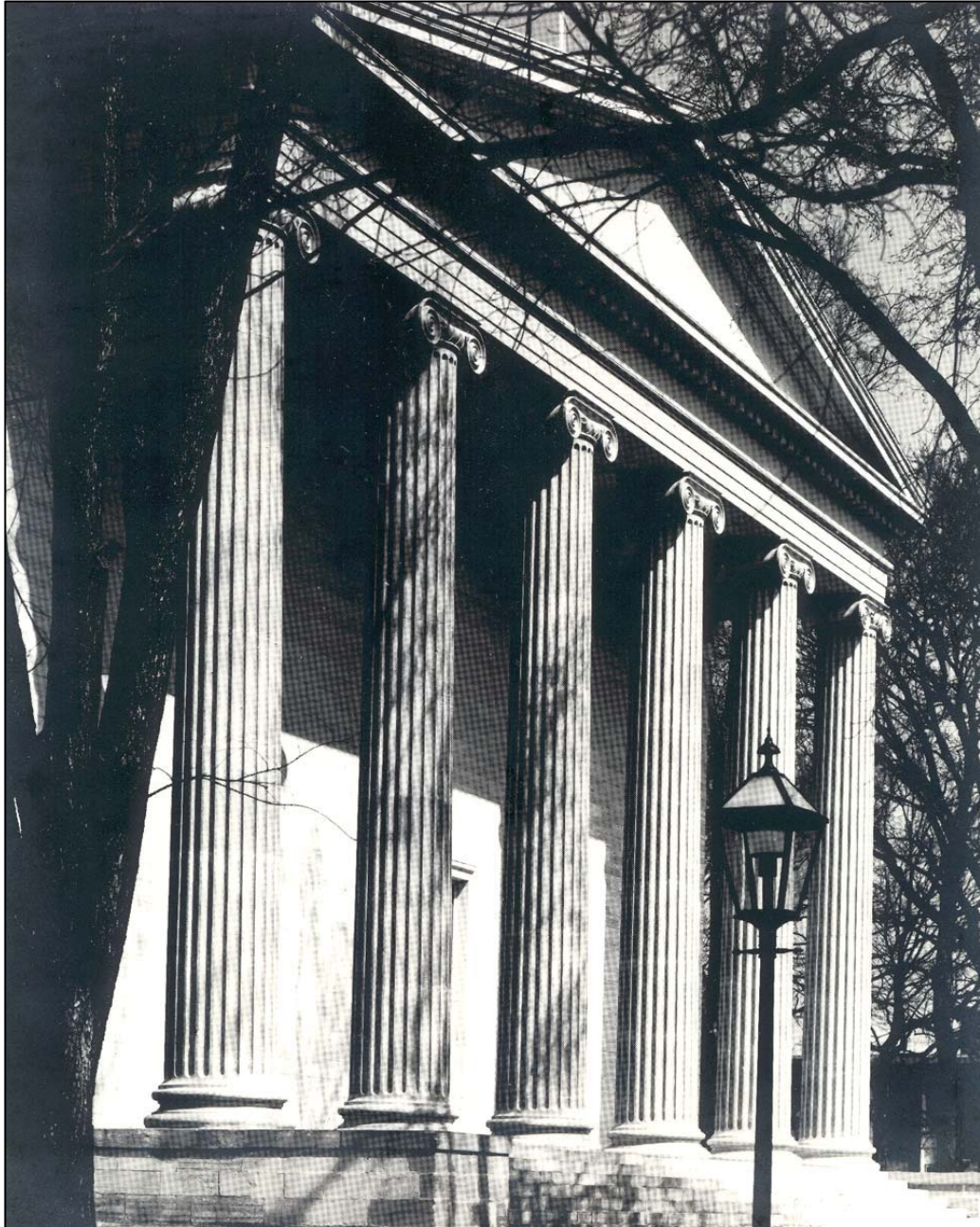


# **Citizens' Guide to the Kentucky Constitution**



**Research Report No. 137**

Revised June 2013

**Legislative Research Commission  
Frankfort, Kentucky**



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Legislative Research Commission

**Research Report No. 137**  
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Frankfort, Kentucky

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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 current Constitution, and the court decisions and proposed revisions that have occurred since 1891.

Requests for this publication have continued steadily, prompting the preparation of revised editions. This edition incorporates into the previous information constitutional changes through November 2012.

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.

Robert Sherman  
Director

Legislative Research Commission  
Frankfort, Kentucky  
June 2013



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# Chapter 1

## Introduction

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 that would establish the framework of state government and guarantee certain rights to the citizens. This first Constitution was revised by Constitutional Conventions in 1799, 1849, and 1890-1891. The current Constitution is the one that was revised in 1891. Forty 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 1890-1891 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 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 2

### 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.

This preamble to Kentucky's current 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 3

### Bill of Rights

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 that 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 that 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 that 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 current 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 that 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 that state that no man can be forced to send his child to any school to which he may be conscientiously opposed and that 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” that provided that any broad form deed that 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 that 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 4

### Distribution of Powers

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. Four 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 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 that provides that the duties of the state 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 state auditor authority that 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. that 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 that resulted in a "friendly" suit between the Legislative Research Commission (LRC) 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 that 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, consisting of legislative leaders, could exercise law-making 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 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 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 that empowered 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 LRC to act as the legislature when the legislature was not in session. The court also noted that a portion of the legislative membership—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 on 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 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 5 percent. The governor must merely report to LRC all plans to modify the budget when anticipated revenue drops more than 5 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.

The last case involved the ability of the Governor to spend state funds absent a legislatively enacted budget. The General Assembly did not pass a state budget in 2002 or 2004, and the Governor, in order to continue state services and programs, created an “executive spending plan.” The Kentucky Supreme Court held in *Fletcher v. Commonwealth ex rel Stumbo* that the passage of a budget is a legislative function. 163 S.W.3d 852 (Ky. 2005). Therefore, the Governor could not expend funds absent a legislative budget, except for constitutionally, statutorily, or federally mandated budgetary expenditures. The case also clarified that, although Kentucky does not have a constitutional provision requiring a budget, if one is passed, it must be balanced, under Sections 49, 50, and 171 of the Kentucky Constitution.



## Chapter 5

### Legislative Branch

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."<sup>1</sup>

The Kentucky General Assembly of the late 19<sup>th</sup> 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 1890-1891 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 1890-1891 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 ...."<sup>2</sup> 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.

#### 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 1890-1891 Constitutional Convention retained the number of members prescribed by the 1850 Constitution: 100 House members and 38 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 19 states whose legislatures are styled a General Assembly, while a plurality of the 50 states, 27, 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 41 of those Houses in the 49 bicameral legislative bodies so named.<sup>3</sup>

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 1890-1891 Constitutional Convention or presented to Kentucky voters in subsequent years. The concept of a unicameral legislature was considered by the 1964-1966 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.<sup>4</sup>

## Legislators

A person seeking the office of state Senator must have been a citizen and resident of the state during the preceding 6 years, be at least 30 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 2 years, be at least 24 years old, and have resided for the past year in the “county, town or city” from which he or she 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.<sup>5</sup>

Representatives are elected for terms of 2 years, while Senators serve a 4-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 3-year terms and Senators elected in 1981 and 1983 were elected to serve 5-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 2 years. All 100 House members are elected every 2 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 cents 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: a per diem expense allowance, \$135.30; a fixed sum for stationery, \$250 for House members and \$500 for Senate members; a per diem salary, \$188.22; and an allowance for legislators to travel to and from their home districts each week, equal to 110 percent of the maximum mileage allowance permitted by the federal government. For their interim work, legislators are compensated through a monthly expense allowance, \$1788.51 per month when not in session. In addition, legislators receive per diem pay of \$188.22 and a travel allowance for attending interim committee meetings. Legislative leaders and committee chairs receive additional compensation in varying amounts (KRS 6.190-6.225 and 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).



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.<sup>6</sup> 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 \$127,885.40 for the governor and \$108,720.50 for other constitutional officers in 2010.

Kentucky House and Senate members are elected from single-member districts (Section 31). The Constitution instructs the General Assembly to divide the state into 100 representative and 38 senatorial districts every 10 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 or her term, and for 1 year after the term ends, a General Assembly member may not accept any office created or one to which a pay increase has been assigned during the 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 or she has settled accounts at least 6 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.<sup>7</sup>

The length of state legislators' terms has been the subject of unsuccessful constitutional revision efforts in Kentucky. The 1890-1891 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 4-year senatorial and 2-year representative terms specified in the 1850 Constitution. Both the Constitution Review Commission of the 1950s and the Constitution Revision Assembly of 1964-1966 proposed 6-year terms for Senators and 4-year terms for Representatives, with approximately one-third of the Senate members and one-half of the House members to be elected every 2 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.<sup>8</sup> The Special Commission on Constitutional Review, created in 1987, recommended no change in legislators' terms.

### **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 40 to 100 Representatives, while Kentucky's second Constitution required no fewer than 58 and no more than 100. In both early Constitutions, the minimum number of Senators, 11 in 1792 and 24 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 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 424 members. State senates range in size from 20 in Alaska to Minnesota's 67. The smallest state house is that of Alaska, with 40 members, while New Hampshire elects 400.<sup>9</sup>

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 multimember legislative districts in one or both chambers of 23 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 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.<sup>10</sup>

The 1890-1891 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 nonlegislative 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.<sup>11</sup>

The issue of state legislative reapportionment, which generated such extensive debate in 1890-1891, 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 20<sup>th</sup> 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.<sup>12</sup>

The competing criteria for legislative districts debated by the 1890-1891 Convention delegates of population versus political subdivisions and territory also extended into the current 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> In subsequent decisions during the 1960s, the court had established and elaborated on 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 14<sup>th</sup> Amendment to the U.S. Constitution.<sup>16</sup> 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.<sup>17</sup> 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 Supreme Court in 1994 held the 1991 Reapportionment Act invalid on the basis that Section 33 mandates the division of the fewest number of counties while using the least variation in population. The court, however, delayed the application of its decision until January 1995, after the 1994 legislative elections.<sup>18</sup> In 2012, the Kentucky Supreme Court held the 2012 redistricting legislation unconstitutional, based upon Section 33.<sup>19</sup>

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 nonlegislative officers or bodies, including state and federal courts.<sup>20</sup> Constitutional revision efforts of the 1950s and of 1964-1966 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.<sup>21</sup>

## **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.<sup>22</sup>

Prior to 2000, Section 36 of the Constitution limited the General Assembly to one organizational session, not to exceed 10 legislative days, in January of odd-numbered years beginning in 1983, and one 60-day regular session to convene in January of even-numbered years. However, a constitutional amendment approved in 2000 now provides for a 30-day regular session in odd-numbered years, beginning in January and reconvening in February. The even-year regular session remained the same. A key restriction on the General Assembly in the odd-year session is a requirement that any bill raising revenue or appropriating funds shall be agreed to by three-fifths of all members elected to each house. The days of the regular sessions are to be calendar days, excluding Sundays, legal holidays, and days when neither the House nor the Senate meets. No regular session in an odd-numbered year may extend beyond March 30 of the year in which it is convened, and a session in an even-numbered year may not extend beyond April 15. (Sections 36 and 42). Because the General Assembly is given flexibility in scheduling its meeting days between January and March 30 in odd-numbered years and January and mid-April in even-numbered years, 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 on the length of special sessions, 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). The courts have stated that they will not interfere with nor enforce legislative rules, as long as they do not violate any constitutional provision.<sup>23</sup> No fewer than a majority of the members of each chamber, 51 Representatives and 20 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 3 days without the consent of the other chamber (Section 41).

Like the constitutions of almost every other state, Section 43 provides for the immunity for state legislators for speech or debate and provides that they cannot be "questioned in another place" for their activities as legislators. The courts have held that this prohibits legislators and staff from being named in lawsuits relating to their legislative activities.<sup>24</sup>

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 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, composed of the members of the House and Senate in leadership positions, organizes and authorizes legislative study of policy issues during the 9 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, 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.<sup>25</sup>

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.<sup>26</sup> In 1968, by House and Senate rules, the parallel standing committees of the two chambers were constituted as joint interim subcommittees of the LRC on 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 2012 interim, LRC committees and subcommittees, including 15 joint interim committees and task forces, their subcommittees, 5 interim special committees, and their subcommittees, and 7 statutory committees, together conducted more than 200 meetings.<sup>27</sup>

### **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.<sup>28</sup> 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.<sup>29</sup>

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

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 1890-1891 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 3 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 2010 House and Senate rules of procedure, one of the 38 senators and 25 of the 100 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.<sup>30</sup> 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 51 House members or 20 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 that contains an emergency clause must provide adequate reasons for the emergency. Such bill then becomes effective upon its passage and signature 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).

