation" includes joint stock company or association. The word "corporation" as used in this Constitution shall embrace joint stock companies and associations.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Other sections relating to corporations: 52, 59, 150, 163, 174, 177, 179, 209, 210, 218, 241, 242, 244.

RAILROADS AND COMMERCE

Section 209. Railroad Commission -- Election, term, and qualifications of Commissioners -- Commissioners' districts -- Powers and duties -- Removal -- Vacancies. A commission is hereby established, to be known as The Railroad Commission, which shall be composed of three Commissioners. During the session of the General Assembly which convenes in December, eighteen hundred and ninety-one, and before the first day of June, eighteen hundred and ninety-two, the Governor shall appoint, by and with the advice and consent of the Senate, said three Commissioners, one from each Superior Court District as now established, and said appointees shall take their office at the expiration of the terms of the present incumbents. The Commissioners so appointed shall continue in office during the term of the present Governor, and until their successors are elected and qualified. At the regular election in eighteen hundred and ninety-five and every four years thereafter the Commissioners shall be elected, one in each Superior Court District, by the qualified voters thereof, at the same time and for the same term as the Governor. No person shall be eligible to said office unless he be, at the time of his election, at least thirty years of age, a citizen of Kentucky two years, and a resident of the district from which he is chosen one year, next preceding his election. Any vacancy in this office shall be filled as provided in Section 152 of this Constitution. The General Assembly may from time to time change said districts so as to equalize the population thereof; and may, if deemed expedient, require that the Commissioners be all elected by the qualified voters of the State at large. And if so required, one Commissioner shall be from each District. No person in the service of any railroad or common carrier company or corporation, or of any firm or association conducting business as a common carrier, or in anywise pecuniarily interested in such company, corporation, firm or association, or in the railroad business, or as a common carrier, shall hold

such office. The powers and duties of the Railroad Commissioners shall be regulated by law; and, until otherwise provided by law, the Commission so created shall have the same powers and jurisdiction, perform the same duties, be subject to the same regulations, and receive the same compensation, as now conferred, prescribed and allowed by law to the existing Railroad Commissioners. The General Assembly may, for cause, address any of said Commissioners out of office by similar proceedings as in the case of Judges of the Court of Appeals; and the General Assembly shall enact laws to prevent the nonfeasance and misfeasance in office of said Commissioners, and to impose proper penalties therefor.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 210. Common carrier corporation not to be interested in other business. No corporation engaged in the business of common carrier shall, directly or indirectly, own, manage, operate, or engage in any other business than that of a common carrier, or hold, own, lease or acquire, directly or indirectly, mines, factories or timber, except such as shall be necessary to carry on its business, and the General Assembly shall enact laws to give effect to the provisions of this section.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 211. Foreign railroad corporation may not condemn or acquire real estate. No railroad corporation organized under the laws of any other State, or of the United States, and doing business, or proposing to do business, in this State, shall be entitled to the benefit of the right of eminent domain or have power to acquire the right of way or real estate for depot or other uses, until it shall have become a body corporate pursuant to and in accordance with the laws of this Commonwealth.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 212. Rolling stock, earnings, and personal property of railroads subject to execution or attachment. The rolling stock and other movable property belonging to any railroad corporation or company in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals. The earnings of any railroad company or corporation, and choses in action, money and personal property of all kinds belonging to it, in the hands, or under the control, of any officer, agent or employee of such corporation or company, shall be subject to process of attachment to the same extent and in the same manner, as like property of individuals when in the hands or under the control of other persons. Any such earnings, choses in action, money or other personal property may be subjected to the payment of any judgment against such corporation or company, in the same manner and to the same extent as such property of individuals in the hands of third persons.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 213. Railroad companies to handle traffic with connecting carriers without discrimination. All railroad, transfer, belt lines and railway bridge companies organized under the laws of Kentucky, or operating, maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carrier to allow the use of its tracks for the trains of another engaged in like business.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Regulation of transportation of freight and passengers by railroads to prevent unjust discrimination, Const. 196; Freight to be handled without discrimination, Const. 215.

Section 214. Railroad not to make exclusive or preferential contract. No railway, transfer, belt line or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association or corporation, for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 215. Freight to be handled without discrimination. All railway, transfer, belt lines or railway bridge companies shall receive, load, unload, transport, haul, deliver and handle freight of the same class for all persons, associations or corporations from and to the same points and upon the same conditions, in the same manner and for the same charges, and for the same method of payment.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 216. Railroad must allow tracks of others to cross or unite. All railway, transfer, belt lines and railway bridge companies shall allow the tracks of each other to unite, intersect and cross at any point where

