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U N I V E R S I T Y   O F   L O U I S V I L L E

THE HISTORY OF THE GOVERNMENT  
OF THE CITY OF LOUISVILLE

A Dissertation

Submitted to the Faculty  
Of the Graduate School of the University of Louisville  
In partial fulfillment of the Requirements  
For the degree  
Of Master of Arts

Department of History and Political Science

By

Attia Martha Bowmer

Year  
1948

Name of Student: ATTIA M. BOWMER

Title of Thesis: THE HISTORY OF THE GOVERNMENT OF THE CITY OF LOUISVILLE

1780 - 1870

APPROVED BY READING COMMITTEE  
COMPOSED OF THE FOLLOWING  
MEMBERS:

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NAME OF DIRECTOR: \_\_\_\_\_

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## PREFACE

Most historical writings on the subject of Louisville have treated its social, political, and economic development, but few have even touched on its municipal government. The purpose of this study is to record the history of the governmental structure of the city of Louisville from 1780 until 1870. It is concerned primarily with the type of government, the sources and extent of its power, and its legislative history. The details of municipal functions and administration are outside the scope of this writing except as they relate, generally or specifically, to the development of the general framework of the city government.

For the sake of convenience, this history has been divided into periods according to the type of government and charter in operation. In each period emphasis is placed upon the relationships existing between the voters and the city council, between the city council and the mayor, and between the state legislature and the council.

Most of the history has been written from manuscript records, statutes, and other documents. As far as available, newspapers of each period have also been consulted.

## CHAPTER I

### LOUISVILLE UNDER THE TRUSTEES

#### Background of Municipal Development

At the time of the establishment of Louisville as a town in 1780, the United States was predominantly an agricultural country, little concerned with problems of urban development. Towns were small and their government still closely resembled English borough government which had been transplanted, along with other English traditions, to the American colonies during the seventeenth and eighteenth centuries.

Toward the close of the seventeenth century there were in England some two hundred boroughs with charters from the Crown, enjoying the privileges of corporation, namely: to sue and be sued, to own and administer property and to possess a common seal.<sup>1</sup> Typically the municipality was a closed corporation or an oligarchy with corporate privileges vested in a small number of freemen.

While in most English boroughs freemen had the right to vote, the conception of freeman had changed between the thirteenth and seventeenth centuries. The body of freemen, once including all men not bound to the soil, had now become a small group with very special privileges based on birth, marriage, the ownership of certain lands,

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<sup>1</sup>T. H. Reed. Municipal Government in the United States, p. 59.

or rank conferred by the borough corporation. To be a freeman did not require residence as a qualification and many of the freemen of a borough were non-residents. Freemen only voted for members of Parliament, and in addition they were accorded certain trading privileges and exemptions from tolls and marked dues, privileges of such pecuniary importance as to enable the king to control Parliament through the threat of withholding them.<sup>2</sup>

Although each municipality received its individual charter from the King and the details of organization and titles varied, the governments of boroughs had much in common. The governing body generally was the council consisting of the aldermen, common councilment, and the mayor, who acted as president. The council sat as one body, and such executive functions as were permitted by their charters were carried out by committees of that group. In most cases, members of the council held office for life and vacancies were filled by vote of the council. In a few of the more populous boroughs, members were elected viva voce by a fairly large group of freemen.<sup>3</sup>

Aside from police and judicial powers, belonging mainly to the mayor, recorder, and certain other chief officers of the commonalty, the main functions of the borough government were the management of corporate property, the direction of the markets, and the election of

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<sup>2</sup>Wm. B. Munro, Municipal Government and Administration, Vol. 1, pp. 49 and 71 ff.

<sup>3</sup>T. H. Reed, Op. Cit., pp. 59-60.

borough representatives to Parliament.<sup>4</sup> Certain of its officers were further entrusted by the Crown with the important duties of administering civil and criminal justice.<sup>5</sup>

In the American colonies of England charters were granted by the governor, who was the local representative of the Crown.<sup>6</sup> Borough charters were not forced upon the colonial towns but were granted only on petition of a group of townsmen. New England towns never received charters, but were by legislative act permitted to function as local governments within limits.<sup>7</sup>

The first active colonial borough was established in New York in 1686. Within a short period of time some twenty boroughs were established mostly within a small section covering parts of the present states of New York, New Jersey, and Pennsylvania; to the south were the Virginia boroughs of Williamsburg, Richmond, and Norfolk, and the Maryland town of Annapolis. After 1746 and until the close of the Revolutionary War, with one or two exceptions, no new charters were granted.<sup>8</sup>

The structure and functions of colonial boroughs closely

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<sup>4</sup>F. E. Goodnow, City Government in the United States, pp. 43 ff.

<sup>5</sup>Ibid.; also, F. A. Fairlie, Essays in Municipal Administration, pp. 49-50.

<sup>6</sup>Munro, Government of American Cities, p. 3; Reed, op. cit., p. 61.

<sup>7</sup>Munro, op. cit., p. 85.

<sup>8</sup>Munro, op. cit., pp. 85-86; Fairlee, op. cit., pp. 58-60; Reed, op. cit., p. 61; cf. Fairlie, Essays in Municipal Government, p. 50.



paralleled the contemporary English municipal organization. While details of government varied with the individual borough, or city, the same general pattern was followed. These charters usually entrusted governmental authority to the mayor, recorder, a small number of aldermen, and an equal or greater number of assistant aldermen, or common councilmen as they were sometimes called. These men comprised the council and sat together as one body.<sup>9</sup> Following the English pattern, the council performed both executive or legislative functions. Judicial functions were generally discharged by the mayor, recorder, and aldermen, who served as justices of the peace and jointly held courts of civil and criminal jurisdiction. The American borough, like the English, was more concerned with judicial than with administrative functions.<sup>10</sup>

The relation of the people to the borough government in the colonies differed somewhat from that in England. While in England the closed corporation was the rule, in America it was the exception. Only Philadelphia, Annapolis, and Norfolk were closed corporations. Council members, except in these three towns, were generally elected by a fairly sizeable electorate comprising all freemen and freeholders. In a few boroughs the franchise belonged

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<sup>9</sup>J. A. Fairlie. Municipal Administration, p. 73.

<sup>10</sup>Reed, op. cit., pp. 61-62; Goodnow, op. cit., p. 52.

also to householders.<sup>11</sup>

The status of freeman was bestowed by the borough corporation, usually according to charter provisions, and was nowhere subject to the restrictions and abuses prevalent in England. In New York, the mayor, recorder, and aldermen had the power to confer free citizenship on natural-born or naturalized British subjects. Other charters had similar provisions. In most cases the fee charged for admission to free citizenship was limited by charter.