When 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 that 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 U.S. Constitution.

When a bill has been delivered to the governor, one of the constitutional legislative powers of the governor commences. The governor is given 10 days, excluding Sundays, in which to sign a bill, allow it to become law without signature, or veto the bill. In most instances, the governor must either approve or veto the entire measure; however, the governor 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, the governor must return it to the General Assembly with a statement of 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 that 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 LRC as “an independent agency of state government...which is exempt from control by the executive branch and from reorganization by the Governor...”<sup>31</sup> Specifically, the General Assembly enacted legislation that authorized 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.<sup>32</sup>

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 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 LRC within the parameters of that concept. (For a detailed discussion of *LRC v. Brown*, see Chapter 4.)

The Kentucky Constitution grants five types of powers to the General Assembly: law-making, judicial, executive, supervisory, and constitutional revision. The following summary of legislative powers follows the LRC Research Report No. 43,<sup>33</sup> except where revised to reflect later constitutional developments or otherwise indicated.

### **Law-making 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). This restriction means that, unlike other states, Kentucky is not a "referendum" state wherein legislative proposals are directly made by the people. Only the General Assembly may suspend laws (Section 15).

The 1891 Constitution contains numerous restrictions on the law-making 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). Section 13 of the Bill of Rights restricts the taking of property for public use, and a study has concluded that this section provides more protection than has been afforded under the Fifth Amendment to the U.S. Constitution.<sup>34</sup> A second major category of constitutional limits on the law-making powers is the prohibition against special and local legislation (Sections 59 and 60). An additional restriction, added in 2004 by a constitutional amendment, specifies that "Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized" (Section 233A).

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:

- Surrender or suspend the power to tax property (Section 175).
- Give or lend the credit of the Commonwealth (Section 177).
- Contract debts exceeding \$500,000, except to repel invasion or suppress insurrection (Section 49).

- 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).
- Release any debt owed to the Commonwealth or any county or city (Section 52).
- 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).
- Tax the bonds of the state, local governments, or taxing districts (Section 171).
- Provide taxes, except for public purposes (Section 171).
- 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:

- Change the salaries of public officers during their terms or provide compensation above specified limits (Sections 235 and 246).
- Compensate state constitutional officers by any method except a salary (Section 96).
- 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; the terms of members of judicial nominating commissions; and give additional jurisdiction to a family court division of circuit court (Sections 110-120), it may not:

- Alter the number of Court of Appeals or circuit judges without certification of necessity from the Supreme Court (Sections 111 and 112).
- Alter the number of district judges, after it first sets the number, without Supreme Court certification of necessity (Section 113).
- Reduce, increase, or rearrange judicial circuits or districts unless the Supreme Court certifies a change is necessary (Sections 112 and 113).
- 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:

- Enact laws concerning the powers and organization of cities that are not uniform for and within each constitutional class of cities (Section 156a).
- 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).
- 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 members of the U.S. Congress. However, the adopted amendment required all elections to be held in even-numbered years, except those for statewide-elected state officers, which are held in Kentucky in one odd-numbered year of a 4-year election cycle, beginning in 1997.

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

- Distinguish on account of race or color in distributing school funds (Section 187).
- Use any fund or tax to aid any church, sectarian, or denominational school (Section 189).
- 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:

- Permit any common carrier to contract for relief from its common law liability (Section 196).
- Provide for printing and binding of public documents other than by contract to the lowest responsible bidder (Section 247).
- Allow the employment of convicts outside the penitentiary, except on state public works, roads, and bridges, and state farms (Section 253).

Many of the law-making powers and restrictions described above have been subject to federal and state court interpretation and modification. For example, a previous requirement to maintain separate schools for children of different races was declared unconstitutional by a federal court,<sup>35</sup> and was subsequently removed by a constitutional amendment passed in 1996. As previously noted, the constitutional limit on public officers’ compensation has been modified under a decision of the state’s highest court.<sup>36</sup>

Other sections of the Constitution, not cited above, operate to restrict the law-making 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.”<sup>37</sup>

## 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- or 30-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). Additionally, each house of the General Assembly “shall judge of the qualifications, elections and returns of its members” (Section 38).

## 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.<sup>38</sup>

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 is traditionally done 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. However, a 2000 amendment abolished the elected Railroad Commission. 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. However, with the passage of the Constitutional Amendment in 2000 providing for annual legislative sessions, the General Assembly has the opportunity to pass on gubernatorial appointments in odd-numbered years. The power of the General Assembly to require the governor to seek the Senate’s consent to appointments has been upheld by Kentucky courts,<sup>39</sup> and an amendment adopted in 1992 granted the Senate specific advice and consent powers over gubernatorial appointments; but the General Assembly may not appoint executive branch officers directly.<sup>40</sup> KRS 11.160 sets forth the general procedure for Senate confirmation of appointments. A 2010 case holds that Section 93 of the Kentucky Constitution vests the state Senate with the sole right to confirm appointees to inferior state offices and nominees to boards and commissions.<sup>41</sup>

## 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 law-making 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 law-making process is Section 54, which prohibits the General Assembly from limiting the amount a person may recover for personal injury, damage to property, or 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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup> Both the Constitution Review Commission and the Constitution Revision Assembly proposed to amend Section 54 to permit enactment of a compulsory workers' compensation statute.<sup>46</sup> 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.<sup>47</sup> In 1899, the Court of

Appeals held that Section 253 did not prohibit Kentucky from having a law allowing prisoners to be paroled.<sup>48</sup> However, a 1972 work-release law, permitting voluntary employment of prisoners outside detention centers during the day, was held in violation of this section.<sup>49</sup> The Constitution Review Commission recommended repealing Section 253 as a matter that should be, and can be safely left to the General Assembly, and the Revision Assembly agreed that the section should be deleted.<sup>50</sup>

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.<sup>51</sup> 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 pari-mutuel betting on horse racing is not a lottery within the meaning of Section 226.<sup>52</sup> A 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."<sup>53</sup>

The 1988 General Assembly passed legislation that 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?<sup>54</sup>

The voters 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 issue of whether charitable gaming was legal in Kentucky resurfaced in 1990, when the General Assembly enacted laws that 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 5 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 because 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 that would permit charitable gaming. Further, the amendment provided that if the General Assembly enacted laws permitting charitable gaming, they must:

- Define what constitutes a charity or charitable organization.
- Define the types of charitable lotteries and charitable gift enterprises that may be engaged in.
- Set standards for the conduct of charitable lotteries and charitable gift enterprises by charitable organizations.
- 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.
- Provide suitable penalties for violation of statutes relating to charitable lotteries and charitable gift enterprises.
- 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.<sup>55</sup>

The voters approved the amendment in November 1992 by a vote of 777,373 to 324,824. A study of charitable gaming was conducted by LRC staff to ascertain the necessary regulatory controls that should be placed on permitted types of charitable gaming, and a law to implement the provisions of the amendment was passed in 1994 (KRS 238.500–238.995).

### **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 for 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 1890-1891 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 60 days prescribed in 1859, under the legislature's authority to do so by two-thirds vote of each chamber. The 1889-1890 General Assembly reportedly lasted 149 days, "with cost to the state in printing of \$17,223.65, and in other respects \$151,014.82."<sup>56</sup> In the interests of economy and the reduction of the number of state laws, the 1890-1891 Convention proposed to curtail the flow of special and local laws. Having done so, the delegates concluded that there was no longer any need for the General Assembly to be able to extend its biennial 60-day sessions and that 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.<sup>57</sup>

### **Past Revision Efforts**

The procedures of the General Assembly have not been a subject of active constitutional revision efforts in Kentucky, although the 1964-1966 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.<sup>58</sup> In contrast, the organization of the General Assembly has been a matter of active revision efforts, none of which succeeded until 1979 and 2000.

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 current Capitol, outmoding the prohibition against hiring more than one doorkeeper for each chamber.<sup>59</sup> 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.<sup>60</sup>



A 1950 proposal by the Constitution Review Commission to permit employment of one doorkeeper per door was not presented to the voters.<sup>61</sup> 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."<sup>62</sup> 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."<sup>63</sup> It also proposed that the General Assembly be permitted to appoint an inspector and examiner.

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 would have substituted an annual salary, fixed by law, for the per diem method of compensating legislators.<sup>64</sup>

Four proposals to establish annual legislative sessions were considered and defeated prior to 2000—in 1969, 1973, 1998, and as part of the proposed new constitution in 1967. However, in 2000, the voters approved a constitutional amendment to establish annual sessions of the General Assembly. Under the amendment, the 10-day organizational session that had been held in January of odd-numbered years is replaced with a 30-day session. The first part of the session convenes on the first Tuesday after the first Monday in January and consists of electing legislative leaders, adopting rules of procedure, and organizing committees. Legislation may also be introduced and considered during the first part of the session. The General Assembly then adjourns and reconvenes for the second part of the session on the first Tuesday in February. Legislation that was introduced but not enacted in the first part of the session is carried over into the second part of the session. Any bill introduced during the odd-year session that would raise revenue requires a 3/5 vote of all the members elected to each House. The odd-year session must adjourn by March 30. In even years, the legislature meets for 60 days and must adjourn by April 15.

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 1964-1966 revision groups would have retained the constitutional office of lieutenant governor and its function as president of the Senate.<sup>65</sup> In 24 of the states, including Kentucky, as of 2010, the presiding officer in the Senate is a Senate member elected or confirmed by that body. The constitutions of the remaining 26 states designate the elected lieutenant governor as president of the Senate.<sup>66</sup>

## Notes

- <sup>1</sup> *Debates of the 1890-91 Constitutional Convention*. P. 3821.
- <sup>2</sup> *Ibid.*, p. 5566.
- <sup>3</sup> Council of State Governments. *Book of the States: 2010*. vol 42. Lexington: CSG, 2010. P. 96.
- <sup>4</sup> Fleming, James T., and John E. Reeves. *A Comparison: the Present, the Proposed Kentucky Constitutions*. Legislative Research Commission. Informational Bulletin No. 52. Frankfort: LRC, Sept. 1986. P. 8.
- <sup>5</sup> *Grantz v. Grauman*, 302 S.W.2d 364, 367 (Ky. 1957).
- <sup>6</sup> *Matthews v. Allen*, 360 S.W.2d 135, 139 (Ky. 1962).
- <sup>7</sup> Coward, Joan Wells. "The Kentucky Constitutions of 1792 and 1799: The Formation of a Political Tradition." Diss. Northwestern Univ., 1971. Pp. 68-70, 232, and 272-73.
- <sup>8</sup> Constitution Review Commission. *Report of the Constitution Review Commission*. Frankfort: CRC, 1950. Pp. 17-18; Fleming. Pp. 8-9.
- <sup>9</sup> Council of State Governments. P. 86.
- <sup>10</sup> *Debates*. Pp. 3807-39, 3962-89, 4384-4430, 4445-52, and 4609-30.
- <sup>11</sup> *Ibid.*, pp. 4412-19.
- <sup>12</sup> Galloway, Patton. *The Legislative Process in Kentucky*. Research Report No. 43. Frankfort: Legislative Research Commission, 1955. P. 51.
- <sup>13</sup> *Ragland v. Anderson*, 125 Ky. 141, 30 K.L.R. 1199, 100 S.W. 865 (1907).
- <sup>14</sup> Jewell, Malcolm E. Kentucky Reapportionment. *Apportionment in the Nineteen Sixties*. Rev. New York: National Municipal League, 1970. P. 2.
- <sup>15</sup> *Baker v. Carr*, 396 U.S. 186 (1962).
- <sup>16</sup> *Upton v. Begley*, No. 364 (E.D. Ky. Jan. 13, 1971) unpublished opinion.
- <sup>17</sup> *Hensley v. Wood*, 329 F. Supp. 787 (1971).
- <sup>18</sup> *Fischer v. State Board of Elections*; 879 S.W.2d 475 (Ky. 1994); see also *State Board of Elections v. Fischer*, 910 S.W.2d 245 (Ky. 1995).
- <sup>19</sup> *Legislative Research Commission v. Fischer*, 366 S.W.3d 905 (Ky. 2012).
- <sup>20</sup> O'Connor, Dan. *Reappointment and Redistricting: A Menu of Methods*. Southern Legislative Conference. Council of State Governments. May 1992. Pp. 1-10.
- <sup>21</sup> Constitution Review Commission. Pp. 18-19; Fleming. Pp. 10-11.
- <sup>22</sup> *Mason's Manual of Legislative Procedure*. National Conference of State Legislatures. 2010. P. 17.
- <sup>23</sup> *Board of Trustees of Judicial Form Retirement System v. Attorney General of Com.* 132 S.W.3d 770 (Ky. 2003).
- <sup>24</sup> *Baker v. Fletcher*, 204 S.W.3d 589 (Ky. 2006); *Wiggins v. Stuart*, 671 S.W.2d 262 (Ky. App. 1984). See also *Tenney v. Brandhove*, 341 U.S. 367 (1951); *Eastland v. United States' Servicemen's Fund*, 421 U.S. 491 (1975).
- <sup>25</sup> Kentucky General Assembly. 2013 House Rule 36; Kentucky General Assembly. 2013 Senate Rule 36.
- <sup>26</sup> Galloway. Pp. 220-44.
- <sup>27</sup> Kentucky Legislative Research Commission. *Final Reports of Interim, Joint, Special, and Statutory Committees, 2012*. Informational Bulletin No. 240. Frankfort: LRC, Dec. 2012.
- <sup>28</sup> *Commonwealth v. Illinois Central R. Co.*, 160 Ky. 745, 170 S.W. 171 (1914).
- <sup>29</sup> *Louisville Trust Co. v. Morgan*, 180 Ky. 609, 203 S.W. 55 (1918).
- <sup>30</sup> Kentucky General Assembly. 2013 House Rule 48 and Senate Rule 48.
- <sup>31</sup> 1982 Kentucky Acts, Ch. 356, §1.