such union, intersection and crossing is reasonable or feasible.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 217. Penalties for violating Sections 213, 214, 215, or 216 -- Attorney General to enforce. Any person, association or corporation, willfully or knowingly violating any of the provisions of Sections 213, 214, 215, or 216, shall, upon conviction by a court of competent jurisdiction, for the first offense be fined two thousand dollars; for the second offense, five thousand dollars; and for the third offense, shall thereupon, ipso facto, forfeit its franchises, privileges or charter rights; and if such delinquent be a foreign corporation, it shall, ipso facto, forfeit its right to do business in this State; and the Attorney-General of the Commonwealth shall forthwith, upon notice of the violation of any of said provisions, institute proceedings to enforce the provisions of the aforesaid sections.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 218. Long and short hauls. It shall be unlawful for any person or corporation, owning or operating a railroad in this State, or any common carrier, to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of property of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier, or person or corporation, owning or operating a railroad in this State, to receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the Railroad Commission, such common carrier, or person or corporation owning or operating a railroad in this State, may in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers, or property; and the Commission may, from time to time, prescribe the extent to which such common carrier, or person or corporation, owning or operating a railroad in this State, may be relieved from the operation of this section.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Other sections relating to railroads, 59, 177, 182, 196, 197, 200, 201.

THE MILITIA

Section 219. Militia, what to consist of. The militia of the Commonwealth of Kentucky shall consist of all able-bodied male residents of the State between the ages of eighteen and forty-five years, except such persons as may be exempted by the laws of the State or of the United States.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 220. General Assembly to provide for militia -- Exemptions from service. The General Assembly shall provide for maintaining an organized militia, and may exempt from military service persons having conscientious scruples against bearing arms; but such persons shall pay an equivalent for such exemption.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 221. Government of militia to conform to Army regulations. The organization, equipment and discipline of the militia shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 222. Officers of militia -- Adjutant General. All militia officers whose appointment is not herein otherwise provided for, shall be elected by persons subject to military duty within their respective companies, battalions, regiments or other commands, under such rules and regulations and for such terms, not exceeding four years, as the General Assembly may, from time to time, direct and establish. The Governor shall appoint an Adjutant-General and his other staff officers; the generals and commandants of regiments and battalions shall respectively appoint their staff officers, and the commandants of companies shall, subject to the approval of their regimental or battalion commanders, appoint their noncommissioned officers. The Governor shall have power to fill vacancies that may occur in elective offices by granting commissions which shall expire when such vacancies have been filled according to the provisions of this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Governor is Commander-in-Chief of militia, Const. 75.

Section 223. Safekeeping of public arms, military records, relics, and banners. The General Assembly shall provide for the safekeeping of the public arms, military records, relics and banners of the Commonwealth of Kentucky.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

GENERAL PROVISIONS

Section 224. Bonds -- What officers to give -- Liability on. The General Assembly shall provide by a general law what officers shall execute bond for the faithful discharge of their duties, and fix the liability therein.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

When officers to give bond, Const. 103.

Section 225. Armed men not to be brought into State -- Exception. No armed person or bodies of men shall be brought into this State for the preservation of the peace or the suppression of domestic violence, except upon the application of the General Assembly, or of the Governor when the General Assembly may not be in session.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 226. State lottery -- Charitable lotteries and charitable gift enterprises -- Other lotteries and gift enterprises forbidden. (1) The General Assembly may establish a Kentucky state lottery and may establish a state lottery to be conducted in cooperation with other states. Any lottery so established shall be operated by or on behalf of the Commonwealth of Kentucky.

(2) The General Assembly may by general law permit charitable lotteries and charitable gift enterprises and, if it does so, it shall:

(a) Define what constitutes a charity or charitable organization;

(b) Define the types of charitable lotteries and charitable gift enterprises which may be engaged in;

(c) Set standards for the conduct of charitable lotteries and charitable gift enterprises by charitable organizations;

(d) Provide for means of accounting for the amount of money raised by lotteries and gift enterprises and for assuring its expenditure only for charitable purposes;

(e) Provide suitable penalties for violation of statutes relating to charitable lotteries and charitable gift enterprises; and

(f) Pass whatever other general laws the General Assembly deems necessary to assure the proper functioning, honesty, and integrity of charitable lotteries and charitable gift enterprises, and the charitable purposes for which the funds are expended.

(3) Except as provided in this section, lotteries and gift enterprises are forbidden, and no privileges shall be granted for such purposes, and none shall be exercised, and no schemes for similar purposes shall be allowed. The General Assembly shall enforce this section by proper penalties. All lottery privileges or charters heretofore granted are revoked.

TEXT AS RATIFIED ON: November 3, 1992.

HISTORY: 1992 amendment was proposed by 1992 Ky. Acts ch. 113, sec. 1; 1988 amendment was proposed by 1988 Ky. Acts ch. 116, sec. 1, and ratified on November 8, 1988; original version ratified August 3, 1891, and revised September 28, 1891.

Section 226a. (Repealed 1935) Catchline read at time of repeal: "Manufacture, sale or transportation of intoxicating liquors prohibited -- Exception -- Legislature to enforce."

REPEAL RATIFIED ON: November 5, 1935.