As in England, certain trade privileges, more important in the earlier days than toward the close of the colonial period, were accorded freemen; e.g., only the freemen of a borough "could practice any art, trade, mystery, or occupation within the borough, except during the great fairs."<sup>12</sup>

The mayor was, in most places, appointed by the governor. In Elizabeth, however, he was elected by the council, and in some of the small boroughs he was elected by a restricted popular vote. The usual term of office was one year, but in those towns where the mayor was appointed, reappointment was common.<sup>13</sup> The mayor had no real executive power. His duty was primarily to preside over the council.

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<sup>11</sup>Fairlie, Essays in Municipal Administration, p. 62.

<sup>12</sup>Ibid., pp. 61-63.

<sup>13</sup>Ibid., p. 67; Reed, op. cit., p. 63.

In Philadelphia he was not permitted a vote in the council, and in New York he voted only in case of a tie. In no instance had he the power of veto. Unlike the mayor of the English borough, who appointed most of the borough officials,<sup>14</sup> the mayor of the American borough generally made no appointments. His importance emanated from his judicial functions and his influence was enhanced by the fact that he had usually served as alderman and had had long experience in municipal government. Sometimes, too, he held minor offices in the borough, as the Mayor of New York, who served as clerk of the market.

The recorder was chosen in the same manner as the mayor. His function seems to have consisted chiefly of drafting documents and of advising the council on legal matters.<sup>15</sup> The council, as has already been said, was usually elected by restricted suffrage. The number of members comprising the council varied from borough to borough. Seven aldermen and seven assistant aldermen were elected annually by wards in New York. In Philadelphia the number of aldermen and councilmen was changed from time to time.<sup>16</sup>

The council's main function "apart from holding local court and making the bylaws was that of regulating trade and supervising

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<sup>14</sup>Fairlie, Municipal Administration, p. 73; Munro, Municipal Government, Vol. 1, p. 90.

<sup>15</sup>Fairlie, Essays in Municipal Administration, pp. 69-70, 76.

<sup>16</sup>Reed, op. cit., pp. 62 and 64.

the markets.<sup>17</sup> Until about 1750 the borough council had little to do, but with the growth of population after 1750, the needs of the people increased. Since the Council had very limited authority, in most cases having no power of general taxation, they made constant demands on the colonial assembly. This, in turn, gave the assembly increased control over municipal affairs and laid the basis for the state control of cities characteristic of later municipal development.<sup>18</sup>

During and after the Revolution few changes in organization and functions were evident. The period from 1776 to 1790 witnessed the ascendancy of state control over municipalities.<sup>19</sup> The new charters were granted by the legislature rather than by the governor. The city charter had become a statute, subject to amendment or repeal like any other statute, and the city became subject to legislative interference.

The new state constitution also led to changes in the manner of choosing mayors. In New York the power of appointing the mayor was transferred from the governor to a state executive council. The Philadelphia charter of 1789 provided that the mayor be elected

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<sup>17</sup>Munro, Municipal Government and Administration, Vol. 1, p. 90.

<sup>18</sup>Reed, op. cit., p. 63; Munro, op. cit., pp. 89-90.

<sup>19</sup>Fairlie, Municipal Administration, pp. 77-78; Munro, Government of American Cities, p. 5

by the aldermen from among their number. The principle of federal analogy reared its head in the Baltimore Charter (1797) which provided that the mayor be chosen by an electoral college;<sup>20</sup> however, this was an exception. In general the choice of mayor became the prerogative of the city council or remained the privilege of the governor, but in any case, there was no attempt to transfer the selection to the people until after 1820.

Also characteristic of the early years of the new republic were the disappearance of the close corporation and the establishment of locally elected councils. In 1787 the Virginia legislature provided for the election of the council by freeholders and inhabitants of the borough. The Philadelphia charter of 1789 provided for a council composed of fifteen aldermen and thirty common councilmen, the aldermen to be elected by the owners of freehold property and the common councilmen to be chosen by the "freemen." Administrative officials such as assessors, tax collectors, constables, and others, however, continued to be appointed throughout the first two decades of the nineteenth century.<sup>21</sup>

Between the close of the Revolutionary War and 1825 some

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<sup>20</sup>Munro, Municipal Government and Administration, Vol. 1, p. 92; Munro, Government of American Cities, p. 7.

<sup>21</sup>Fairlie, Municipal Administration, pp. 78, 81; Munro, Government of American Cities, p. 6; Munro, Municipal Government and Administration, Vol. 1, p. 95.

purely American features crept into the system of Municipal government. "The principle of administrative and legislative autonomy became a fetich . . . The autonomous mayoralty, the executive veto, and the practice of aldermanic confirmation -- all of them native institutions, and all attributable to the influence of national theories upon local government -- made their appearance . . ." The charter of the city of Boston (1796) was the first to establish the two-chambered city council. One chamber was composed of two representatives from each of eight wards and the other, of representatives of the city at large.<sup>22</sup> Both the first Detroit charter (1806) and the Pittsburg charter of 1816 followed suit in establishing the bi-cameral council.<sup>23</sup> This trend of organizing municipalities along the lines of federal government persisted throughout the nineteenth century.

By 1820 the urban population represented a little less than five per cent of the total population of the United States and only thirteen towns could boast of more than 8,000 inhabitants. The rate of increase in urban population expanding after the Revolutionary War slowed down considerably between 1810 and 1820 before it gained momentum in the following three decades.<sup>24</sup> Although the functions

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<sup>22</sup>Munro, Government of American Cities, pp. 7-9.

<sup>23</sup>Fairlie, Municipal Administration, pp. 79-80. Detroit's charter lasted only until 1809.

<sup>24</sup>A. F. Weber. Growth of Cities in the Nineteenth Century, pp. 22-24.

of the municipalities were still relatively unimportant, some public services had been initiated. New York had the beginnings of an organized police system. Most of the larger towns had built some type of public sewer and had made provision for street cleaning. In more populous towns there were sidewalks and oil lamps along the main thoroughfares. Fire protection was in the hands of volunteer companies. Poor relief received some attention and public education was in an incipient stage of development.<sup>25</sup>

In summary it may be said that during the period following the close of the war there began to evolve out of the colonial borough a distinctive American municipal system. The general organization and functions of the colonial corporation remained almost intact but certain changes, especially in the relationship of the people to the town government and the town to the State, were evident. The close corporation was replaced by locally elected councils, and the mayor was less often appointed. Suffrage, however, was still restricted to the well-to-do classes. The council, more powerful than the mayor, appointed officials and carried on the administrative functions of the government either as a body or through council committees. Municipal services were few and administration, comparatively simple.