- <sup>32</sup> *Legislative Research Commission v. Brown*, 664 S.W.2d 907, 910 (Ky. 1984).
- <sup>33</sup> Galloway. Pp. 8-17.
- <sup>34</sup> *Implications of the U.S. Supreme Court's Kelo Decision for the Use of Eminent Domain in Kentucky*. Legislative Research Commission. Research Report No. 330. Frankfort: LRC, 2005.
- <sup>35</sup> *Willis v. Walker*, 136 F. Supp. 177 (D.C.Ky. 1955).
- <sup>36</sup> *Matthews v. Allen*, 360 S.W.2d 135 (Ky. 1962). *Commonwealth v. Hesch*, 395 S.W.2d 362 (Ky. 1965).
- <sup>37</sup> *Johnson v. Commonwealth*, 165 S.W.2d 820 (Ky. 1942).
- <sup>38</sup> 70 Am Jur 2d, Sedition, §84.
- <sup>39</sup> *Sewell v. Bennett*, 187 Ky. 626, 220 S.W. 517 (1920).
- <sup>40</sup> *Sibert v. Garrett*, 197 Ky. 17, 246 S.W. 455 (1922).
- <sup>41</sup> *Fox v. Grayson*, 317 S.W.3d 1 (Ky. 2010).
- <sup>42</sup> *Debates*. P. 3793.
- <sup>43</sup> Special Commission on Constitutional Review. *Report of the Special Commission on Constitutional Review*. Research Report No. 226. Frankfort: Legislative Research Commission, Sept. 1987. P. 19.
- <sup>44</sup> *Kentucky State Journal Co. v. Workman's Compensation Board*, 161 Ky. 562, 170 S.W. 1166 (1914).
- <sup>45</sup> Wilson, Mary Helen. *A Perspective on Constitutional Revision in Kentucky*. Legislative Research Commission. Informational Bulletin No. 119. Frankfort: LRC, Nov. 1976. P. 44.
- <sup>46</sup> Constitution Review Commission. P. 21; Fleming. P. 19.
- <sup>47</sup> *Debates*. Pp. 5386-5408.
- <sup>48</sup> *George v. Lilliard*, 106 Ky. 820, 21 K.L.R. 438, 51 S.W. 793 (1889).
- <sup>49</sup> *Commonwealth ex rel Hancock v. Holmes*, 509 S.W.2d 258 (Ky. 1974).
- <sup>50</sup> Constitution Review Commission. P. 52; Fleming. Pp. 87-88.
- <sup>51</sup> *Otto v. Kosofsky*, 476 S.W.2d 626 (Ky. 1971).
- <sup>52</sup> *Commonwealth v. Kentucky Jockey Club*, 238 Ky. 739, 38 S.W.2d 626 (1971).
- <sup>53</sup> Fleming. P. 95.
- <sup>54</sup> 1988 Kentucky Acts, Ch. 116.
- <sup>55</sup> 1992 Kentucky Acts, Ch. 113.
- <sup>56</sup> *Debates*. P. 5566.
- <sup>57</sup> *Debates*. Pp. 4921-22.
- <sup>58</sup> Fleming. Pp. 16 and 18.
- <sup>59</sup> Vandenbosch, Amry. Ed. "The Constitution as Basic Law." *The Constitution of Kentucky: Suggestions for Revision*. Lexington: Univ. of Kentucky. Bureau of Government Research, 1948. P. 10.
- <sup>60</sup> Burns, Virgil. *A Defense of Kentucky's Constitution: A Study in Democracy*. New York: Vantage Press, Inc., 1952. P. 53.
- <sup>61</sup> Constitution Review Commission. P. 51.
- <sup>62</sup> Fleming. Pp. iii and 18-19.
- <sup>63</sup> Special Commission on Constitutional Review. P. 20.
- <sup>64</sup> *Ibid*, p. 13.
- <sup>65</sup> Fleming. P. 14.
- <sup>66</sup> Council of State Governments. Pp. 107-108.

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## Chapter 6

### Executive Branch

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?<sup>1</sup>

#### Current Constitution

Kentucky's fourth and current Constitution, that of 1891, is a typical late 19<sup>th</sup>-century charter. Unlike more recent documents of other states, it is quite lengthy, with approximately 30 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, the governor and lieutenant governor are elected jointly by popular vote of the people for a term of 4 years; both are 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 30 years of age and a citizen and resident of Kentucky for the 6 years immediately preceding the 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. The governor is the commander-in-chief of the Army, Navy, and Militia of the Commonwealth (Section 75); may fill vacancies in public offices not otherwise provided for under the Constitution (Section 76); may remit fines and forfeitures imposed in judicial proceedings; commute sentences; and grant reprieves and pardons (Section 77). The governor may require information from executive officers, except in cases of impeachment (Section 78), and must inform the General Assembly as to the state of the Commonwealth, recommending "such measures as he may deem expedient" (Section 79). The governor also has the power to call extraordinary, or special, sessions of the General Assembly that otherwise meets in regular session every year (Section 80). 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 10 days to veto or sign any bill that has passed both chambers of the General Assembly. If a bill is vetoed, it is returned to the General Assembly with 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. If the

governor neither signs nor vetoes a bill within 10 days, it becomes law 90 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 that spend state funds, the governor has the power of the line-item veto that is the power to veto specific lines and items 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.

### **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 4 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, Lieutenant 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, Section 91 of the Constitution provides 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 4-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. 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 1891 Constitution also required the election from special districts of a three-member Railroad Commission, whose duties were established statutorily. Like other elected state officers, members of this commission served for 4 years and were elected at the same time as the governor (Section 209). However, a 2000



amendment approved by the voters abolished the Railroad Commission and eliminated the elected offices of its commissioners.

### **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 4-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 4-year term. While the Constitution of 1792 placed no limitation on the number of terms a governor could serve, every Constitution since 1799 has prohibited a governor from succeeding himself or herself. 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 2 years prior to election, a logically low requirement in a pioneer state, each subsequent Constitution has placed the minimum at 6 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 clergy could not be elected governor or 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 occupied 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 clergy engaging in the rough and tumble life of late 19<sup>th</sup>-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 current 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 current 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, and Constitutional Officers**

The second, third, and current Kentucky Constitutions provided for a lieutenant governor. Until 1992, the constitutional duties of the office remained the same: 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 4-year terms; a treasurer was elected for a 2-year term. Under the current Constitution, as amended in 2000, seven state executive officers are elected by popular vote: the governor; lieutenant governor; treasurer; auditor of public accounts; attorney general; secretary of state; and commissioner of agriculture, labor and statistics. 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,”<sup>2</sup> 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.<sup>3</sup>

In 1992, voters ratified an amendment that 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.<sup>4</sup>

### **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 U.S. 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 100 years following the adoption of the current 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.

### **Goebel Election Case**

Perhaps the most interesting of these cases involved the disputed gubernatorial election of November 1899 and Section 90 of the Constitution that 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 Capitol 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 Capitol 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. dismissed, 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.<sup>5</sup>

### **Governor as Commander-in-Chief**

The state's highest court has taken a similar stand of more or less nonreviewability 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 the governor's reasons for doing so may not be questioned by the courts.<sup>6</sup>

### **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 the governor may revoke the pardon on failure to meet the conditions. The Kentucky Supreme Court has also held that the judiciary does not have the power to review the action of the governor in granting a pardon.<sup>7</sup> In 1997, the court held that it was "patently clear" that

Section 77 contains basic mandated requirements: 1) that the movant file on application for clemency with the governor, and 2) must have the governor file with each application a statement of the reasons for the decision.<sup>8</sup> Section 77 leaves the decision to grant clemency to the governor's "unfettered discretion," and the state has not made the clemency process an integral part of the state's overall adjudicative process. Section 77 in no way establishes specific procedures to be followed and imposes no standards, criteria, or factors that the governor needs to consider.<sup>9</sup>

### **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 that 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.<sup>10</sup> The court has also held, however, that the governor may amend the call by adding, but not deleting, subjects to be considered.<sup>11</sup> The court has held that the lieutenant governor may call a special session in the absence of the governor.<sup>12</sup> Additionally, the governor has discretion as to whether or not to call a special session, and courts will not force a governor to do so.<sup>13</sup>

### **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. Because the lieutenant governor no longer presides over the Senate, the president of the Senate signs bills that have passed.

### **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 a 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 the governor was motivated by conscientious convictions in recording disapproval. When so restrained, a chief executive would hesitate to base a veto on apparently unfounded reasons but would endeavor to furnish and set forth reasons and grounds of apparent substance of his opposition.<sup>14</sup>

## 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 the office is not rendered ineffective thereby, or 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 4).

In *McClure v. Augustus*, 85 S.W.3d 584 (Ky. 2002), the Kentucky Supreme Court construed the *Brown* and *Johnson* cases to hold that, while a sheriff as an executive officer has certain common law powers, such as the power to appoint and remove deputies, the General Assembly could "take common-law powers away from executive constitutional officers and assign them to different executive officers or agencies without violating the constitution."

## Rubber Dollar Case

While a number of sections of the current 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 "rubber dollar case." There the court held that the salary limitations imposed by this section may be interpreted and applied in terms that 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 calculation by the Department for Local Government, as required by KRS 64.480, the Governor's maximum 2013 salary is \$135,970.08 based on the Consumer Price Index and the 2012 Budget (KRS 64.480).

## Limiting the Governor's Powers

The governor's powers are limited by four cases that 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); *Legislative Research Commission ex rel. Prather v. Brown*, 664 S.W. 2d 907 (Ky. 1984); and *Fletcher v. Commonwealth ex rel. Stumbo*, 163 S.W.3d 852 (Ky. 2005). For a complete discussion of these cases, see Chapter 4.

### Proposed Constitutional Amendments

Kentuckians have gone to the polls to vote on 79 amendments to the 1891 Constitution. Forty-one of these amendments have passed. Of the proposed amendments, 19 have pertained to the executive branch. Only six of these have passed. Proposed amendments relating to executive revision are presented below.