HISTORY: Repeal was proposed by 1934 Ky. Acts ch. 58, sec. 1; creation proposed by 1918 Ky. Acts ch. 63, sec. 1, and ratified on November 4, 1919, effective July 1, 1920.

Section 227. Prosecution and removal of local officers for misfeasance, malfeasance, or neglect. Judges of the County Court, Justices of the Peace, Sheriffs, Coroners, Surveyors, Jailers, Assessors, County Attorneys and Constables shall be subject to indictment or prosecution for misfeasance or malfeasance in office, or willful neglect in discharge of official duties, in such mode as may be prescribed by law, and upon conviction his office shall become vacant, but such officer shall have the right to appeal to the Court of Appeals. Provided, also, that the General Assembly may, in addition to the indictment or prosecution above provided, by general law, provide other manner, method or mode for the vacation of office, or the removal from office of any sheriff, jailer, constable or peace officer for neglect of duty, and may provide the method, manner or mode of reinstatement of such officers.

TEXT AS RATIFIED ON: November 4, 1919.

HISTORY: 1919 amendment was proposed by 1918 Ky. Acts ch. 62, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Appeal to Supreme Court subject to Supreme Court rules, Const. 110(2)(a).

Section 228. Oath of officers and attorneys. Members of the General Assembly and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of this Commonwealth, and be faithful and true to the Commonwealth of Kentucky so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my ability, the office of _____ according to law; and I do further solemnly swear (or affirm) that since the adoption of the present Constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus offending, so help me God.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Manner of administering oaths, Const. 232; Form of oath altered on pardon of person convicted of dueling, Const. 240.

Section 229. Treason defined -- Evidence necessary to convict. Treason against the Commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or his own confession in open court.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Power of pardon for treason vested in General Assembly, Const. 77.

Section 230. Money not to be drawn from Treasury unless appropriated -- Annual publication of accounts -- Certain revenues usable only for highway purposes. No money shall be drawn from the State Treasury, except in pursuance of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published annually. No money derived from excise or license taxation relating to gasoline and other motor fuels, and no moneys derived from fees, excise or license taxation relating to registration, operation, or use of vehicles on public highways shall be expended for other than the cost of administration, statutory refunds and adjustments, payment of highway obligations, costs for construction, reconstruction, rights-of-way, maintenance and repair of public highways and bridges, and expense of enforcing state traffic and motor vehicle laws.

TEXT AS RATIFIED ON: November 6, 1945.

HISTORY: 1945 amendment was proposed by 1944 Ky. Acts ch. 9, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 231. Suits against the Commonwealth. The General Assembly may, by law, direct in what manner and in what courts suits may be brought against the Commonwealth.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Claims against the State, Const. 58.

Section 232. Manner of administering oath. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 233. General laws of Virginia in force in this State until repealed. All laws which, on the first day of June, one thousand seven hundred and ninety-two, were in force in the State of Virginia, and which are of a general nature and not local to that State, and not repugnant to this Constitution, nor to the laws which have been enacted by the General Assembly of this Commonwealth, shall be in force within this State until they shall be altered or repealed by the General Assembly.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 234. Residence and place of office of public officers. All civil officers for the State at large shall reside within the State, and all district, county, city or town officers shall reside within their respective

districts, counties, cities or towns, and shall keep their offices at such places therein as may be required by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 235. Salaries of public officers not to be changed during term -- Deductions for neglect. The salaries of public officers shall not be changed during the terms for which they were elected; but it shall be the duty of the General Assembly to regulate, by a general law, in what cases and what deductions shall be made for neglect of official duties. This section shall apply to members of the General Assembly also.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Compensation of local officers not to be changed during term, Const. 161; Maximum limit on salaries, Const. 246.

Section 236. When officers to enter upon duties. The General Assembly shall, by law, prescribe the time when the several officers authorized or directed by this Constitution to be elected or appointed, shall enter upon the duties of their respective offices, except where the time is fixed by this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Oath to be taken and bond executed before entering upon duties, Const. 103, 228.

Section 237. Federal office incompatible with State office. No member of Congress, or person holding or exercising an office of trust or profit under the United States, or any of them, or under any foreign power, shall be eligible to hold or exercise any office of trust or profit under this Constitution, or the laws made in pursuance thereof.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Incompatible office, Const. 44, 165.

Section 238. Discharge of sureties on officers' bonds. The General Assembly shall direct by law how persons who now are, or may hereafter become, sureties for public officers, may be relieved of or discharged from suretyship.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 239. Disqualification from office for presenting or accepting challenge to duel -- Further punishment. Any person who shall, after the adoption of this Constitution, either directly or indirectly, give, accept or knowingly carry a challenge to any person or persons to fight in single combat, with a citizen of this State, with a deadly weapon, either in or out of the State, shall be deprived of the right to hold any office of honor or profit in this Commonwealth; and if said acts, or any of them, be committed within this State, the person or persons so committing them shall be further punished in such manner as the General Assembly may prescribe by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Oath as to dueling, Const. 228.