Louisville's early history coincided with the developments of this post-war period. The first exploring party reached the falls of the Ohio in 1773 and only a few years intervened before the

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<sup>25</sup>Munro, Government of American Cities, pp. 8-9.

settlement on Corn Island in 1778.<sup>26</sup> During the fall of the same year the settlers removed to the mainland and two years later the Virginia legislature, upon petition of the inhabitants,<sup>27</sup> passed an act establishing the town of Louisville.

#### Early Political Development of Louisville

Louisville's beginnings were anything but auspicious. The land set aside for the establishment of the town was "2000 acres on the Ohio opposite to the Falls" which had been confiscated on July 1, 1780, from John Connolly recently convicted of being a British Agent.<sup>28</sup> Connolly, after his trial, had left to join the British, but John Campbell, who owned two thousand acres adjacent to Connolly's land and who, at the time of the establishment of Louisville, had been a British prisoner in Canada, returned three years later to claim, not only his own land, but a mortgage against the land formerly in Connolly's possession. For the next eight years he maneuvered in the Virginia legislature to collect that claim. Whether or not Campbell's claim was legitimate is not known but certainly the town of Louisville stood to lose with every success he won. Campbell and the Virginia

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<sup>26</sup>Lewis Collins. History of Kentucky, Vol. 2, p. 358.

<sup>27</sup>James R. Robertson. Petitions of the Early Inhabitants of Kentucky to the General Assembly of Virginia, 1769-1792. Louisville, 1914 (Filson Club Publication No. 27), pp. 53-55.

<sup>28</sup>Collins, op. cit., Vol. 2, p. 183.



legislature were not, however, the only obstacles confronting the trustees. Indian troubles, which made it impossible to hold the scheduled public auction of town lots in April, 1781,<sup>29</sup> likewise compelled the Virginia legislature to extend three times<sup>30</sup> the period for building on the lots in Louisville. To establish government when settlement itself was hazardous was no mean feat.

The town was little more than a frontier settlement in 1780. The exact number of inhabitants is not known, although three hundred families are reported to have settled in Louisville by that date. Kentucky County had just recently been carved out of Fin- castle County and four months after Louisville had been named a town, Kentucky County was divided into three counties, Louisville being designated as the county seat of Jefferson.<sup>31</sup>

The act of the Virginia legislature of 1780 named nine trustees for the town of Louisville and vested in them the authority to lay off a thousand acres of land into half-acre lots with convenient streets and public grounds. By the same act, they were empowered to sell the lots, to settle boundary disputes, to resell lots if the owners failed to build and to apply such money to "repairs or better-

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<sup>29</sup>Record of Town of Louisville 1781-1793.

<sup>30</sup>1786; 1789; 1793 Acts of the Virginia Legislature relating to Louisville, passim.

<sup>31</sup>Collins, op. cit., Vol. 1, p. 20.

ment of the city."<sup>32</sup> Although no mention is made in the Act of 1780, the trustees probably possessed the judicial powers customarily bestowed on municipal officers of the time.<sup>33</sup>

Of the nine original trustees, only one resided in Jefferson County and three others are known to have been inhabitants of Lincoln or Fayette Counties.<sup>34</sup> Colonel Durrett remarks that the trustees were appointed by the Virginia legislature "for one reason or another, but seldom if ever, because they were suited by residence or qualification for the office they were to fill."<sup>35</sup>

The original trustees, like the councils of the close corporations, had the power to fill vacancies of the board. The legislature passed another act in 1786 granting the same powers to seven commissioners, named in the act; again in 1789 twelve trustees were appointed and in 1790, five commissioners.<sup>36</sup> (There was virtually no difference

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<sup>32</sup>An Act for establishing the town of Louisville at the Falls of the Ohio, passed by Virginia Legislature, May 1780, loc. cit.

<sup>33</sup>See R. T. Durrett, "Louisville Under the Virginia Trustees" J. G. Johnston, Memorial History of Louisville, 1896, p. 47.

<sup>34</sup>Collins, op. cit., Vol. 1, pp. 20 and 366; according to Col. Durrett, eight of the nine trustees resided outside Louisville. That the trustees were not residents is further brought out in resolution passed by the board at a meeting of the trustees April 22, 1783, which provided that one Mark Thomas "be paid 24 for boarding the Trustees and their attendants and that the Bursar pay him out of the Sale Lots."

<sup>35</sup>Durrett, op. cit., p. 62.

<sup>36</sup>Virginia Statutes, 1786, Ch. 102; 1789, Ch. 66; 1790, Ch. 29, loc. cit., pp. 19, 29, 35, 51.

in the powers bestowed on trustees and those granted commissioners. In fact, in the journal of the trustees, the commissioners appointed in 1786 were designated as "Commissioners and Trustees."<sup>37</sup> The selection of trustees, thus, was a privilege belonging primarily to the legislature, secondarily to the trustees themselves, but in no case to the citizens of the town.

The one striking feature of the government of Louisville at this time, like that of other towns of the United States, was its complete subordination to legislative control. The trustees were accorded very little discretion by the Virginia legislature and later, when the town had passed from Virginia's jurisdiction to that of Kentucky, their powers were extended only slightly.

The first meeting of the trustees recorded was on February 7, 1781. At that meeting provisions were made for a survey of the town lands, for the widening of Main Street, and for an auction of lots. It was likewise decided to petition the General Assembly with regard to the opening of a canal.<sup>38</sup> None of these plans was carried out for many a year. The settlement of the town progressed slowly and there is no record of a second meeting until June 4, 1783, at which the only business transacted was the appointment of four trustees.<sup>39</sup> From this

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<sup>37</sup>Record of Town of Louisville, Feb. 14, 1787.

<sup>38</sup>Ibid., Feb. 7, 1781.

<sup>39</sup>Ibid., June 4, 1783.

time on until 1786 meetings were held infrequently, the trustees concerning themselves primarily with the sale of lots and Campbell's claims.

In May, 1783, further proceedings respecting the sale of lots were suspended<sup>40</sup> and in October of the same year the Virginia legislature repealed all sections of the act of 1780 which might "prejudice the title of the said John Campbell and Joseph Simon" and prescribed that the lands be divided according to the deed of partition drawn by Campbell and Connolly.<sup>41</sup> The next year the legislature further decreed that the former Connolly lands should be divided into lots, sold by the trustees, and the money applied to redeeming the mortgage.<sup>42</sup> Apparently, the trustees would not or could not carry out the duties imposed by the legislature, for the following year, 1786, they were compelled to abrogate their powers in favor of a new board of "commissioners."

The difficulties in government increased with the succeeding years. In 1789 trustees were again appointed and their number increased to twelve.<sup>43</sup> Frequent mention of resignations and refusals

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<sup>40</sup>Virginia Statutes, May 1783, Ch. 31, in Collection of Acts, 1839, pp. 4-5.