#### Proposed Amendments to the Constitution of 1891 Affecting the Executive Branch

##### 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 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 abolished the statutorily established State Board of Education and established an appointed State Board of Education; would have abolished the elected superintendent of public instruction in favor of a superintendent appointed by the board
1990	28	Would have authorized the General Assembly to create 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

**Adopted**

<b>Year Submitted</b>	<b>Sections Affected</b>	<b>Purpose</b>
1949	246	Repealed the \$5,000 salary limit of Section 246 and substituted limits of \$12,000 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 60 "legislative days," allowing both chambers to recess near the end of each session and then return to consider overriding vetoed legislation; provided for a 10-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, 4, 82, 83, 84, 85, 86, 87, 91, 93, 94, and 95	Required joint election of the governor and lieutenant governor; permitted statewide constitutional 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
2000	6 and 42	Provided that the General Assembly meet in annual session in odd-numbered years for 30 days; provided that bills raising revenue or appropriating funds in an odd-numbered year session be agreed to by 3/5 of all members elected to each House; adjourned odd-numbered year session by March 30
2000	201, 209, and 218	Abolished the Railroad Commission

**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 1964-1966, the Special Commission on Constitutional Review of 1987, and the ongoing efforts within the framework of the interim committee structure of the Legislative Research Commission.

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.



**One-term Limitation.** The constitutional one-term limitation was a recurring concern prior to the adoption of the 1992 amendment. According to 2012 statistics from the Council of State Governments, only one state now prohibits its governor from serving consecutive terms in office.<sup>15</sup> The Constitution Review Commission, the Constitution Revision Assembly, and the Special Commission on Constitutional Review recommended removing this provision. The removal of the one-term limitation in 1992 permitted Paul Patton to succeed himself in office.

**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 on the lieutenant governor when the governor was absent from the state. Twenty-nine states have similar provisions in their constitutions. One confers the executive power on the lieutenant governor if the governor's absence exceeds a specified length of time; one state confers executive power on the lieutenant governor only in emergency situations; and one state confers executive power only if the governor asks the lieutenant governor to serve in that capacity.<sup>16</sup>

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.

**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.

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 and provides for the following line of succession: lieutenant governor, president of the Senate, attorney general, and auditor.

Left unaddressed by recent constitutional revisions is a related issue. Critics maintain that the current 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 or her 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.

## General Assembly Proposals

The 1980 General Assembly proposed a constitutional amendment that would have permitted statewide constitutional officers, including the governor, to serve two consecutive terms, then seek reelection 4 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 that 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 1986.

The 1990 General Assembly proposed a constitutional amendment that 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 lieutenant 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 procedures 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, because 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.

The 2000 General Assembly proposed, and the people of Kentucky ratified, an amendment that abolished the Railroad Commission and shifted its responsibilities in regulating railroads to the

appropriate state agency with jurisdiction over the matters. Under implementing legislation passed along with the amendment proposal, the state Transportation Cabinet assumed the duties and responsibilities of the former Railroad Commission on December 1, 2000. The incumbent railroad commissioners remained in office for their current terms until 2003 but had no duties after December 1, 2000. No election for these offices was held in 2003.

In 2011, an amendment was proposed by the General Assembly and passed by the voters in 2012 to provide that citizens have a personal right to hunt, fish, and harvest wildlife, subject to statutes passed by the General Assembly and regulations adopted by the designated state agency to promote wildlife conservation and management and preserve the future of hunting and fishing. The amendment provides that public hunting and fishing shall be a preferred means of controlling wildlife.

### **Constitution of Kentucky: Strengths and Weaknesses of the Executive Branch**

Most of the provisions of the Constitution of 1891 that 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 the office elective, giving the governor veto power, allowing the governor to call special sessions of the legislature, and conferring upon the governor 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. Prior to 2000, 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. The most significant development is the passage of an annual sessions amendment in 2000 that provides for a regular legislative session in odd-numbered years. Additionally, the courts have recognized that the General Assembly, as the law-making body, retains the power to set the limits of the executive's authority.

#### **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 seven other executive officers to be elected independently of the governor (Section 91). The governor thus shares executive power and responsibility with seven 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 with the passage of the annual sessions amendment.

Like most of the state constitutions of the time, Kentucky's 1891 document reflects the 19<sup>th</sup>-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.<sup>17</sup> 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 or may be of a different political party. Some officials view themselves as rivals of the governor and pursue their own plans independently of the chief executive. Others argue that the division of power permits the executive officers to provide a check and balance on each other. For example, the state auditor's function of independently delving into the workings of state government, and the attorney general's ability to investigate executive branch issues might be seen as a needed restriction on the powers of the other offices.

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. Chandler in 1934 and Lieutenant Governor Thelma Stovall in 1978 called special sessions when their Governors were absent from the state, establishing their own agendas in the call. The conflict between Governor Breathitt and Lieutenant 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 that 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.

Kentucky has seven elected state executive officials. In comparison, according to the Council of State Governments, in 2012, 18 states have equal or greater popularly elected state executive officials, and 31 states have fewer.<sup>18</sup>

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 that strengthened the General Assembly were approved in 1979 and 2000. One amendment, passed in 1979, permits the General Assembly to pass four rather

than two proposed constitutional amendments each session. The second amendment, passed in 2000, provides for annual legislative sessions. Thus the General Assembly now convenes every year. Another factor strengthening the General Assembly was the establishment of various legislative oversight committees that 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 that were challenged by the Governor as violating the separation of powers between the two branches. The resulting litigation is discussed in Chapter 4.

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, Jones, and Patton, has been the creation of a program cabinet and program agency system that group together state agencies that 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 gubernatorial 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 4). 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 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 Commission. 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.

### Notes

<sup>1</sup> *Debates of the 1890-91 Constitutional Convention*. P. 1104.

<sup>2</sup> Smith, Z. F. *The History of Kentucky*. Louisville: Courier-Journal Job Printing Co., 1885. P. 784.

<sup>3</sup> *Proceedings and Debates*. P 1424.

<sup>4</sup> *Ibid*, p. 4459.

<sup>5</sup> 56 S.W. 177, at 184.

<sup>6</sup> *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).

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

<sup>8</sup> *McQueen v. Patton*, 948 S.W.2d 418 (Ky. 1997).

<sup>9</sup> *Baze v. Thompson*, 302 S.W.3d 57 (Ky. 2010).

<sup>10</sup> *Trenton Graded School District v. Board of Education*, 278 Ky. 607, 129 S.W.2d 143 (1939).

<sup>11</sup> *Stickler v. Higgins*, 269 Ky. 260, 106 S.W.2d 1008 (1937).

<sup>12</sup> *Royster v. Brock*, 258 Ky. 146, 79 S.W.2d 707 (1935).

<sup>13</sup> *Geveden v. Commonwealth*, 142 S.W.3d 170 (Ky. App. 2004).

<sup>14</sup> *Arnett v. Meredith*, 275 Ky. 233, 121 S.W.2d 36 (1938).

<sup>15</sup> Council of State Governments. *Book of the States, 2012*. Lexington: CSG, 2012. Pp. 214-215.

<sup>16</sup> *Ibid.*, pp. 248-249.

<sup>17</sup> Fesler, James W. "The Challenge to the States." P. 8.

<sup>18</sup> Council of State Governments. *Book of the States, 2012*: Lexington: CSG, 2012. Pp. 231-236.

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*Matthews v. Allen*, 360 S.W. 2d 135 (Ky.1963).

*McQueen v. Patton*, 948 S.W. 2d 418 (Ky. 1997).

*McQueen v. Patton*, 118 F. 3d 460 (6<sup>th</sup> Circuit 1997), cert. denied, 521 U.S. 1130, 117 S. Ct. 2536, 138 L. Ed. 2d 1035 (1997).

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## Chapter 7

### Judicial Branch

#### 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 20 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 4 years. The chief justice is the executive head of the Court of Justice (Section 110).

The Court of Appeals consists of 14 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 4 years and who serves as 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 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 multijudge circuits, the judges choose a chief judge for a 2-year term who serves as the administrative head of the circuit court (Section 112). In 2002, Section 112 was amended to permit the Supreme Court to designate one or more divisions of circuit court within a judicial circuit as family court division. A circuit court division so designated retains the general jurisdiction of the circuit court and shall have additional jurisdiction as may be provided by the General Assembly.

District court is held in each county. District judges are elected from judicial districts that 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 nonpartisan 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 8 years, and district judges for terms of 4 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 2 years. The person must have been a licensed attorney for 8 years to serve as Supreme Court justice, judge of the Court of Appeals, or circuit judge; and must have been licensed for 2 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 that 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 differences were not settled 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 2 years they both held sessions. In 1826, the General Assembly 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 of 1850.

The third Constitution again used the federal language and further provided for four Court of Appeals judges to be elected for terms of 8 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 8 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 Constitution 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. The Constitution 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 or 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 versions 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 the 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 a more balanced caseload, optimum use of judges in districts where caseloads are 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 Kentucky Supreme Court 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 policy-making 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 that 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 2013, the salary levels are as follows:

### Judicial Salary Levels

Supreme Court	\$135,502	Chief Justice \$5,000 more
Court of Appeals	\$130,044	Chief Judge \$3,000 more
Circuit Court	\$124,618	Chief Regional Judge \$1,000 more
District Court	\$112,668	Chief Regional Judge \$1,000 more

### 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 (1964-1966)

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 currently 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 3-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 on concerns about nationwide trends toward excessive spending in judicial elections and negative effects of political pressures judges currently face.

### Other Significant Developments

The General Assembly abolished commercial bail bonding in 1976 and replaced the system with a pretrial system operated under the jurisdiction of the Court of Justice by the Administrative Office of the Courts. In this system, there are pretrial release officers available to each district court and circuit court who visit jails and make pretrial release investigations and recommendations to judges assigned to hear pretrial release matters. The defendant may be



required to post bail, but the deposit is given to the state and not to a commercial bondsman; or the defendant may be released on his or her own recognizance or other form of security; or the defendant may be retained in jail. A uniform schedule of bail for minor offenses has been issued by the Supreme Court. Kentucky was the first state to abolish commercial bail bonding.

The General Assembly has funded bonding and construction funding for courthouse renovation and courthouse construction resulting in new court facilities in many counties. The Administrative Office of the Courts has developed a Law Related Education Program to be utilized in the school system to explain the court system and legal basics to students.

A more recent development has been the creation of family courts in which domestic relations cases are heard by selected district judges (meeting the constitutional criteria for a circuit judge) and circuit judges. In counties where the family court is in effect, domestic relations cases, whether in the district court or circuit court, are combined, and the same judge disposes of all issues in the matter in order to avoid disparate treatment of the case. Follow-up and additional proceedings in the matter are normally handled by the same judge who handled the matter initially. A family court constitutional amendment was proposed by the General Assembly and approved by the voters in 2002.

### Cases

*Commonwealth v. Schumacher*, 566 S.W.2d 762 (Ky. App. 1978).

*Davis v. Delahanty*, 551 S.W.2d 227 (Ky. 1977).

*Ex parte Auditor of Public Accounts*, 609 S.W.2d 682 (Ky. 1980).

*Ex parte Farley*, 570 S.W.2d 617 (Ky. 1978).

*Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

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

*Nicholson v. Judicial Retirement and Removal Commission*, 562 S.W.2d 306 (Ky. 1978).



## Chapter 8

### Current 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.

Because the provisions touch so many separate areas, the sections of the Constitution that relate to taxation and finance are identified and summarized below.

Section 36. In an odd-year legislative session, no bill raising revenue or appropriating funds shall become a law unless it shall be agreed to by three-fifths of all the members elected to each house.

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
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 more—\$1.50 per \$100 assessed valuation
- Cities between 10,000 and 15,000—\$1 per \$100 assessed valuation
- Cities with less than 10,000—75 cents per \$100 assessed valuation
- Counties and tax districts—50 cents per \$100 assessed valuation

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 157B. No city, county, or taxing district shall expand any funds in any fiscal year in excess of the revenues for that year.

Section 158. The maximum indebtedness of cities, counties, and taxing districts is set. The General Assembly shall have the power to establish additional limits on indebtedness and conditions under which debt may be incurred.

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 aged 65 or older or who are classified as totally disabled under a program of the U.S. government or any retirement system. Cities may exempt factories from property tax for 5 years. The General Assembly may provide by law an exemption for all or any portion of the property tax for any class of personal property.

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 5 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, become a stockholder in a corporation, or 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 \$4.5 million 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 that 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. Because the annual expenditure by state government in 1891 has been estimated at about \$2 million, a debt of about 25 percent of the total appropriation could be incurred. By comparison, in fiscal year 2010, the general fund appropriations alone were \$9.3 billion. In that fiscal year, \$500,000 represented less than .005 percent of estimated general fund revenues.