Section 240. Pardon of person convicted of dueling. The Governor shall have power, after five years from the time of the offense, to pardon any person who shall have participated in a duel as principal, second or otherwise, and to restore him to all the rights, privileges and immunities to which he was entitled before such participation. Upon presentation of such pardon the oath prescribed in Section 228 shall be varied to suit the case.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 241. Recovery for wrongful death. Whenever the death of a person shall result from an injury inflicted by negligence or wrongful act, then, in every such case, damages may be recovered for such death, from the corporations and persons so causing the same. Until otherwise provided by law, the action to recover such damages shall in all cases be prosecuted by the personal representative of the deceased person. The General Assembly may provide how the recovery shall go and to whom belong; and until such provision is made, the same shall form part of the personal estate of the deceased person.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Recovery for injury or death not to be limited, Const. 54.

Section 242. Just compensation to be made in condemning private property -- Right of appeal -- Jury trial. Municipal and other corporations, and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by them; which compensation shall be paid before such taking, or paid or secured, at the election of such corporation or individual, before such injury or destruction. The General Assembly shall not deprive any person of an appeal from any preliminary assessment of damages against any such corporation or individual made by Commissioners or otherwise; and upon appeal from such preliminary assessment, the amount of such damages shall, in all cases, be determined by a jury, according to the course of the common law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Private property not to be taken without compensation, Const. 13.

Section 243. Child labor. The General Assembly shall, by law, fix the minimum ages at which children may be employed in places dangerous to life or health, or injurious to morals; and shall provide adequate penalties for violations of such law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 244. Wage-earners in industry or of corporations to be paid in money. All wage-earners in this State employed in factories, mines, workshops, or by corporations, shall be paid for their labor in lawful money. The General Assembly shall prescribe adequate penalties for violations of this section.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 244a. Old age assistance. The General Assembly shall prescribe such laws as may be necessary for the granting and paying of old persons an annuity or pension.

TEXT AS RATIFIED ON: November 5, 1935.

HISTORY: Creation proposed by 1934 Ky. Acts ch. 59, sec. 1.

Section 245. Revision of statutes to conform to Constitution. Upon the promulgation of this Constitution, the Governor shall appoint three persons, learned in the law, who shall be Commissioners to revise the statute laws of this Commonwealth, and prepare amendments thereto, to the end that the statute laws shall conform to and effectuate this Constitution. Such revision and amendments shall be laid before the next General Assembly for adoption or rejection, in whole or in part. The said Commissioners shall be allowed ten dollars each per day for their services, and also necessary stationery for the time during which they are actually employed; and upon their certificate the Auditor shall draw his warrant upon the Treasurer. They shall have the power to employ clerical assistants, at a compensation not exceeding ten dollars per day in the aggregate. If the Commissioners, or any of them, shall refuse to act, or a vacancy shall occur, the Governor shall appoint another or others in his or their place.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 246. Maximum limit on compensation of public officers. No public officer or employee except the Governor, shall receive as compensation per annum for official services, exclusive of the compensation of legally authorized deputies and assistants which shall be fixed and provided for by law, but inclusive of allowance for living expenses, if any, as may be fixed and provided for by law, any amount in excess of the following sums: Officers whose jurisdiction or duties are coextensive with the Commonwealth, the mayor of any city of the first class, and Judges and Commissioners of the Court of Appeals, Twelve Thousand Dollars ($12,000); Circuit Judges, Eight Thousand Four Hundred Dollars ($8,400); all other public officers, Seven Thousand Two Hundred Dollars ($7,200). Compensation within the limits of this amendment may be authorized by the General Assembly to be paid, but not retroactively, to public officers in office at the time of its adoption, or who are elected at the election at which this amendment is adopted. Nothing in this amendment shall permit any officer to receive, for the year 1949, any compensation in excess of the limit in force prior to the adoption of this amendment.

TEXT AS RATIFIED ON: November 8, 1949.

HISTORY: 1949 amendment was proposed by 1948 Ky. Acts ch. 172, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Compensation not to be changed during term, Const. 161, 235; Compensation of Governor, KRS 64.480; Deductions for neglect of duty, Const. 235.

Section 247. Public printing -- Contract for -- Officers not to have interest in -- Governor to approve. The printing and binding of the laws, journals, department reports, and all other public printing and binding, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum and under such regulations as may be prescribed by law. No member of the General Assembly, or officer of the Commonwealth, shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the Governor.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 248. Juries -- Number of jurors -- Three-fourths may indict or give verdict. A grand jury shall consist of twelve persons, nine of whom concurring, may find an indictment. In civil and misdemeanor cases, in courts inferior to the Circuit Courts, a jury shall consist of six persons. The General Assembly may provide that in any or all trials of civil actions in the Circuit Courts, three-fourths or more of the jurors concurring may return a verdict, which shall have the same force and effect as if rendered by the entire panel. But where a verdict is rendered by a less number than the whole jury, it shall be signed by all the jurors who agree to it.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Right to jury trial, Const. 7; Local and special laws prohibited, Const. 59.