<sup>41</sup>Virginia Statutes, Oct. 1783, Ch. XV, ibid., p. 11.

<sup>42</sup>Virginia Statutes, Oct. 1784, Ch. LXV, ibid., p. 15.

<sup>43</sup>Virginia Statutes, Oct. 1789, Ch. 71, ibid., p. 37.

to serve by members may be found in the records of the board.<sup>44</sup> Due to the fact that "inconveniences had arisen on account of the powers given the trustees and commissioners of the town of Louisville ... . not being sufficiently defined" an act was passed in December 1790 providing that the powers of trustees thereafter be vested in five commissioners whom the act named. The board of trustees met on the first of the March following but "considering that they cannot proceed until they are possessed of the different acts of assembly and with the record of the former trustees and commissioners respecting the aforesaid Town" adjourned without transacting any business.<sup>45</sup>

In 1791, as its last act affecting Louisville, the board returned the title of one thousand acres (the lower thousand acres of the Connolly tract) to John Campbell.<sup>46</sup> The action of the trustees on this matter was perfunctory and indicative of their lack of authority. On June 25, 1793, at the first meeting in more than two years, John Campbell was ordered to produce to the board at the next meeting his accounts of receipts and expenditures. It was also noted that "the above meeting was held in pursuance of a law passed by the Legislature of Virginia" (in 1791).<sup>47</sup> At the following meeting in August, Mr. Campbell's

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<sup>44</sup>Record of Town of Louisville, passim.

<sup>45</sup>Record of Town of Louisville, March 1, 1790.

<sup>46</sup>Virginia Statutes, 1791, Ch. LXVI, loc. cit., p. 30.

<sup>47</sup>Record of Town of Louisville, 1781-1825, p. 36.

report is not recorded; there is simply the statement without comment that "John Campbell agreeable to order produced an account of his receipts and expenditures and filed among the other papers received from the former Trustees and Commissioners."

Meanwhile, although Kentucky had been admitted as a State in 1792, three of the trustees appointed by the Virginia legislature nominally continued in office for the intervening years. As Colonel Durrett states, after "Campbell had compelled the trustees to sell all the land given for a town . . . there was but little to engage the attention of even so small a number as three."<sup>48</sup>

In 1795 the first Kentucky legislation for Louisville was enacted, and several important changes were instituted. This act provided that the trustees be elected rather than appointed and prescribed that they be "residents and freeholders . . . and of good reputation." The vote was extended to residents who were "qualified electors who had a right of suffrage for members of the General Assembly,"<sup>49</sup> a privilege which the constitution accorded ". . . to all free male citizens of the age of twenty-one years, having resided in the State two years, or the county in which they expect to vote one year next before the election . . ." <sup>50</sup> In other towns of the

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<sup>48</sup>Durrett, op. cit., p. 61.

<sup>49</sup>"An Act concerning Louisville," Dec. 19, 1795, Sec. 1, in Collection of Acts, 1839, p. 11.

<sup>50</sup>Kentucky Constitution, 1792, Art. III, Sec. 2.

State the right to vote was granted to "every free male of the age of eighteen residing in the town or holding a title to real estate therein."<sup>51</sup>

The authority of the trustees was extended to include the power to appoint a clerk, to establish a market house, to repair streets, to remove nuisances and obstructions, to pass ordinances and regulations respecting boundaries, to levy and collect taxes not exceeding thirty-five pounds a year.<sup>52</sup> This last was especially important, since previously municipal revenue had depended solely upon the sale of lots.

The same act provided that inspection of tobacco at Campbell's warehouse be suppressed and one established in Louisville.<sup>53</sup>

The following year the legislature further declared that "the forfeiture of no lots shall accrue for want of erecting the necessary buildings thereon within the next five years . . . nor at any time thereafter."<sup>54</sup> Thus, by the time the newly elected trustees took office, some of the obstacles to municipal government had been removed.

The years between 1795 and 1828 are characterized by a very

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<sup>51</sup>An Act concerning the Establishment of Towns, December 19, 1796, Sec. 3, in Kentucky Laws, 1797.

<sup>52</sup>Ibid., Sec. 3.

<sup>53</sup>Ibid., Sec. 7.

<sup>54</sup>Kentucky Laws, 1797, "An Act concerning Louisville, passed December 19, 1795, Sec. 1, in Collection of Acts, 1839.

slight extension of municipal functions attended by frequent grants of power from the legislature. Although the 1795 Act might appear elastic enough to cover many of the trustees' actions, the board, nevertheless, sought,<sup>55</sup> and obtained legislative authorization frequently. As a result, some thirty-one laws concerning Louisville were enacted in this period,<sup>56</sup> extending the authority of the trustees to include such powers as: the right to impose penalties for racing and shooting, the power to regulate public springs, to make and record deeds of conveyance, to appoint a surveyor of streets, to keep the harbor in good order, to survey the town, to have polluted ponds cleaned and nuisances removed, to make deeds, to appoint a commissioner, to procure lists of taxable property, to build a market house, to fill or drain ponds, to pass by-laws relative to the prevention of fire and the collection and appropriation of authorized taxes; to pass by-laws to suppress unlicensed tippling houses; to have streets paved; to assess owners of property for paving; to level and graduate streets; to dig wells; to obtain judgment against collectors who fail to collect taxes; to purchase and hold real estate for erecting market houses, wharves, etc.;

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<sup>55</sup>From time to time in the record of the trustees' meetings, petitions to the general assembly requesting further powers are reported. See, e.g., Record of Town of Louisville, 1781-1825, pp. 42, 49, 70, et passim.

<sup>56</sup>Collection of Acts of Virginia and Kentucky relative to Louisville, passim.



to appoint harbor masters; to appoint inspectors of flour; and to require inhabitants to work on roads within the town.<sup>57</sup>

A typical example of this specific and detailed legislation may be found in the "Act to authorize the Trustees of Louisville to pave the Streets of said town," approved January 8, 1813. This act gave the trustees the power

to compel the owners of lots and parts of lots on Main Street . . . between cross street number three, and cross street number six, to pave in front of their respective lots . . . as far as the middle of said street . . .

The Act of 1795 stipulated that there should be seven trustees and that they were to be elected annually.<sup>58</sup> This was changed in 1801 by an act providing for bi-annual elections.<sup>59</sup> The election was conducted by the sheriff and held at the courthouse. Vacancies caused by death or resignation were to be filled by election under the Act of 1795,<sup>60</sup> but this must have proved impractical for in 1801 the legislature provided that thereafter vacancies should be filled by vote of the remaining trustees until the next general election.<sup>61</sup>

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<sup>57</sup>Ibid., passim.

<sup>58</sup>"An Act Concerning Louisville," approved Dec. 19, 1795, loc. cit.