### **New Provisions**

All other provisions of the 1891 Constitution that 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 on 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.<sup>1</sup>

It was argued that church property should not be given a blanket exemption; some delegates were 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 that 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 that 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.<sup>2</sup>

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 2 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. In 1998, this section was further amended to permit the General Assembly to exempt personal property.

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 because the property tax was the primary revenue source throughout the state. The method the delegates 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 office and be subject to legal penalties. Some delegates had argued that 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."<sup>3</sup> 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."<sup>4</sup>

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 that 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 that 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 that 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.<sup>5</sup>

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.<sup>6</sup>

Still other delegates argued that someone in the community could always object to an expenditure of money and that maximums were 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.<sup>7</sup>

Another provision that would create problems after the adoption of the Constitution was Section 158 that 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."<sup>8</sup>

An additional barrier to cities' indebtedness was the requirement of a two-thirds majority of the electorate voting on any such indebtedness. This provision was removed by amendment in 1994. 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.<sup>9</sup>

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 firsthand 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 that 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.

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.

The court has also allowed school boards to create nonprofit corporations that 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 that define the allowable types of state debt. Invoking Section 50, the court disallowed a plan for providing medical malpractice coverage for Kentucky physicians that 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.<sup>10</sup>

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.”<sup>11</sup>

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 25 percent to 35 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. Because 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 that was higher than that of comparable property owners.

In *Eminence Distillery v. Henry County* (1918), the Supreme 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 100 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 75 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 percent, 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 1 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 82 percent of fair cash value and directed the Property Valuation Administrators (PVAs) to increase assessment levels as needed for compliance with the 100 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 Supreme Court reaffirmed the Revenue Cabinet's authority to ensure that property is assessed by the local PVA 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."<sup>12</sup>

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. The court 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.

The Kentucky Supreme Court construed the scope of Section 230 and held in *Fletcher v. Stumbo*, 163 S.W.3d 852 (Ky. 2005), that the Governor has no constitutional authority to exercise legislative powers and order the appropriations necessary to prevent the imminent collapse of governmental services when the General Assembly has failed to do so; that the Governor possesses no emergency or inherent powers to appropriate money from the state treasury that the General Assembly, for whatever reason, has not appropriated; and that the Governor's spending plan was unconstitutional. This case overruled an older case, *Miller v. Quertermous*, 304 Ky. 733, 202 S.W.2d 389 (Ky. 1947), that had approved executive branch spending on essential services during emergencies.

Significantly, the courts have also ruled that the General Assembly has the power to address budgetary issues by suspending statutes in a budget bill: *Beshear v. Haydon Bridge Co.*, 304 S.W.3d 682 (Ky. 2010); *Baker v. Fletcher*, 204 S.W.3d 589 (Ky. 2006).

### **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 approximately \$8.3 million in road and bridge bonds. The provisions of this amendment have not been used since the 1920s and 1930s because of the 1945 amendment that 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 that 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 \$11.2 million to \$179 million. The assessment on tangible personal property rose from \$128.7 million to \$232.8 million. The assessment on intangible property rose from \$68.6 million to \$246.3 million. Although the assessment figure on these classes of property rose, the rate established for taxing them was low. The amendment was followed by legislation that 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 2010 was \$655.8 million. Net receipts from the motor fuels taxes are distributed in the following manner:

**Distribution of Net Receipts From Motor Fuels Taxes  
Fiscal Year 2010**

Regular Road Fund	\$372.4 million
Rural Secondary Program	\$130.5 million
Municipal Aid	\$45.3 million
County Road Aid	\$107.6 million

The net receipts from the motor vehicle usage tax for FY 2010 were \$332.8 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 \$19.9 million.

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 on 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 during the tax year, taxes must be paid based on the market value.

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. 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 persons classified as totally disabled by an agency of the United States government regardless of the age of the taxpayer. An amendment adopted in 1998 extended the Homestead Exemption to persons classified as totally disabled by any retirement system.

In 1972, the first year that the original homestead amendment went into effect, exemptions totaled \$695.8 million. 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 totaling \$1.1 billion, amounting to 5 percent of the total real estate assessment. In 1996, exemptions under the homestead amendment had grown to \$9.4 billion, accounting for approximately 9.6 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 that 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. The statute further provides for an adjustment in the amount of exemption every 2 years if the cost of living index has changed as much as 1 percent. The value of the Homestead Exemption for 2013 was \$36,000.

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 10 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 90 percent to 75 percent the state-appropriated school funds to be divided on a per capita basis. The 1953 amendment repealed Section 186 that 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 \$9 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 current 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, 2 acres in the country) and all parsonages occupied as a home by a minister of religion and appurtenant grounds were exempt.

A 1994 amendment to Section 157 removed the requirement of a two-thirds majority of the electorate voting to approve any indebtedness by a city, county, or other taxing district.

A 1996 amendment to Section 180 removed the authority of the General Assembly to authorize counties, cities, or towns to levy a poll tax of up to \$1.50 per person for the right to vote. While this authorization had not been used in modern times, it was seen as a vestige of the times when groups could be effectively kept from voting because they could not afford the cost of voting.

A 1998 amendment to Section 170 extended to the General Assembly the right to take statutory action to exempt from the property tax any class of personal property. The amendment also removed constitutional language that specifically prohibited any laws that exempted or omitted property from taxation. Until this amendment, only a constitutional change could be used to remove any property from assessment for property tax.

Proposed constitutional amendments relating to taxation and finance that have been defeated are listed below.

### Defeated Constitutional Amendments Relating to Taxation and Finance

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 on the ballot, voted on 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 10 years

### 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 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 that 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 current 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 86 years that 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 that carry the full faith and credit of the Commonwealth and have first call on any or all of the Commonwealth's resources for repayment. The interest on revenue bonds is normally one-fourth of 1 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 that could easily lend itself to abuse, especially in the area of capital construction.

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. 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. 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. This conclusion was echoed in a 2006 task force report that recommended additional flexibility for local governments.<sup>13</sup>

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. However, in 2009, the General Assembly revised budgetary guidelines to require the three branches of government to submit a budget reduction plan in each biennial budget, in the event of a revenue shortfall in the General Fund or the Road Fund of more than 5 percent (KRS 48.130, 48.705).

Additionally, each branch would also submit a surplus expenditure plan (KRS 48.140). However, shortfalls of more than 5 percent or surpluses of more than 2.5 percent would still have to be addressed by a future General Assembly.

### Notes

<sup>1</sup> *Debates of the 1890-91 Constitutional Convention*. Beckham. P. 2711.

<sup>2</sup> *Debates*. Bullitt. P. 2746.

<sup>3</sup> *Debates*. Kennedy. P. 2750.

<sup>4</sup> *Debates*. Johnston. P. 2750.

<sup>5</sup> *Debates*. Young. P. 2872.

<sup>6</sup> *Debates*. McDermott. P. 2870.

<sup>7</sup> *Debates*. McKay. P. 2878.

<sup>8</sup> *Debates*. P. 2892.

<sup>9</sup> *Debates*. Phelps. P. 2893.

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

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

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

<sup>13</sup> Kentucky. Legislative Research Commission. *Final Report of the Task Force on Local Taxation (House Bill 272)*. Research Memorandum No. 500. Frankfort: LRC, 2006. P. vi.

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## Chapter 9

### Local Government

#### 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, 100 delegates gathered at what is now the Old Capitol in Frankfort to attend a constitutional convention that would not formally adjourn until September 28, 1891. After 226 sessions that 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 over time to reflect the changing needs and desires of the citizens of this state.

Kentucky's current 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.”<sup>1</sup> Because of 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 29 topics. Section 60 prohibits the legislature from indirectly enacting any special or local legislation by repealing any part of a general act that 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 that 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 1 year thereafter for appointment or election to civil office or for receiving increased compensation during said term, with the exclusion of “such offices as may be filled by the election of the people.” Section 165 prohibits any person from holding incompatible offices or employment’s 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 who have been convicted of a felony or a high misdemeanor from holding public office.

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, any county, any city, or any town, or any member or officer of the General Assembly shall be guilty of a felony and requires that that part of the punishment be disqualification from holding office if the officer directly or indirectly receives a profit from the use of public funds in his or her charge.

The 1891 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 20 years. This section requires such franchises to be let by bid after advertisement to the “highest and best” bidder unless any or all bids are rejected.

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 1891 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.

#### 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 fewer

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 Assembly.

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

One case 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 order the legislative branch to reclassify the City of Berea.

Prior to the Berea case, the 1986 session of the Kentucky General Assembly enacted KRS 81.032 through 81.036. This legislation establishes statutory 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 that is not reflected in the census figures. The affidavit must be supported by documentation that may include more recent property valuation information, door-to-door population counts, or other municipal data such as annexation records that 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. Upon reclassification, the General Assembly is required to provide the secretary of state a copy of the certified information that was presented to the General Assembly.

### **Municipal Officers**

The election of municipal officers is governed by Section 160 of the Constitution that 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 cities of the fourth, fifth, or sixth classes may be appointed or elected, as provided by law. The terms of mayors are set at 4 years or until their successors qualify, and the terms of members of legislative bodies are 2 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. A 1986 amendment now allows mayors or chief executive officers of cities of the first or second class to serve three consecutive terms before becoming ineligible for a succeeding term.

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, 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.

Section 152 specifies that vacancies in offices are to be filled initially by appointment. The appointee serves until the next regular city, county, district, or state election, unless that election takes place less than 3 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 4 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 disqualification's for public office.

Section 234 requires all city, county, and town officers to reside within their respective districts 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 that are not also offered to the public on any common carrier (Section 197).

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

Section 45 makes any person who has served as a city, county, town, or district collector of taxes or public money ineligible to serve in the General Assembly unless the person has received a discharged of the obligation from the respective jurisdiction at least 6 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 to function on a day-to-day basis 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 constitutional 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. Such offices as sheriff, justice of the peace, and constable developed there.<sup>3</sup> By the time Kentucky was admitted to the Union on June 1, 1792, 9 counties had been established, and within 8 years 43 more counties were created.<sup>4</sup>

### **Creation of Counties**

At the time of the adoption of the 1850 Constitution, Kentucky had 100 counties. In the 40 years before the Constitutional Convention of 1890, an additional 19 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, 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.<sup>5</sup>

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 10 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 current 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 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. Additionally, the city of Louisville and Jefferson County, under a new form of government known as a consolidated local government, merged in 2003.

## 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 (also known as a magistrate or a commissioner) and one constable. Section 142 requires each county to have no

fewer 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 4-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 1984, the voters of the Commonwealth ratified an amendment to the Constitution that 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 that of surveyor, have become outdated and retain few statutory duties. Another, the constable, while rarely performing law enforcement duties, has assumed new duties such as serving process for the state's court system or acting as bailiff. 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 and Fayette Counties have consolidated these offices.

The "judicial amendment" to the Constitution that 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 nonjudicial powers and duties on county judges and justices of the peace. Section 124 provides that:

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 the governing body of a county.

## **Qualifications**

The Constitution sets the qualifications for county officials. Section 100 requires the county clerk to be at least 21 years of age, while all other elected officials must be at least 24. All candidates for office must be citizens of Kentucky. They must have resided in the Commonwealth for at

least 2 years and in the county or district in which they are candidates for at least 1 year preceding their election to office (Section 234). Section 100 requires candidates for Commonwealth's Attorney to have been a licensed practicing attorney for 4 years prior to being elected. Candidates for county attorney must have practiced law for at least 2 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; upon conviction for a misdemeanor or felony; upon conviction for misfeasance or malfeasance in office or willful neglect in the discharge of their duties while in office; or by any other procedure that the General Assembly may establish (Sections 66, 67, 68, 150, and 227). Section 235 authorizes the General Assembly to enact laws that 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 75 percent of the fees collected by said officers, respectively, and paid into the Treasury." In 1982, the General Assembly 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.<sup>6</sup> 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 that granted home rule powers to county governments. Deeming the delegation of legislative authority in the 1972 statute 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 26 specified public functions. The county home rule statute also 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 that 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 for 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 that “stretches” as the purchasing power of the dollar decreases or increases.<sup>7</sup> 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 Department for Local Government 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:

$$\frac{\text{Consumer Price Index}}{100} = \frac{X}{\text{Constitution limit}} \quad [X \text{ being the maximum compensation}]$$

As of December 2012, the \$7,200 limit is \$68,169.48, and the \$12,000 limit is \$113,615.80.