Section 249. Employees of General Assembly -- Number and compensation. The House of Representatives of the General Assembly shall not elect, appoint, employ or pay for, exceeding one Chief Clerk, one Assistant Clerk, one Enrolling Clerk, one Sergeant at Arms, one Doorkeeper, one Janitor, two Cloakroom Keepers and four Pages; and the Senate shall not elect, appoint, employ or pay for, exceeding one Chief Clerk, one Assistant Clerk, one Enrolling Clerk, one Sergeant at Arms, one Doorkeeper, one Janitor, one Cloakroom Keeper and three Pages; and the General Assembly shall provide, by general law, for fixing the per diem or salary of all of said employees.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Officers of General Assembly, Const. 34, 85.

Section 250. Arbitration, method for to be provided. It shall be the duty of the General Assembly to enact such laws as shall be necessary and proper to

decide differences by arbitrators, the arbitrators to be appointed by the parties who may choose that summary mode of adjustment.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 251. Limitation of actions to recover possession of land based on early patents. No action shall be maintained for possession of any lands lying within this State, where it is necessary for the claimant to rely for his recovery on any grant or patent issued by the Commonwealth of Virginia, or by the Commonwealth of Kentucky prior to the year one thousand eight hundred and twenty, against any person claiming such lands by possession to a well-defined boundary, under a title of record, unless such action shall be instituted within five years after this Constitution shall go into effect, or within five years after the occupant may take possession; but nothing herein shall be construed to affect any right, title or interest in lands acquired by virtue of adverse possession under the laws of this Commonwealth.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Interest in land derived from Virginia not to be impaired by Kentucky, Compact with Virginia, Sections 7 to 10.

Section 252. Houses of reform to be established and maintained. It shall be the duty of the General Assembly to provide by law, as soon as practicable, for the establishment and maintenance of an institution or institutions for the detention, correction, instruction and reformation of all persons under the age of eighteen years, convicted of such felonies and such misdemeanors as may be designated by law. Said institution shall be known as the "House of Reform."

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 253. Working of penitentiary prisoners -- When and where permitted. Persons convicted of felony and sentenced to confinement in the penitentiary shall be confined at labor within the walls of the penitentiary; and the General Assembly shall not have the power to authorize employment of convicts elsewhere, except upon the public works of the Commonwealth of Kentucky, or when, during pestilence or in case of the destruction of the prison buildings, they cannot be confined in the penitentiary.

That Section 253 of the Constitution be amended so that the Commonwealth of Kentucky may use and employ outside of the walls of the penitentiaries in such manner and means as may be provided by law, persons convicted of felony and sentenced to confinement in the penitentiary for the purpose of constructing or reconstructing and maintaining public roads and public bridges or for the purpose of making and preparing material for public roads and bridges, and that the Commonwealth of Kentucky may, by the use and employment of convict labor outside of the walls of the penitentiary by other ways or means, as may be provided by law, aid the counties for road and bridge purposes, work on the State farm or farms.

TEXT AS RATIFIED ON: November 2, 1915.

HISTORY: 1915 amendment was proposed by 1914 Ky. Acts ch. 93, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 254. Control and support of convicts -- Leasing of labor. The Commonwealth shall maintain control of the discipline, and provide for all supplies, and for the sanitary condition of the convicts, and the labor only of convicts may be leased.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 255. Frankfort is state capital. The seat of government shall continue in the city of Frankfort, unless removed by a vote of two-thirds of each House of the first General Assembly which convenes after the adoption of this Constitution.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

MODE OF REVISION

Section 256. Amendments to Constitution -- How proposed and voted upon. Amendments to this Constitution may be proposed in either House of the General Assembly at a regular session, and if such amendment or amendments shall be agreed to by three-fifths of all the members elected to each House, such proposed amendment or amendments, with the yeas and nays of the members of each House taken thereon, shall be entered in full in their respective journals. Then such proposed amendment or amendments shall be submitted to the voters of the State for their ratification or rejection at the next general election for members of the House of Representatives, the vote to be taken thereon in such manner as the General Assembly may provide, and to be certified by the officers of election to the Secretary of State in such manner as shall be provided by law, which vote shall be compared and certified by the same board authorized by law to compare the polls and give certificates of election to officers for the State at large. If it shall appear that a majority of the votes cast for and against an amendment at said election was for the amendment, then the same shall become a part of the Constitution of this Commonwealth, and shall be so proclaimed by the Governor, and published in such manner as the General Assembly may direct. Said amendments shall not be submitted at an election which occurs less than ninety days from the final passage of such proposed amendment or amendments. Not more than four amendments shall be voted upon at any one time. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately, but an amendment may relate to a single subject or to related subject matters and may amend or modify as many

articles and as many sections of the Constitution as may be necessary and appropriate

in order to accomplish the objectives of the amendment. The approval of the Governor shall not be necessary to any bill, order, resolution or vote of the General Assembly, proposing an amendment or amendments to this Constitution.