<sup>59</sup>"An Act Concerning the Town of Louisville," approved Dec. 11, 1801, ibid.

<sup>60</sup>"An Act Concerning Louisville," approved Dec. 19, 1795, ibid.

<sup>61</sup>"An Act Concerning the Town of Louisville," approved Dec. 11, 1801, ibid.

The first Monday in each month was set for the regular board meeting but meetings could be called at other times either by the chairman or on request of two members.<sup>62</sup> In 1805 the Board voted to fine members for absence from meetings "without good excuse" and this was done on several occasions.<sup>63</sup>

The actions of the board of trustees included legislative, executive, and to a limited extent, judicial functions. As legislators they enacted ordinances and by-laws. In their executive capacity they appointed administrative officers, such as harbor-masters, town sergeant, clerk, treasurer, and others. They likewise contracted with individuals or groups for municipal business. No judicial powers were vested in them by the Act of 1795, but section 5 of "An act for the more effectual preventing of crimes, conspiracies, and insurrections of Slaves, Free Negroes, and Mulattoes and for their better government"<sup>64</sup> provided "That it shall be lawful for any Trustee of a town to issue his warrant to cause any slave, free negro or mullato, misbehaving within the limits of the town, to be apprehended and brought before him, or some other Trustee of said town, who shall have power to punish . . . as is now vested by law in a Justice of the Peace." Apparently the trustee was limited in

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<sup>62</sup>Record of Town of Louisville, 1781-1825, pp. 39, 66.

<sup>63</sup>Ibid., passim.

<sup>64</sup>Approved Jan. 25, 1811.

jurisdiction to specific cases involving negroes.

The sums of money expended by the trustees during the period were modest, although they increased almost yearly. The Act of 1795 had limited the amount of taxes collected to "twenty-five pounds annually on the tithable and property, real and personal, within the half-acre lots . . ." and an additional maximum levy of ten pounds for cleaning out the harbor.<sup>65</sup> The first annual tax estimate, made in July, 1797, amounted to 31 f 15/6 d<sup>66</sup> and the tax rate was set, as follows:<sup>67</sup>

"For a horse mare and colt.....	6 d per head
"For Negroes per head .....	1/
"For each Billiard Table.....	20/
"For each ordinary License.....	6/
"For each Retail Store .....	10/
"For each Carriage per Wheel .....	2/
"For each Town lot (1/2 acre).....	61 per f 100
"For each Tithable .....	31 per f 100

On February 16, 1802, the Record of Louisville reads:

The collector of Town Taxes having made out his collection Book and it appearing that the Taxes agreeably to the orders of the Board amount to a much greater sum than the Trustees are authorized by law to raise. It is ordered that the Taxes . . . for the year 1800 and 1801 be reduced one-half . . .

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<sup>65</sup>"An Act concerning the Town of Louisville," approved Dec. 19, 1795, Sec. 3, loc. cit.

<sup>66</sup>. . . the pound of that time equal to Virginia pound of 1777 made equal by law to 2/3 of the pound sterling, it was equal to \$3.33 1/3. The tax, therefore, equaled about \$106 in our currency." (R. T. Durrett, "Louisville Under the Kentucky Trustees," op. cit., p. 64.)

<sup>67</sup>Record - Town of Louisville, 1781-1827, pp. 39-40, July 3, 1797.

(This is probably the only instance in Louisville on record in which the tax rate was cut in half.)

In 1803 the legislature increased the levy to \$200 a year;<sup>68</sup> in 1805 and 1812 taxes were again raised to \$800<sup>69</sup> and \$200<sup>70</sup> a year, respectively. By 1817 the tax revenue was again insufficient to meet the town's needs and in that year the legislature increased the levy to \$6,000.<sup>71</sup> The taxes assessed for 1805 amounted to \$237.19;<sup>72</sup> for 1810, \$999.74;<sup>73</sup> and for 1821, the assessment was \$5,996.68.<sup>74</sup> In 1815 property intended and used for religious worship was declared tax exempt,<sup>75</sup> and in 1825 the legislature empowered the trustees to

. . . levy and collect from each male inhabitant of said town over the age of twenty-one years, a poll tax not exceeding one

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<sup>68</sup>"An Act to Amend the several acts respecting the town of Louisville," approved Dec. 26, 1803, Sec. 3, in Collection of Acts, 1839, pp. 20-21.

<sup>69</sup>"An Act to amend the several acts respecting the town of Louisville," approved Dec. 21, 1805, Sec. 2, Ibid., p. 21.

<sup>70</sup>"An Act concerning the town of Louisville in Jefferson County," approved Feb. 7, 1812, Sec. 1, ibid., pp. 27 ff.

<sup>71</sup>"An Act concerning the town of Louisville," approved Jan. 27, 1817, ibid., p. 32.

<sup>72</sup>Record of Town of Louisville, 1781-1825, March 10, 1806, p. 74.

<sup>73</sup>Ibid.

<sup>74</sup>Benjamin Casseday. History of Louisville to 1852, p. 160.

<sup>75</sup>Record of Town of Louisville, 1781-1825, Feb. 10, 1815, p. 151.

dollar; and on real and personal property not more than forty cents for every one hundred dollars of the assessed value  
 . . .<sup>76</sup>

Municipal revenues were also augmented somewhat by license fees and fines.<sup>77</sup> One rather unusual and questionable method of obtaining revenue is recorded in the minutes of the trustees.

Resolved that William Dougherty be authorized and appointed to take up all Horses, mares, etc. owned or claimed by a slave or slaves in this town after the 20th Inst. and sell them at public auction in the streets of said town (without advertising) for the best price that can be had in ready money and after paying the expense attending the sale, and pay the overplus to the Treasurer of this Board for use of the Town.<sup>78</sup>

It is a question whether the trustees needed horses or whether the town needed money.

The municipal services of Louisville during the first three decades of the nineteenth century did not keep pace with the rapid growth in population. After the War of 1812, with the opening of the port of New Orleans and the improvement in shipping introduced by the steamboat, Louisville was rapidly outgrowing the trustee type of government. In 1790 the population of Louisville had been 200<sup>79</sup> but by

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<sup>76</sup>Act granting further powers to the Trustees of the town of Louisville and for other purposes, Dec. 17, 1825, Sec. 1, in Collection of Acts, 1839.

<sup>77</sup>Record of Town of Louisville, ibid., passim.

<sup>78</sup>Ibid., p. 149, Sept. 19, 1814.