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. Deweese* narrowly defined “officers,” as used in Section 246, to mean only those officers specifically mentioned in the Constitution.<sup>8</sup> 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 were subject to the compensation limits of Section 246.

However, House Bill 810 (KRS 64.527), enacted by the 1998 General Assembly, made significant changes in the way certain county officials, including sheriffs, county clerks, county judge/executives, and jailers who operate a full-service jail are compensated.

HB 810 eliminated the maximum salary for the specified officers and established a new salary schedule based on the varying population of the counties and the years of service of the officeholder. After adjustment for the Consumer Price Index, the maximum salary for these officers in 2012 is \$113,615.80; the minimum is \$62,488.69.

Some controversy has erupted over the provisions of HB 810. A lawsuit was filed in the Campbell County Circuit Court challenging the salary provisions in HB 810. In September 1998, the Campbell County Circuit Court ruled that HB 810 is:

...declared unconstitutional to the extent that it declares the offices in issue (county clerks, sheriffs, county judge/executives, and jailers operating a full-service jail) to have duties or jurisdiction co-extensive with that of the Commonwealth without specifying said duties or jurisdiction..." and "...that the Defendant and the parties aligned with the Defendant, Commonwealth of Kentucky, are permanently enjoined from implementing and enforcing these provisions of HB 810 as being in excess of the limits set forth in the Constitution of Kentucky Section 246.

The Department for Local Government, among others, requested that this case be heard by the Kentucky Supreme Court. The court unanimously overturned the Campbell Circuit Court Decision and upheld the constitutionality of HB 810 in *Kentucky Sheriff's Association v. Fischer*.<sup>9</sup>

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 2012 dollars, county attorneys will be compensated with state dollars to the limit of \$68,169.48 for their state prosecutorial duties. The counties are permitted by the Constitution to contribute to the county attorney's salary up to the \$113,615.80 (\$12,000) limit.

Section 161 prohibits the compensation of any city, county, or municipal constitutional officer from being changed after election or appointment or during his or her 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.<sup>10</sup>

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

Section 106 of the Kentucky Constitution recognizes the fact that county officials may be allowed fees for their services: “The fees of county officers shall be regulated by law.” This section and KRS 564.350 also require circuit clerks, county clerks, sheriffs, and jailers in counties containing more than 70,000 in population to be paid by salary out of the State Treasury. The salaries of these officers, their deputies, and their office expenses are not to exceed 75 percent of the fees collected by the officers. Jailers and circuit clerks are no longer fee officers, but the fees collected by the sheriff and the county clerk must be paid to the Finance and Administration Cabinet. Salaries and expenses of these offices are paid by the State Treasurer semimonthly upon the warrant of the Finance and Administration Cabinet made payable to the officer (KRS 64.345).

### 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 shown below.

#### Maximum Tax Rates for Local Governments

Type of Government	Population	Maximum Tax Rate
City	15,000 or more	\$1.50/\$100 taxable property
	10,000-14,999	\$1/\$100 taxable property
	9,999 or fewer	75 cents/\$100 taxable property
Counties and Taxing Districts		50 cents/\$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 1998, Section 170 exempts the following property from taxation:

- Public property used for public purposes
- Nonprofit burial grounds
- Institutions of purely public charity
- Nonprofit educational institutions
- Public libraries and their endowments
- Real property owned and occupied by, and personal property, both tangible and intangible, owned by institutions of religion
- Household goods used by a person in his residence
- Crops grown in the year of assessment that are still in the hands of the producer
- A maximum of \$6,500 of real property owned and used as a permanent residence by a person Older than 65 or by a person classified by the federal government as totally disabled. Applying the “rubber dollar” to the \$6,500 Homestead Exemption, the exemption currently equals \$36,000. This amount is calculated every 2 years and will be recalculated for the 2015 tax year.



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 5 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.

Section 172A, adopted in 1969, permits the General Assembly to provide by general law for the tax assessment of agricultural and horticultural land according to its use and 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 5 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 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:

- License fees on stock used for breeding purposes
- 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. A 2006 task force recommended that this section be amended to provide a more “flexible and efficient” local government tax structure.<sup>11</sup>

### Indebtedness of Local Government

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 5 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 20 cents per \$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 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 158 establishes the maximums for the aggregate indebtedness of cities, counties, and taxing districts that 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 or more	10% of taxable property
	3,000 to 15,000	5% of taxable property
	Fewer than 3,000	3% of taxable property
Counties and Taxing Districts		2% 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 40 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.

## Notes

<sup>1</sup> Kentucky. Legislative Research Commission. *Kentucky Municipal Statutory Law*. Informational Bulletin No. 145. Frankfort: LRC, 1991. P.3.

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

<sup>3</sup> Duncombe, Herbert S. *County Government in America*. Washington, D.C.: National Association of Counties, 1966. Pp. 18-19.

<sup>4</sup> Kentucky Constitutions of 1792 and 1799.

<sup>5</sup> Kentucky. Legislative Research Commission. *County Government in Kentucky*. Informational Bulletin No. 115. Frankfort: LRC, 2003. P. 1.

<sup>6</sup> *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).

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

<sup>8</sup> *Board of Education of Graves County v. Dewese*, 343 S.W.2d 598 (Ky. 1960).

<sup>9</sup> *Kentucky Sheriffs Association v. Fischer*, 986 S.W.2d 444 (Ky. 1999).

<sup>10</sup> Opinion of the Kentucky Attorney General, 80-171.

<sup>11</sup> Kentucky. Legislative Research Commission. *Final Report of the Task Force on Local Taxation (House Bill 272)*. Research Memorandum No. 500. Frankfort: LRC, 2006. P. vi.

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*Fiscal Court of Jefferson County v. City of Louisville*, 359 S.W.2d 478 (Ky. 1977).

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

*Hogg, County Attorney v. Rowan County Fiscal Court, et al.*, 313 Ky. 387, 231 S.W.2d 8 (1950).

*Holsclaw v. Stephens*, 507 S.W.2d 462 (Ky. 1973), modified on rehearing (1974).

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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 10

### Corporations

#### Historical Background

Although people since ancient times have joined in collective ventures, the corporation as we know it today is a relatively recent phenomenon. Modern corporations did not appear in the United States 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 that 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 15<sup>th</sup> member of the Union. The Constitution of 1792 reflected the wilderness environment of the state. It was a simple document that 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 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. By 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 that prevailed into the 1900s and resulted in countless difficulties for travelers and merchants.

Railroads had succeeded in Europe, and they 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 Constitutional Convention were preoccupied with protecting the institution of slavery from interference by the emancipation movement. However, for the first time, discussion touched 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, peddlers [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.”<sup>1</sup> However, when the final draft of the 1850 Constitution was signed, only one section dealt with corporations. Under Article 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 that 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. At this time, the Kentucky General Assembly, by Act, chartered each and every corporation. In 1870, the General Assembly denied Cincinnati a corporate charter for the railway, and the resulting controversy eventually reached the Congress of the United States. 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 more than 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 that opposed the fostering of corporate interests and attempted to represent the needs of agriculture in the state.

“Grangers” complained that exorbitant railroad prices crushed farm profits. By 1889, the Farmer’s Alliance was a powerful agricultural organization influencing the election of delegates to the 1890 Constitutional Convention.<sup>2</sup>

The first call for a convention took place in 1873 and was repeated until 1888, when a sufficient majority of voters agreed on 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 had difficulty understanding 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 current 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.<sup>3</sup>

However, other delegates felt less threatened by the power of corporations. Arguing for the deletion of the section that 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.<sup>4</sup>

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 that deal with areas that are typically statutorily regulated.

The result of the Convention of 1890-1891 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 19 sections and was involved in another 21 sections of the 1891 document.

Constructed during a period of reaction to the newly powerful arm of business, the 1891 Constitution, prior to the 2002 amendments, reflected the impact of the transformation from

virtual wilderness to the 20<sup>th</sup> century, and the anxious response of those attempting to safeguard the interests of the common person in Kentucky.

### **Amendments**

Few amendments to the Constitution in the area of corporate regulation were presented to the voters of Kentucky since its adoption in 1891, and only two were adopted as part of the document by the electorate, prior to the revision of the corporations section prior to 2002.

In 1917, an amendment was proposed to permit telephone companies, under certain conditions, to buy or lease competing companies, making an exception to Section 201 that 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.

A 2000 amendment proposed elimination of the Railroad Commission and transfer of its railroad regulatory duties to the appropriate state agency with jurisdiction (the Transportation Cabinet). The amendment repealed Section 209 and amended Sections 201 and 218. The amendment passed after similar amendments had failed in 1972 and 1992.

### **Corporation Constitutional Requirements Prior to 2002**

Prior to the repeal of several of the Kentucky constitutional provisions regarding corporations, these sections contained specific requirements for the formation and operation of corporations that reflected the social, political, and economic context in which they were drafted, and the concern of the constitutional convention about overreaching by corporate entities. Prior to 2002, the Kentucky Constitution contained more than 40 sections that affected both corporations formed under the laws of the state and foreign corporations functioning within the state. Nineteen sections were listed under the heading Corporations, while 10 dealt specifically with railroads.

Prior to 2002, the term “corporation” was specifically defined by the Constitution as including joint stock companies and associations (Section 208). Section 190 required 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 corporate charters that 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 could only hold such property “proper and necessary” for carrying on such activities. Any property not proper and necessary for the authorized activities of the corporation may be held no longer than 5 years under penalty of escheat, or reversion, to the state (Section 192). Section 193 forbade 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 were 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).

Under the old provisions, the General Assembly was also 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. If any corporation organized under the laws of the Commonwealth consolidated with a foreign corporation, the resulting body, under Section 200, was directed not to become a foreign corporation, and Kentucky retained jurisdiction over that part of the property within the Commonwealth. Furthermore, foreign corporations were not permitted to transact business within Kentucky under more favorable conditions than domestic corporations (Section 202). Section 203 provided that no corporation shall alienate any franchise to relieve the franchise or property held under it from liability incurred in its operation.

Additionally, a cumulative voting requirement was 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 could 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 was intended to ensure that minority groups of shareholders may obtain representation on a given board of directors.

## **2002 Revision of Corporation Requirements**

Many commissions over the years recommended that the corporations provisions be updated to reflect the rapidly evolving nature of business and the needs of legal entities to adapt to these changes.<sup>5</sup> The increasingly national and global nature of commerce made any differences between Kentucky's law and other states' laws more apparent. Prior to the 2002 revision, the Kentucky Constitution contained many specific and sometimes outdated requirements. Additionally, litigation arose over these requirements, and courts were called upon to construe certain sections broadly to avoid declaring statutory sections unconstitutional.<sup>6</sup>

In 2002, a constitutional amendment was proposed by the General Assembly and adopted by the voters of the Commonwealth to revise Section 190 and repeal Sections 191, 192, 193, 194, 198, 200, 201, 202, 203, 207, and 208. These provisions had been previously recommended for repeal by the Special Commission on Constitutional Review.<sup>7</sup> The provisions had also been the subject of litigation, with varying interpretations by state courts and opinions by attorneys general. Other provisions were interpreted as to give some flexibility, but proponents of the amendment stated that this would not give corporate entities the ability to respond to changing needs.<sup>8</sup>

The revised Section 190 reads:

Except as otherwise provided by the Constitution of Kentucky, the General Assembly shall, by general laws only, provide for the formation, organization, and regulation of corporations. Except as otherwise provided by the Constitution of Kentucky, the General

Assembly shall also, by general laws only, prescribe the powers, rights, duties, and liabilities of corporations and the powers, rights, duties, and liabilities of their officers and stockholders or members.

Essentially, the provision leaves to the General Assembly's discretion the particulars of structuring and regulating corporate entities. A companion provision passed along with the proposed constitutional amendment in 2002, Senate Bill 121, and made contingent on the adoption of the constitutional amendment by the voters, began the process of addressing the changes in the Constitution. For example, KRS 271B.6-210 was amended to permit the board of directors of a corporation to issue shares for any tangible or intangible property including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

In 2006, 2007, and again in 2010, several pieces of omnibus legislation were passed by the General Assembly to bring Kentucky statutes into line with those of other states and included the passage of provisions of uniform laws as proposed by the National Conference of Commissioners on Uniform State Laws.