TEXT AS RATIFIED ON: November 6, 1979.

HISTORY: 1979 amendment was proposed by 1978 Ky. Acts ch. 433, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

Section 257. Publication of proposed amendments. Before an amendment shall be submitted to a vote, the Secretary of State shall cause such proposed amendment, and the time that the same is to be voted upon, to be published at least ninety days before the vote is to be taken thereon in such manner as may be prescribed by law.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 258. Constitutional Convention -- How proposed, voted upon, and called. When a majority of all the members elected to each House of the General Assembly shall concur, by a yea and nay vote, to be entered upon their respective journals, in enacting a law to take the sense of the people of the State as to the necessity and expediency of calling a Convention for the purpose of revising or amending this Constitution, and such amendments as may have been made to the same, such law shall be spread upon their respective journals. If the next General Assembly shall, in like manner, concur in such law, it shall provide for having a poll opened in each voting precinct in this state by the officers provided by law for holding general elections at the next ensuing regular election to be held for State officers or members of the House of Representatives, which does not occur within ninety days from the final passage of such law, at which time and places the votes of the qualified voters shall be taken for and against calling the Convention, in the same manner provided by law for taking votes in other State elections. The vote for and against said proposition shall be certified to the Secretary of State by the same officers and in the same manner as in State elections. If it shall appear that a majority voting on the proposition was for calling a Convention, and if the total number of votes cast for the calling of the Convention is equal to one-fourth of the number of qualified voters who voted at the last preceding general election in this State, the Secretary of State shall certify the same to the General Assembly at its next regular session, at which session a law shall be enacted calling a Convention to readopt, revise or amend this Constitution, and such amendments as may have been made thereto.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 259. Number and qualifications of delegates. The Convention shall consist of as many delegates as there are members of the House of Representatives; and the delegates shall have the same

qualifications and be elected from the same districts as said Representatives.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 260. Election of delegates -- meeting. Delegates to such Convention shall be elected at the next general State election after the passage of the act calling the Convention, which does not occur within less than ninety days; and they shall meet within ninety days after their election at the Capital of the State, and continue in session until their work is completed.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 261. Certification of election and compensation of delegates. The General Assembly, in the act calling the Convention, shall provide for comparing the polls and giving certificates of election to the delegates elected, and provide for their compensation.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 262. Determination of election and qualifications of delegates -- Contests. The Convention, when assembled, shall be the judge of the election and qualification of its members, and shall determine contested elections. But the General Assembly shall, in the act calling the Convention, provide for taking testimony in such cases, and for issuing a writ of election in case of a tie.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

Section 263. Notice of election on question of calling convention. Before a vote is taken upon the question of calling a Convention, the Secretary of State shall cause notice of the election to be published in such manner as may be provided by the act directing said vote to be taken.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

SCHEDULE

That no inconvenience may arise from the alterations and amendments made in this Constitution, and in order to carry the same into complete operation, it is hereby declared and ordained:

First: That all laws of this Commonwealth in force at the time of the adoption of this Constitution, not inconsistent therewith, shall remain in full force until altered or repealed by the General Assembly; and all rights, actions, prosecutions, claims and contracts of the State, counties, individuals or bodies corporate, not inconsistent therewith, shall continue as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon its adoption, except that all laws which are inconsistent with such provisions as require legislation to enforce them shall remain in force until such legislation is had, but not longer than six years after the adoption of this Constitution, unless sooner amended or repealed by the General Assembly.

Second: That all recognizances, obligations and all other instruments entered into or executed before the adoption of this Constitution, to the State, or to any city, town, county or subdivision thereof, and all fines, taxes, penalties and forfeitures due or owing to this State, or to any city, town, county or subdivision thereof; and all writs, prosecutions, actions and causes of action, except as otherwise herein provided, shall continue and remain unaffected by the adoption of this Constitution. And all indictments which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be prosecuted as if no change had taken place, except as otherwise provided in this Constitution.

Third: All Circuit, Chancery, Criminal, Law and Equity, Law, and Common Pleas Courts, as now constituted and organized by law, shall continue with their respective jurisdictions until the Judges of the Circuit Courts provided for in this Constitution shall have been elected and qualified, and shall then cease and determine; and the causes, actions and proceedings then pending in said first named courts, which are discontinued by this Constitution, shall be transferred to, and tried by, the Circuit Courts in the counties, respectively, in which said causes, actions and proceedings are pending.