<sup>79</sup>A century of Population Growth from First Census of the United States to the Twelfth, 1790-1900, p. 78.

the turn of the century it had probably reached 600.<sup>80</sup> During the next decade the population doubled, and from 1810 to 1820, it trebled.<sup>81</sup> By 1827 the inhabitants of Louisville numbered 7,063.<sup>82</sup> Meanwhile the assessment valuation of property had increased from less than a hundred thousand dollars in 1800 to over two hundred thousand in 1810 and to more than one and one-half million in 1820.<sup>83</sup>

Louisville was a growing commercial town and its trustees were more concerned with trade than with the living conditions of its inhabitants, although Louisville was probably not far behind even the larger localities of that day.<sup>84</sup> Some of the streets within the city were paved and by 1825 the trustees had obtained authorization for digging a canal.<sup>85</sup> Their chief considerations, however, were fines and fees and trade regulations.

The town had been surveyed in 1780 and again in 1812.<sup>86</sup> The

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<sup>80</sup>Casseday, op. cit., p. 247; History of Ohio Falls Cities, Vol. 1, p. 257. The latter source gives population of 1800 as 359.

<sup>81</sup>Ibid.

<sup>82</sup>Casseday, op. cit., p. 173; History of Ohio Falls Cities, Vol. 1, p. 257.

<sup>83</sup>Casseday, op. cit., p. 247.

<sup>84</sup>Munro, Government of American Cities, pp. 9 ff.

<sup>85</sup>Collins, op. cit., Vol. 1, p. 37.

<sup>86</sup>Pursuant to enabling act of legislature, approved Feb. 22, 1808 ("An Act to amend the several acts relative to the town of Louisville," Sec. 2.)

surveys had called for the widening of Main Street and provision for a common. Subsequently, however, this land was divided into lots and sold by the trustees.<sup>87</sup> No provision for public education had been made and poor relief was unsystematic. (The county court annually levied sums for paupers and left sums with individuals between meetings for relief purposes.)<sup>88</sup>

Dr. M'Murtrie, writing in 1819, complains of the "bad quality of water in general use" and of the lack of alleys and public squares.<sup>89</sup> It was not until 1827 that the Board of Trustees agreed to pay the expenses of a fire company.<sup>90</sup> The first "police force" was established in 1810 on petition of the citizens; this consisted of two watchman,<sup>91</sup> at a salary of \$250 a year, whose duties were to "patrol the streets from ten p.m. until daybreak, to cry the hour and weather, to hold in the watch-house any person out without reason after ten o'clock to

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<sup>87</sup>M'Murtrie, Henry, Sketches of Louisville, 1819, p. 113.

<sup>88</sup>Kentucky Laws, 1797, Part VIII - Laws Establishing courts of Justice, 4 reads in part "They (the county courts) establish and regulate ferries and provide for their poor" passed Dec. 17, 1796; Dr. M'Murtrie deplors the lack of better provision for the poor but offers as possible reason, the virtual absence of paupers in Louisville (pp. 144-145).

<sup>89</sup>M'Murtrie, op. cit.

<sup>90</sup>Record of Town of Louisville, 1787-1827, p. 77.

<sup>91</sup>Ibid., Dec. 5, 1810, p. 107.

prevent conflagrations, Felonies, Riots, routs, breaches of the peace and all unlawful assemblages of negroes."<sup>92</sup>

How efficiently two watchmen were able to patrol even this small community may be shown by again quoting Dr. M'Murtrie:

A watchman is a character perfectly unknown and not a single lamp lends its cheering light to the nocturnal passenger, who consequently stands a very good chance of breaking his neck by falling into ditches, drains, and wells, which without a barrier of any kind around them, are frequently left open for weeks and even months together. To show the necessity of a radical reform in the police of this place, much more might be added but, as the subject more particularly interests those whose senses daily give them a thousand unequivocal proofs of the fact, I shall conclude by hinting to them, that it must always be thus until they have officers appointed by the people whose whole and sole duty it is to look after these things, and who are paid for it, or in other words, until they procure an act of incorporation. As long as the trustees or other officers are chosen from among mercantile men, who have no other inducement to leave their own business for that of another, but the public good, so long will the town have to take care of itself. Verbum sapienti. <sup>93</sup>

Dr. M'Murtrie was not alone in this viewpoint. On November 3, 1827, a meeting of the citizens of Louisville was held to consider incorporation and five resolutions were adopted requesting that a committee of seven citizens be empowered to draw up a charter to be submitted to the legislature. The two outlying communities, Shippingport and Portland were asked to join; the former accepted, but Portland

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<sup>92</sup>Record of Town of Louisville, 1781-1825, March 25, 1811, p. 104.

<sup>93</sup>M'Murtrie, op. cit., pp. 143-144.



remained a separate town<sup>94</sup> until 1852.<sup>95</sup>

The citizens resolutions were presented to the legislature in 1828 and the charter of incorporation, apparently without having been submitted to the people of Louisville, was passed February 13, 1829.

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<sup>94</sup>Casseday, op. cit., p. 172.

<sup>95</sup>An Act to Provide for the Annexation of the Town of Portland to the City of Louisville, approved Jan. 9, 1852, Sec. 1.

## CHAPTER II

### LOUISVILLE UNDER THE FIRST CHARTER

1828-1850

The history of Louisville from 1828 to 1850 is characterized by significant economic growth and development. By 1830 Louisville with a population of 10,341 had gained the prestige of being the largest town in the State; by 1850 her population had reached 43,194<sup>1</sup>. Situated strategically for trade between Pittsburgh and New Orleans, the city shared in the commercial prosperity and development of the Mississippi Valley. The Portland Canal, first projected some twenty-seven years earlier,<sup>2</sup> was finally opened to trade in 1831<sup>3</sup> and by 1845 over three million tons of freight had passed through it.<sup>4</sup> The first railroad entering Louisville, a section of the Lexington and Ohio Railroad, was in operation between Sixth Street and Portland in 1838.<sup>5</sup> Commerce, as it had been since earliest days, continued to

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<sup>1</sup>Collins, op. cit., Vol. II, p. 262; U. S. Bureau of Census, The Seventh Census of the United States, 1850, p. 612.

<sup>2</sup>In 1804 a company had been incorporated by the State legislature to cut a canal, but only surveys were made at that time.

<sup>3</sup>Otis, op. cit., p. 114.

<sup>4</sup>American Democrat and Weekly Courier, Feb. 4, 1846.

<sup>5</sup>Collins, op. cit., Vol. II, p. 358.

be the city's chief enterprise, while after 1840 manufacturing showed substantial growth.