### **Corporation Constitutional Requirements Retained**

Despite the repeal of the 10 sections referenced above and their replacement with Section 190's general grant of power to the General Assembly to regulate corporations, there are still provisions in the Kentucky Constitution that specifically apply to corporations. The Constitution mandates that the property of corporations, like that of individuals, be subject to the state power of eminent domain and that the property 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 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 shall not be modified (Section 199). Section 201 forbids merger between telegraph, telephone, or common carrier and competing common carriers, along with contracts that split the earnings of corporations carrying freight or passengers with companies not doing the actual carrying. However, telephone companies may acquire or operate competing companies with the consent of the local municipality.

Any officer of a banking institution who receives deposits for a bank that is known by the officer 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.

Grouped under the title Railroads and Commerce are nine sections that deal more specifically with the regulation of common carriers. Briefly, they 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 enforced by the attorney general (Section 217). The Constitution also contains a section that prohibits 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 that apply to corporations indirectly. For example, the General Assembly shall not pass local or special legislation that grants a charter to any corporation or amends the charter of any existing corporation (Section 59), and corporations shall not use money or any other thing of value to influence elections (Section 150). Property, whether corporate or individual, shall be taxed according to actual value (Section 174).

Several constitutional sections concern 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 that allows extension of the Commonwealth's credit to counties for road construction, and Section 179 that 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 shall not 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).

While most corporation sections of the Kentucky Constitution place requirements or restrictions on corporations, Section 2 states: "Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." In a series of

cases reaching back to 1958, the Kentucky Supreme Court has relied on Section 2 to protect certain economic rights of corporations and other businesses.<sup>9</sup> The leading case, *Kentucky Milk Marketing v. Kroger Co.*, turned on the constitutionality of KRS 260.705(1)(a) that prohibited any milk distributor or processor from injuring competition by advertising for sale or selling a milk product at less than cost.<sup>10</sup> The court struck down the statute as an unconstitutional violation of Section 2 and described it in the following terms:

It is an invasion of the right of merchants to sell competitively, and of the public to buy competitively in the open market...It is an arbitrary interference with the free flow of commerce—the free enterprise system—and is not justified or to be justified by the police power of the state. It is clearly a violation of the letter and spirit of Section 2 of our Bill of Rights.<sup>11</sup>

In contrast, for more than 60 years, the United States Supreme Court has found little in the U.S. Constitution to support the economic due process rights of corporations and other businesses.<sup>12</sup> It appears the Kentucky Constitution, as interpreted by the Kentucky Supreme Court, protects certain corporate economic freedom to a greater extent than the U.S. Constitution, as interpreted by the U.S. Supreme Court.

### Notes

<sup>1</sup> *Debates of the Constitutional Convention of 1849*. P 831.

<sup>2</sup> Clark, Thomas D. *A History of Kentucky*. Lexington: The John Bradford Press, 1960. P. 412.

<sup>3</sup> *Debates of the 1890 Constitutional Convention*. Montgomery. P. 3648.

<sup>4</sup> *Ibid*, p. 3701.

<sup>5</sup> *Report of the Constitution Review Commission*. Frankfort: CRC 1950. P. 48; Fleming, James T., and John E. Reeves. *A Comparison: The Present, the Proposed Kentucky Constitution*. Informational Bulletin No. 52. Frankfort: Legislative Research Commission, 1966. P. 90.

<sup>6</sup> *Commonwealth ex rel. Luckett v. L& N R.R. Co.*, 479 S.W.2d 15 (Ky. 1972).

<sup>7</sup> Special Commission on Constitutional Review. *Report of the Special Commission on Constitutional Review*. Research Report No. 226. Frankfort: Legislative Research Commission, Sept. 1987.

<sup>8</sup> See Thomas E. Rutledge. *Amendment No. 2 Will Modernize Business Law*. *Lexington Herald-Leader*, Oct. 21, 2002, A8 (“Kentucky is one of only a handful of states that still retain archaic constitutional provisions governing corporations. The provisions drive Kentucky businesses to organize outside of our state, and to pay substantial fees to other state treasuries for that privilege, without providing any added protection to Kentucky citizens. Having these provisions is not worth the economic price we pay to keep them.”).

<sup>9</sup> Dyche, John David. “The History and Meaning of Section 2 of the Kentucky Constitution.” *Ky. Bench & Bar*, 55.4 (Fall 1991). Pp. 17, 19, 21, 22.

<sup>10</sup> *Kentucky Milk Marketing v. Kroger Co.*, 691 S.W.2d 893 (Ky. 1985).

<sup>11</sup> *Ibid.*, p. 900.

<sup>12</sup> Dyche. P. 21.

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- Eaton Asphalt Paving Co., Inc. v. CSX Transportation, Inc.*, 8 S.W.3d 878 (Ky.App. 1999).
- Farmers No. 4, Inc. v. Lexington Tobacco Board of Trade*, 461 S.W.2d 926 (Ky. 1970).
- General Electric Co. v. American Buyers Cooperative*, 3165 S.W.2d 354 (Ky. 1958).

*Great-West Life Assurance Company v. Courier-Journal Job Printing Company*, 288 S.W.2d 639 (Ky. 1956).

*Kentucky Milk Marketing v. Kroger Co.*, 691 S.W.2d 893 (Ky. 1985).

*Kirk v. Kirk's Auto Elec., Inc.*, 728 S. W.2d 529 (Ky. 1987).

*Louisville Banking Company v. Commonwealth*, 142 Ky. 690, 134 S.W. 1142 (1911).

*Nebbia v New York*, 291 U.S. 502 (1934).

*Owen Co. Burley Tobacco Society v. Brumback*, 128 Ky. 137, 32 K.L.R. 916, 107 S.W. 710 (1908).

*Shanks v. Board of Education*, 221 Ky. 470, 298 S.W. 111 (1927).

### **Opinions of the Attorney General**

OAG 73-164

OAG 75-10





## Chapter 11

### Education

The Constitution requires the General Assembly to provide for an “efficient system of common schools throughout the State” through appropriate legislation (Section 183). The statutes providing for this system cover 11 chapters of the Kentucky Revised Statutes: Chapters 156-163, 167, and 168. General guidelines are established by the Constitution in the sections discussed below.

Section 158 sets a limit on the indebtedness of a school district of an amount not to exceed 2 percent of the value of the taxable property therein.

Section 184 establishes a Common School Fund and provides that the money may be used for no other purpose than education.

Section 185 provides that any tax that is collected for education must be approved by the voters, and the General Assembly is charged with the responsibility of investing the money.

Section 186 provides that school funds are to be distributed to the school districts as directed by the General Assembly.

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

### Prior Constitutions

Kentucky's Constitution did not provide for education 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 4-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 that 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, however, contains such provisions.

### **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 that permitted 10 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 25 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 Support for Education Excellence in Kentucky (SEEK) programs that 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 this office 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 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 serves as the executive officer of the board, implementing its educational policies and directing all persons employed in the Department of Education.

## Court Decisions

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

Financing 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 that 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 Kentucky Court of Appeals 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 U.S. Supreme Court decision in *Brown v. Board of Education* (1954) voided Section 187 of the Kentucky Constitution that had mandated separate schools for black and white children. It also made unconstitutional the Day Law, a 1904 statute that 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. Department of Health, Education, and Welfare* (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 14<sup>th</sup> 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.

In 1978, the General Assembly enacted a statute to require the Department for 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 (Section 189) prohibits the use of tax money levied for educational purposes to be spent to aid any church, sectarian, or denominational school. Direct payments to private,

parochial schools for transportation of students, combined with a withholding of equivalent support for public schools, were also held to violate Sections 5 and 189 (*Fiscal Court of Jefferson County v. Brady* (1994)). However, a subsequent case held that school funds could be used to supply transportation by paying the transportation companies directly, as this was not direct benefit to the schools and there was a sufficient public health and safety interest in providing transportation (*Neal v. Fiscal Court, Jefferson County* (1999)). In 2010, the Kentucky Supreme Court held that Section 189 prohibited the appropriation of funds to a Baptist university to build a pharmacy school in *University of the Cumberlands v. Pennybacker*.

The U.S. Supreme Court ruled in *Stone v. Graham* (1980) 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 violated the 1<sup>st</sup> Amendment to the United States Constitution. However, subsequent U.S. Supreme Court cases, *McCreary County v. ACLU* (2005) and *Van Orden v. Perry* (2005), indicate that such a text integrated into an otherwise secular display may pass constitutional muster if the court determines there is no religious intent behind the display.

In June 1989, the Kentucky Supreme Court 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 (*Rose v. Council for Better Education, Inc.* (1989)). The court ruled that the statutory system as a whole and the interrelationship of its parts were in violation of Section 183. The court enumerated seven fundamental capacities that an efficient system must have as its goals. A Task Force on Education Reform, 22 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.

### Cases

*Bowling Green v. Kirby*, 208 Ky. 839, 295 S.W. 1004 (1927).

*Brown v. Board of Education*, 347 U.S. 483 (1954).

*Carroll v. Department of Health, Education, and Welfare*, 410 F. Supp. 234 (D.C.Ky. 1976).

*Fannin v. Williams*, 655 S.W.2d 480 (Ky. 1983).

*Fiscal Court of Jefferson County v. Brady*, 885 S.W.2d 681 (Ky. 1994).

*Kentucky Board of Education v. Rudasill*, 589 S.W.2d 877 (Ky. 1979).

*McCreary County v. ACLU*, 545 U.S. 842 (2005).

*Neal v. Fiscal Court, Jefferson County*, 986 S.W.2d 907 (Ky. 1999).

*Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989).

*Stone v. Graham*, 449 U.S. 39 (1980).

*University of the Cumberlands v. Pennybacker*, 308 S.W.3d 668 (Ky. 2010).

*Van Orden v. Perry*, 545 U.S. 677 (2005).

*Waller v. Georgetown Board of Education*, 273 S.W. 498 (Ky. 1925).

*Willis v. Walker*, 136 F. Supp. 177, 181 (1955).



## Chapter 12

### Changing Kentucky's Constitution

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

Three basic methods of changing a constitution are generally recognized:

- Amendment
- Revision
- 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 that 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 5 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 20 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 that 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 the Committee on Revision of the Constitution and Slavery. Indeed, the two subjects were tied together because those who wanted slavery desperately wanted to ensure that slavery would never be abolished by means of the Constitution. A resolution was offered during the Convention that 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 20 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.

## **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 60 of the 100 House members and by 23 of the 38 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."<sup>1</sup> Hundreds of proposed amendments have been introduced in the General Assembly since 1891, with only 79 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 Constitution, only two amendments could be submitted to the electorate at one election. The 23<sup>rd</sup> 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."<sup>2</sup> 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.<sup>3</sup> Several multisection amendments have been approved, the most notable being an amendment passed in 1975 that affected 33 sections of the Constitution, all related to the court system.<sup>4</sup>

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 90-day notice is mandatory.<sup>5</sup> 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, 79 amendments have been approved by the General Assembly. Of those, 34 have failed, 41 have passed, and 4 have been invalidated by the courts. Although numerous amendments are introduced, relatively few ever enter the Constitution as part of 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 multistep 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 because 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 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 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 24 years of age, residents of the state for 2 years, and residents of their district for 1 year. The election of delegates is held at the next general state election, and the newly elected delegates convene within 90 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 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 20 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. The 1959 Special Session of the General Assembly proposed a limited constitutional convention to address 12 areas of consideration. The Supreme Court upheld the authority of the General Assembly to call a limited convention.<sup>6</sup> 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 60 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 that was directed to make recommendations for amendments that 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 executive powers while outside the state. The voters rejected these proposals at the polls.