Fourth: The Treasurer, Attorney-General, Auditor of Public Accounts, Superintendent of Public Instruction, and Register of the Land Office, elected in eighteen hundred and ninety-one, shall hold their offices until the first Monday in January, eighteen hundred and ninety-six, and until the election and qualification of their successors. The Governor and Lieutenant Governor elected in eighteen hundred and ninety-one shall hold their offices until the sixth Tuesday after the irst Monday in November, eighteen hundred and ninety-five, and until their successors are elected and qualified. The Governor and Treasurer elected in eighteen hundred and ninety-one shall be ineligible to the succeeding term. The Governor elected in eighteen hundred and ninety-one may appoint a Secretary of State and a Commissioner of Agriculture, Labor and Statistics, as now provided, who shall hold their offices until their successors are elected and qualified, unless sooner removed by the Governor. The official bond of the present Treasurer shall be renewed at the expiration of two years from the time of his qualification.

Fifth: All officers who may be in office at the adoption of this Constitution, or who may be elected before the election of their successors, as provided in this Constitution, shall hold their respective offices until their successors are elected or appointed and qualified as provided in this Constitution.

Sixth: The Quarterly Courts created by this Constitution shall be the successors of the present statutory Quarterly Courts in the several counties of this State; and all suits, proceedings, prosecutions, records and judgments now pending or being in said last named courts shall, after the adoption of this Constitution, be transferred to the Quarterly Courts created by this Constitution, and shall proceed as though the same had been therein instituted.

ORDINANCE

We, the representatives of the people of Kentucky, in Convention assembled, in their name and by their authority and in virtue of the power vested in us as Delegates from the counties and districts respectively affixed to our names, do ordain and proclaim the foregoing to be the Constitution of the Commonwealth of Kentucky from and after this date.

Done at Frankfort this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and ninety-one, and in the one hundredth year of the Commonwealth.

TEXT AS RATIFIED ON: August 3, 1891, and revised September 28, 1891.

HISTORY: Not yet amended.

AMENDMENTS ADOPTED SINCE 1891

Year Adopted	Section(s) Amended	Purpose
1903	181	Authorize the General Assembly to provide by general law for levying by cities and counties of license fees and franchise taxes based on income derived from property or other sources.
1909	157a	Permit state to give, pledge, or lend credit to counties for road purposes and permit counties to levy a tax of 20 cents per $100 of assessed property value to pay principal and interest on voted road and bridge bonds.
1915	171	Permit classification of property for tax purposes.
1915	253	Permit use of prisoners for road work.
1917	201	Permit telephone companies, under certain conditions, to buy or lease competing companies.
1919	227	Permit removal of local law enforcement officers for neglect of duty.
1919	226A	Prohibit manufacture, sale, or transportation of alcoholic beverages.
1935	226A	Repeal prohibition.
1935	244A	Permit old age pensions.
1941	186	Permit ten per cent of money appropriated by the legislature for school purposes to be used in an equalization fund, instead of being divided on a per capita basis.
1941	147	Permit the use of voting machines.
1945	147	Authorize the General Assembly to provide for absentee voting.
1945	230	Guarantee that receipts from certain tax sources shall be placed in the highway fund.
1949	246	Repeal the $5,000 salary limit and substitute limits of $12,000 per year for officials with statewide jurisdiction and mayors of first class cities, $8,400 for circuit judges, and $7,200 for all other officials.
1949	186	Changes from ninety to seventy-five the percentage of state appropriated school funds to be divided on a per capita basis.
1953	186	Repeal provisions of Section 186 which required school funds to be distributed on a per capita basis.
1955	145	Permit persons eighteen years of age or older to vote, provided they meet other qualifications, and remove the word "male" from the constitutional description of voters.
1955	170	Exempt all household goods from taxation.
1969	172A	Permit agricultural land in urban areas to be assessed for taxation at its value for agricultural purposes and permit a unit of local government to tax property at different rates, in different areas, based upon services.
1971	170	Exempt from taxation up to $6,500 of the assessed value of a single family residence owned and occupied by a person age 65 or older.
1975	109-139 141,143	Restructure the state court system.
1975	170	Extend "homestead exemption" to residences other than single family dwellings.
1979	256	Increase from two to four the number of amendments to be considered at any one referendum.
1979	30, 31, 36,42	Change from odd-year to even-year for election of members of the General Assembly.
1981	170, 172B	Provide certain property tax exemptions for residents age 65 and older and for the disabled. Permits property tax moratoriums under certain circumstances to encourage repair and renovation of properties.
1984	99	Permit sheriffs to succeed themselves.

1986	160	Permit mayors of cities of the first and second classes to run for election for three successive terms.
1988	19	Limit the mining of coal conveyed by any broadform deed to methods of coal extraction utilized in the area at the time the deed was signed.
1988	226	Permit the General Assembly to establish a Kentucky state lottery, alone or in conjunction with other states.
1990	170	Exempt from property taxation all real property owned and occupied by, and all personal property owned by, institutions of religion.
1992	226	Permit the General Assembly to establish and regulate charitable gaming.
1992	70-74, 82-87, 91, 93, 94, 95 97, 99, 148, 167	Omnibus reform of Executive Branch and election schedule, including: succession for statewide officers; joint election of Governor and Lieutenant Governor; gubernatorial disability and absence from the state; abolition of elected Superintendent of Public Instruction; duties of Lieutenant Governor; and even-year elections for all but statewide officers.
1994	156, new 156a, new 156b, 157, new 157b, 158	Omnibus reform of local government structure and financing provisions.
1996	180, 187	Removed the requirement that public schools be racially-segregated and the authority for local governments to levy a poll tax.