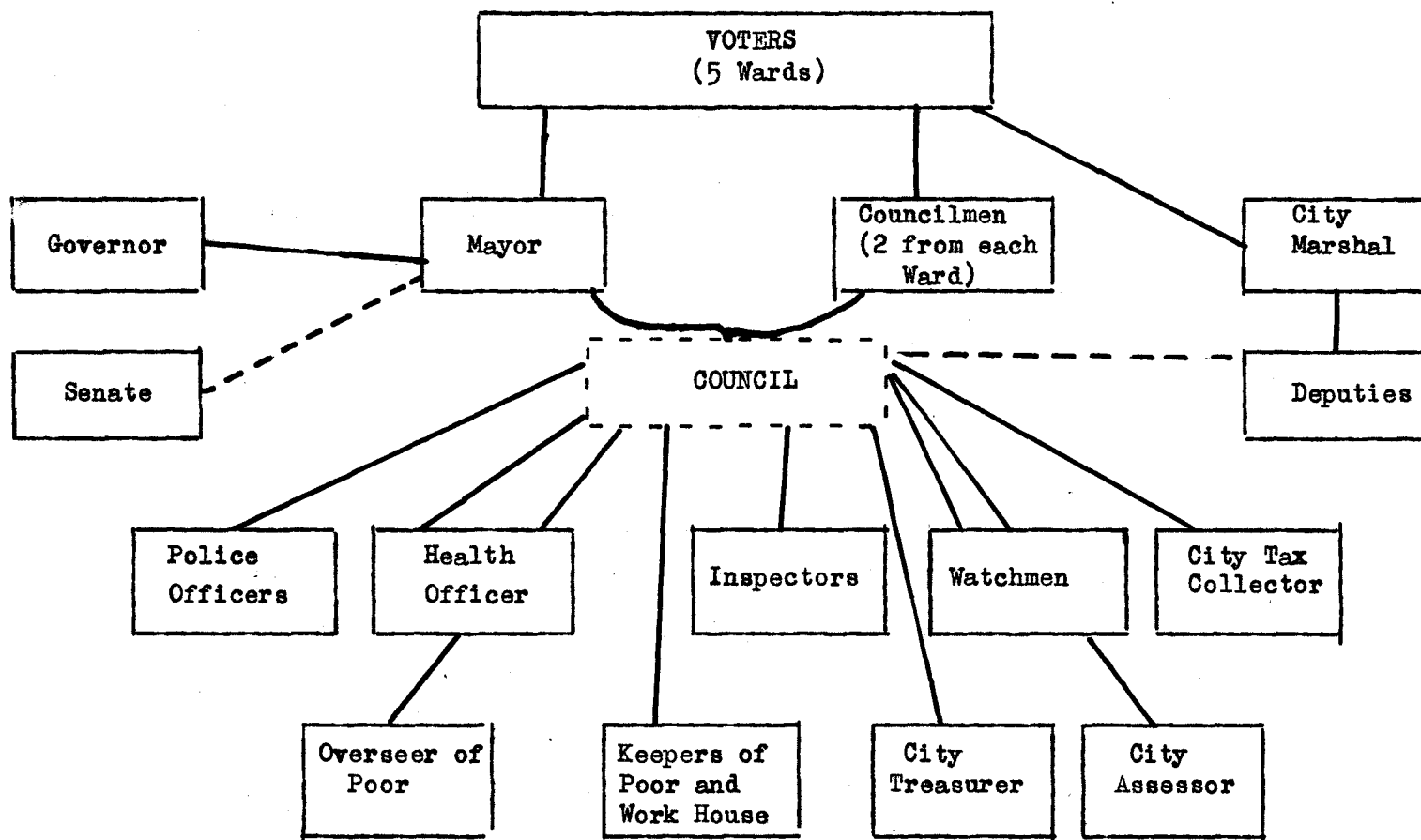
The 1828 charter reflected, in general, the trend and thought of the times, embodying as it did the idea that the purposes of government were primarily the protection and regulation of property and the conduct of such public enterprises as the construction of streets, the operation of ferries, establishment of markets and the like; only secondary importance was attached to such functions as health, education and welfare. The structure of the municipal government introduced no radical changes but was rather an outgrowth of the older form. Under the charter the power of governing the city was vested in a mayor and council instead of trustees. Although the council's jurisdiction was somewhat broader and the powers granted them by the legislature were more general than those of their predecessors, the governing power continued to reside within a comparatively small group of men chosen by vote of an electorate composed principally of property-owners. Nevertheless, the legislature, evidently considered the charter an experiment,<sup>6</sup> for they decreed that it should remain in effect for a period of five years only; an act of continuance passed in

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<sup>6</sup> Baltimore's first act of incorporation (1797) was also considered an experiment and made effective for one year only; the next session of the assembly, however, made it perpetual. See T. P. Thomas, "The City Government of Baltimore," Baltimore, 1896 (Johns-Hopkins University Studies in Historical and Political Science, Vol. XIV, No. 2), p. 58.

GENERAL STRUCTURE

CHARTER OF 1828



1833, however, extended the life of the act indefinitely.<sup>7</sup>

## Elections and Voting

1828-1850

While the principle of popular election of state and local officials was gaining adherents throughout the country and Kentucky in the constitution of 1799 had changed the mode of electing its governor and senators from electoral to popular vote,<sup>8</sup> the makers of the 1828 charter were still loathe to leave the choice of mayor entirely to the whim of the local electorate. The charter contained the rather unusual provision<sup>9</sup> that

. . . in all elections for mayor, not less than two persons<sup>10</sup> shall be voted for as such, and the two persons having the highest number of votes shall . . . be certified to the Governor of this Commonwealth . . . stating in the certificate the number of votes given to each, one of whom shall be commissioned by the Governor as Mayor of the City of Louisville, and submitted for

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<sup>7</sup> Charter of 1828, Sec. 26, Collection of Acts, 1839; Act to amend and continue in force an act to incorporate the City of Louisville, Feb. 1, 1833; Acts of the General Assembly, 1833, Ch. 204, Sec. 1.

<sup>8</sup> Constitution of Kentucky, 1799, Art. II, Sec. 8.

<sup>9</sup> Another instance where state and local authorities shared in the selection of the mayor was the city of Pittsburgh where prior to 1834 the select and common councils together chose the mayor, by electing one of twelve "aldermen," appointed by the governor of the state (McLaughlin and Hart, Cyclopedia of American Government, Vol. 2, p. 694.)

<sup>10</sup> The charter is ambiguous on this point. Cf. Sec. 4, and Sec. 9.

the advice and consent of the Senate as in other cases . . .<sup>11</sup>

It further provided that should the Governor, or the Senate, for sufficient cause, be unwilling to commission either of the voters' choices that this fact

. . . be certified by the Secretary of State to the City Council of Louisville, who shall, in not less than ten days or more than thirty days, cause another election to be held for Mayor, to be conducted as other elections are directed to be by this act, and the two persons having the highest number of votes shall be certified to the Governor, who shall commission one of them as aforesaid . . .<sup>12</sup>

Five years later the State legislature took a further precaution to insure state control by decreeing that in the event that only one person be chosen by the voters of Louisville, the Mayor and council were to

. . . recommend to the Governor some other competent and qualified person to act as Mayor, one of whom the Governor shall . . . commission as Mayor . . .<sup>13</sup>

This same act also repealed the clause necessitating a second election should the Governor be dissatisfied with both men recommended, and instead empowered the mayor and council to select two other qualified persons.<sup>14</sup>

It so happened, however, that whatever the intention of the

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<sup>11</sup> Charter of 1828, loc. cit.