The Constitution Review Commission's recommendations on the amendment process that 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 that 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 that the General Assembly could submit to the voters for approval or rejection. House Bill 752 removed the restriction on placing the same amendment upon the ballot again within 5 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, the General Assembly formerly 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 1<sup>1/2</sup> years and between General Assembly approval and voter action on the amendments that 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 in two. The recommended number of delegates was the same as the membership of the Senate rather than of 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 that would be on the ballot in November 1960. The convention call was defeated. In 1962, membership of the Review Committee was increased; and in 1964, a 50-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.<sup>7</sup> The CRA was composed of 38 delegates selected from the 38 senatorial districts and 5 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 spent 22 months conducting a section-by-section review of the Constitution. The result of its 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 that 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.<sup>8</sup> The legislature circumvented the sections of the Constitution regarding revision by relying on Section 4 of the state Bill of Rights that 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.<sup>9</sup> 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<sup>10</sup>**

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 that could be submitted to the voters from two to four. Even with this change, the Kentucky Constitution remains difficult to amend. In 1990, Kentucky voters were for the first time presented the maximum of four proposed amendments, only one of which passed. Even with the change to annual sessions in 2000, which would allow the General Assembly to pass constitutional amendments in odd-year sessions, the amendments may only be submitted to a vote of the people at a general election where members of the House of Representatives are selected, which is every 2 years, in even-numbered years.

The only other states with such limitations are Arkansas, Colorado, Kansas, and Illinois. Arkansas limits to three the number of constitutional amendments that 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.

Because the legislatures in 50 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 that 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 that 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 9 years, four states every 10 years, eight states every 20 years, and one every 16 years.

Kentucky is also the only state that 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 35 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 35 states contain such a requirement. In Kentucky and the six other states that have no such mandatory provision, the legislature is not prevented from requiring the revision to be approved by the voters.

### Notes

<sup>1</sup> *Proceedings and Debates of the Convention*. Whitaker. P. 1559.

<sup>2</sup> *Hatcher v. Meredith*, 295 Ky. 194, 173 S.W.2d 665 (1943).

<sup>3</sup> *Funk v. Fielder*, 243 S.W.2d 474 (Ky. 1951).

<sup>4</sup> The Judicial Article. Sections 109-143. Amendment No. XXII.

<sup>5</sup> *McCreary v. Speer*, 156 Ky. 783, 162 S.W. 99 (1914); *Arnett v. Sullivan*, 279 Ky. 720, 132 S.W.2d 76 (1939).

<sup>6</sup> *Chenault v. Carter*, 332 S.W.2d 623 (Ky. 1960).

<sup>7</sup> 1964 House Bill 39.

<sup>8</sup> 1966 Senate Bill 161.

<sup>9</sup> *Gatewood v. Matthews*, 403 S.W.2d 716 (Ky. 1966).

<sup>10</sup> Council of State Governments. *Book of the States*. 2010. Pp. 3-17.

## **Appendix**

### **Constitution of Kentucky**

The Constitution of Kentucky has been previously published as a separate informational bulletin. Portions of the bulletin are reprinted here, including the summaries of all proposed amendments, those that have been adopted, those that have been defeated, and the Index.





## 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 – Quarters 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.** (1) The General Assembly, in odd-numbered years, shall meet in regular session for a period not to exceed a total of thirty (30) legislative days divided as follows: The General Assembly shall convene for the first part of the session on the first Tuesday after the first Monday in January in odd-numbered years for the purposes of electing legislative leaders, adopting rules of procedure, organizing committees, and introducing and considering legislation. The General Assembly shall then adjourn. The General Assembly shall convene for the second part of the session on the first Tuesday in February of that year. Any legislation introduced but not enacted in the first part of the session shall be carried over into the second part of the session. In any part of the session in an odd-numbered year, no bill raising revenue or appropriating funds shall become a law unless it shall be agreed to by three-fifths of all the members elected to each House.

(2) 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.

(3) All 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 7, 2000.

History: 2000 amendment was proposed by 2000 Ky. Acts ch. 407, sec. 1; 1979 amendment was proposed by 1978 Ky. Acts ch. 440, sec. 2, and ratified November 7, 2000; 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 occurring in odd-numbered years extend beyond March 30; nor shall a session of the General Assembly occurring in even-numbered years continue beyond sixty legislative days, nor shall it extend beyond April 15; these limitations as to length of sessions shall not apply to the Senate when sitting as

a court of impeachment. A legislative day shall be construed to mean a calendar day, exclusive of Sundays, legal holidays, or any day on which neither House meets.

Text as ratified on: November 7, 2000.

History: 2000 amendment was proposed by 2000 Ky. Acts ch. 407, sec. 2; 1979 amendment was proposed by 1978 Ky. Acts ch. 440, sec. 3, and ratified November 6, 1979; 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, 190, 196, 197, 199, 205, 206, 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.

**Section 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.

(6) The Supreme Court may designate one or more divisions of Circuit Court within a judicial circuit as a family court division. A Circuit Court division so designated shall retain the general jurisdiction of the Circuit Court and shall have additional jurisdiction as may be provided by the General Assembly.

Text as ratified on: November 5, 2002.

History: 2002 amendment was proposed by 2001 Ky. Acts ch. 163, sec. 1; 1974 repeal and reenactment proposed by 1974 Ky. Acts ch. 84, sec. 1, and ratified November 4, 1975, effective January 1, 1976; 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 purpose of this amendment:

District judges elected for the term beginning on the first Monday in January of 2003, who possess the qualifications of a Circuit Judge and who are assigned by the Chief Justice to serve as family court judges on or before the commencement of the term, shall on that date become Circuit Judges with terms of office coinciding with the terms of Circuit Judges generally, and another numbered division or divisions of that judicial circuit shall be created. When a District Judge becomes a Circuit Judge pursuant to this provision, that District Judgeship shall be abolished and there shall be no vacancy to fill. The General Assembly, upon the ratification of this amendment, shall enact legislation to implement the provisions of this amendment in a manner consistent with the Supreme Court's adjustment of any Circuit Court division as a family court division.

### 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 o'clock a.m. and seven o'clock 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, 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 ratified 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 boundaries 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 expenses of the city, county, or taxing district 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 employment's.** 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 any retirement system either within or without the Commonwealth of Kentucky, 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. 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. Notwithstanding the provisions of Sections 3, 172, and 174 of this Constitution to the contrary, the General Assembly may provide by law an exemption for all or any portion of the property tax for any class of personal property.

Text as ratified on: November 3, 1998.

History: 1998 amendment was proposed by 1998 Ky. Acts ch. 227, sec. 1; 1990 amendment was proposed by 1990 Ky. Acts ch. 151, sec. 1, and ratified on November 6, 1990; 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. Regulation of corporations by General Assembly.** Except as otherwise provided by the Constitution of Kentucky, the General Assembly shall, by general laws only, provide for the formation, organization, and regulation of corporations. Except as otherwise provided by the Constitution of Kentucky, the General Assembly shall also, by general laws only, prescribe the powers, rights, duties, and liabilities of corporations and the powers, rights, duties, and liabilities of their officers and stockholders or members.

Text as ratified on: November 5, 2002

History: 2002 amendment was proposed by 2002 Ky. Acts ch. 341, sec. 1; original version ratified August 3, 1891, and revised September 28, 1891.

**Section 191. (Repealed 2002)** Catchline at time of repeal: “Unexercised charters granted prior to Constitution revoked.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**Section 192. (Repealed 2002)** Catchline at time of repeal: “Corporations restricted to charter authority – Holding of real estate limited.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**Section 193. (Repealed 2002)** Catchline at time of repeal: “Stock or bonds to be issued only for money or for property or labor at market value – Watered stock void.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**Section 194. (Repealed 2002)** Catchline at time of repeal: “Corporations to have place of business and process agent in State.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**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. (Repealed 2002)** Catchline at time of repeal: “Trusts and combinations in restraint of trade to be prevented.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**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. (Repealed 2002)** Catchline at time of repeal: “Domestic corporation consolidating with foreign does not become foreign.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**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 state agency 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 state agency as may have jurisdiction over such matters, shall fix the term of such agreement.

Text as ratified on: November 7, 2000.

History: 2000 amendment was proposed by 2000 Ky. Acts ch. 399, sec. 1; 1917 amendment was proposed by 1916 Ky. Acts ch. 125, sec. 1, and ratified November 6, 1917; original version ratified August 3, 1891, and revised September 28, 1891.

**Section 202. (Repealed 2002)** Catchline at time of repeal: “Foreign corporations not to be given privileges over domestic.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**Section 203. (Repealed 2002)** Catchline at time of repeal: “Liabilities under corporate franchise not released by lease or alienation.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**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. (Repealed 2002)** Catchline at time of repeal: “Cumulative voting for directors of corporations – Proxies.”

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

**Section 208. (Repealed 2002)** Catchline at time of repeal: “‘Corporation’ includes joint stock company or association.

Repeal ratified on: November 5, 2002.

History: Repeal was proposed by 2002 Ky. Acts ch. 341, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.

*Other sections relating to corporations: 52, 59, 150, 163, 174, 177, 179, 210, 218, 241, 242, 244.*

## RAILROADS AND COMMERCE

**Section 209. (Repealed 2000)** Catchline at time of repeal: “Railroad Commission – Election, term, and qualifications of Commissioners – Commissioners’ districts – Powers and duties – Removal – Vacancies.”

Repeal ratified on: November 7, 2000.

History: Repeal was proposed by 2000 Ky. Acts ch. 399, sec. 3; original version ratified August 3, 1891, and revised September 28, 1891.

**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 state agency as may have jurisdiction over such matters, such common carrier, or person or corporation owning or operating a railroad in this State, may in special cases, after investigation by the appropriate state agency, be authorized to charge less for longer than for shorter distances for the transportation of passengers, or property; and the appropriate state agency 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: November 7, 2000.

*History: 2000 amendment was proposed by 2000 Ky. Acts ch. 399, sec. 2; original version ratified August 3, 1891, and revised September 28, 1891.*

*Other sections relating to railroads, 59, 177, 182, 196, 197, 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 233A. Valid or recognized marriage - Legal status of unmarried individuals.** Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

Text as ratified on: November 2, 2004.

History: Creation proposed by 2004 Ky. Acts ch. 128, sec. 1.

**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.

**Section 255A. Personal right to hunt, fish, and harvest wildlife – Limitations.** The citizens of Kentucky have the personal right to hunt, fish, and harvest wildlife, using traditional methods, subject only to statutes enacted by the Legislature, and to administrative regulations adopted by the designated state agency to promote wildlife conservation and management and to preserve the future of hunting and fishing. Public hunting and fishing shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass, property rights, or the regulation of commercial activities.

Text as ratified on: November 6, 2012

History: Creation proposed by 2011 Ky. Acts ch. 4, sec. 1.

## 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 first 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**

<b>Year Adopted</b>	<b>Section(s) Amended</b>	<b>Purpose</b>
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 10 percent 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 90 to 75 the percentage of state appropriated school funds to be divided on a per capita basis.
1953	186	Repeal provisions of Section 186 that required school funds to be distributed on a per capita basis.
1955	145	Permit persons 18 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.

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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.
1998	170	Permit the General Assembly to exempt motor vehicles and other personal property from property tax and extend the Homestead Exemption to persons classified as totally disabled by any public or private retirement system.
2000	36, 42	Provide that the General Assembly shall meet in annual session in odd-numbered years for 30 days, provide that bills raising revenue or appropriating funds in an odd-numbered year session shall be agreed to by 3/5 of all members elected to each house, adjourn odd-numbered year session March 30.
2000	201, 209, 218	Abolish the Railroad Commission.
2002	112	Permit the Supreme Court to designate one or more divisions of circuit court within a judicial circuit as a family court division.
2002	190, 191, 192, 193, 194, 198, 200, 202, 203, 207, 208	Omnibus reform of corporations provisions, permit regulation by general laws.
2004	233A	Provide that only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky and that a legal status identical to or similar to that of marriage shall not be valid or recognized or unmarried individuals.
2012	255A	Create a right to hunt, fish, and harvest wildlife using traditional methods, subject to statutes enacted by the legislature and regulations relating to wildlife conservation and hunting and fishing.

### 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 60 legislative days and described a legislative day as one on which at least one house was in session.

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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 45 legislative days, which need not be consecutive, nor longer than 4 months (6 months if approved by two-thirds of the members of both houses); required legislators to have resided in their districts for 2 years rather than 1 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.
1998	36, 42	Would have required the General Assembly to meet annually in odd-numbered years for 25 days, would have reduced the organizational session by 5 days.
*		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 <i>McCreary v. Speer</i> , 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 <i>Arnett v. Sullivan</i> , 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 <i>Stovall v. Gartrell</i> , 332 S.W.2d 256 (Ky. 1960.)

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