AMENDMENTS SUBMITTED TO POPULAR VOTE SINCE 1891 BUT DEFEATED

Year Submitted	Section(s) To Have Been Amended	Purpose
1897	181	Would have permitted municipalities to tax property on the basis of income.
1905	147	Would have required voice voting instead of secret ballot.
1907	145	Would have made payment of taxes a prerequisite to voting.
1913	171	Would have permitted the classification of property for tax purposes.*
1913	253	Would have permitted the employment of convict labor on public roads.*
1921	186	Would have provided that ten percent of the common school fund could be distributed on other than a per capita basis.
1921	91	Would have removed the Superintendent of Public Instruction from the list of elective officials.
1923	145	Would have permitted women to vote and hold office.
1925	246	Would have raised the $5,000 salary limit for certain specified officials.
1927	147	Would have permitted absentee voting.
1927	246	Would have abolished the $5,000 salary limit and substituted a provision that the General Assembly should fix reasonable compensation.
1929	256	Would have removed the two-amendment restriction.
1929	246	Would have removed the salary limit on Judges of the Court of Appeals.
1931	158	Would have raised the debt limits of cities and counties in certain cases.
1933	172	Would have permitted the General Assembly to exempt real and personal property from taxation by the state.
1937	New	Would have permitted the General Assembly to reorganize local government and would have permitted consolidation of cities and counties.
1937	256	Would have removed the limit on the number of constitutional amendments to be submitted at one time.
1939	145	Would have made women eligible to hold public office.**
1939	New	Would have authorized and directed the General Assembly to provide aid to dependent children and needy blind.**
1943	54	Would have permitted the General Assembly to pass a compulsory workers' compensation law.
1943	246	Would have removed the $5,000 salary limit.
1951	256	Would have permitted an unlimited number of amendments to be submitted at one time and changed the time and manner of voting on amendments.
1953	91, 93	Would have removed the Secretary of State, Treasurer, Commissioner of Agriculture, Labor and Statistics, and the Superintendent of Public Instruction from the list of elective state officers.
1957	91, 93, 95, 96	Would have abolished the elective Superintendent of Public Instruction and established in his place a Commissioner of Education appointed by a nine-member Board of Education.
1959	New	Would have established a sales tax to provide a veterans' bonus.***
1959	99	Would have made sheriffs eligible to succeed themselves.
1963	246	Would have abolished the salary limit.
1963	256	Would have permitted the submission of five amendments to be voted on at one time.
1969	42	Would have authorized the General Assembly to meet annually for sixty legislative days and described a legislative day as one on which at least one house was in session.
1973	91, 93, 95, 99, 183, 209	Would have deleted the requirement that the Superintendent of Public Instruction be elected; allowed sheriffs to succeed themselves; established a seven-member State Board of Education; abolished the Railroad Commission.

1973	32, 36, 42	Would have required the General Assembly to meet annually for not longer than forty-five legislative days, which need not be consecutive, nor longer than four months (six months if approved by two-thirds of the members of both houses); required legislators to have resided in their districts for two years rather than one year prior to election.
1981	71, 82, 93, 99	Would have permitted statewide constitutional officers to serve two successive terms and would have permitted sheriffs to succeed themselves.
1986	91,93, 95, 183	Would have constitutionally established an appointed State Board of Education, which would have hired a state Superintendent of Public Instruction; would have abolished the constitutional office of elected Superintendent of Public Instruction.
1990	36	Would have allowed the General Assembly to call itself into extraordinary session.
1990	28	Would have allowed the General Assembly to create a system whereby it or a body it designated could reject administrative regulations promulgated by an agency of the Executive Branch.
1990	156, 157,157a, 158, 159 160, 166, 167, 170, 180, 181	Would have altered the structure and powers of local government.
1992	91, 93, 94, 95, 201, 209, 218	Would have deleted the election of the Secretary of State, Treasurer, Commissioner of Agriculture, Superintendent of Public Instruction, and Railroad Commission.

* Through error was not publicized as required by Section 256 of the Constitution and although placed on the ballot, voted upon and passed, was declared invalid. See *McCreary v. Speer*, 156 Ky. 783, 162 S.W. 99 (1914).

** Through error was not publicized as required by Section 256 of the Constitution and thus could not be placed on the ballot. See *Arnett v. Sullivan*, 279 Ky. 720, 132 S.W.2d 76 (1939).

*** Although ratified by the voters, this amendment was declared invalid by the Kentucky Court of Appeals. The Court held the subject of the amendment to be one properly addressed by statute rather than by a constitutional amendment. See *Stovall v. Gartrell*, 332 S.W.2d 256 (Ky. 1960.)

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