<sup>12</sup> Charter of 1828, loc. cit., Sec. 24.

<sup>13</sup> Amend., Feb. 1, 1833, Sec. 3, loc. cit.

<sup>14</sup> Ibid.

legislature, state control of the choice of the Mayor of Louisville existed merely on the statute books. In practice, in every election on record from 1829 through 1835, the candidate receiving the greatest number of votes was commissioned mayor.<sup>15</sup> Furthermore, inasmuch as municipal elections were held in March<sup>16</sup> and the state legislature was in session regularly only during January and February,<sup>17</sup> the confirmation of the governor's appointment by that body was wholly without meaning -- the mayor had already held office for ten months of his twelve-months' term.

In 1836 the power of the selection of the mayor was finally taken out of the hands of the governor and senate and granted to the city council. It was prescribed that

. . . it shall be the duty of the City Council of Louisville . . . to elect some competent person as Mayor of said city . . . and the majority of the number of councilmen shall concur in such election . . .<sup>18</sup>

This proved a most unsatisfactory method of choosing a mayor, since often no nominee could obtain a necessary majority. In the first election by the council, a deadlock continued for three consecutive

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<sup>15</sup>City Journal, March 11, 1828 - June 29, 1835, vols. 1-4, passim.

<sup>16</sup>Charter of 1828, Sec. 2.

<sup>17</sup>Acts of the General Assembly, 1833, Ch. 91.

<sup>18</sup>Acts of the General Assembly, Ch. 257, Sec. 18, p. 284.

meetings.<sup>19</sup> At the second meeting a resolution was introduced proposing that the election be referred to the people, "the original and legitimate source of all political power" and that the council vote unanimously for the candidate who should receive the greatest number of votes.<sup>20</sup> The motion was lost by a vote of 3 to 7 (The only two mayoral candidates among the councilmen voted in favor of the resolution). Later, after numerous ineffectual ballotings, the resolution was reconsidered, this time the vote being tied 5 to 5.<sup>21</sup> Finally at a third meeting, after many more ballotings, William A. Cocke was elected mayor.<sup>22</sup> In the election of 1837, the vote was taken thirteen times before Frederick A. Kaye was declared mayor elect.<sup>23</sup>

There is no doubt that the citizens of the city were displeased with the council method of election. The following petition to the state legislature was circulated throughout the community and received the endorsement of at least one newspaper:<sup>24</sup>

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<sup>19</sup>City Journal, vol. 6, March 7, 1836, p. 268; March 14, 1836, pp. 277-278; March 21, 1836, p. 288.

<sup>20</sup>Ibid., p. 276.

<sup>21</sup>Ibid., p. 278.

<sup>22</sup>Wm. A. Cocke, 7 votes; Levi Tyler, 3; City Journal, vol. 6, p. 288.

<sup>23</sup>City Journal, vol. 7, March 15, 1837, p. 125.

<sup>24</sup>The Louisville Daily Journal, editorial, Dec. 19, 1836.



The undersigned citizens of Louisville, pray your honorable body so to alter the Charter of said city as to give the election of the mayor directly to the people, instead of leaving that office to be filled, as at present, by the City Council. They believe that the mayor ought to be elected by the legal voters, who are now recognized in the city Charter as having the right to vote for councilmen. They also pray that the mayor, instead of being elected for one year, may be elected for two years, and then he may be ineligible for the next two years . . .

The state legislature, apparently cognizant of the will of the local electorate passed an act amending the charter in 1838. Following the lead of other state legislatures,<sup>25</sup> it provided that the mayor should be elected by the qualified voters of the city.<sup>26</sup>

From this time on until the adoption of the new charter in 1851, with one exception, elections were conducted in routine manner. The one exception was the contested election in 1841. The contest arose between William A. Cocke, who received the majority vote, and James Harrison. The latter presented a memorial alleging various reasons why Mr. Cocke should not take office as mayor.<sup>27</sup> In response Cocke requested a new election. A second election<sup>28</sup> was held and the vote

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<sup>25</sup> Charters adopted between 1820 and 1835 in the cities of Boston, St. Louis, Detroit, Philadelphia, Baltimore, and New York, all provided for election of mayor by popular vote. See Fairlie, Municipal Administration, pp. 81-82.

<sup>26</sup> An Act to amend the charter of the City of Louisville, approved Jan. 16, 1838, Sec. 3, in Elliott, op. cit., p. 75.

<sup>27</sup> The Louisville Daily Journal, May 7, 1841; City Journal, vol. 9, May 6, 1841, p. 307 ff.

<sup>28</sup> The elections of councilmen from two wards were likewise under attack. See City Journal, May 6, 1841.

this time went to a third candidate, David L. Beatty, with a plurality of 135 votes over the number received by James Harrison.<sup>29</sup>

Vacancies in the mayor's office were filled by a member of the city council, chosen by that body, pending the outcome of a new election held in the original manner of electing a mayor.<sup>30</sup> An amendment to the charter, passed in 1838, stated that should the office of mayor be vacated, a successor for the unexpired term was to be elected by the council.<sup>31</sup> In the event of a vacancy, for whatever cause, in the office of councilman the law provided that

. . . the Mayor and residue of the councilmen shall, forthwith, supply the vacancy by the election of some other qualified resident of the ward . . .<sup>32</sup>

From the date of Louisville's incorporation, councilmen were elected by popular vote<sup>33</sup> and, until 1836, the office of city marshal was elective.<sup>34</sup> Thereafter the marshal was appointed annually by the mayor with "the advice and consent of a majority of the council."<sup>35</sup>

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<sup>29</sup>City Journal, vol. 9, May 17, 1841, p. 315.

<sup>30</sup>Charter of 1828, Sec. 15, loc. cit.; Acts of the General Assembly, 1836, Ch. 257, Sec. 18 (p. 284).

<sup>31</sup>Amend., Jan. 16, 1838, Sec. 3, loc. cit., p. 75.

<sup>32</sup>Amend., Dec. 23, 1831. Acts of the General Assembly, 1831, ch. 746, Sec. 5 (p. 199).

<sup>33</sup>Charter of 1828, Sec.

<sup>34</sup>Ibid.

<sup>35</sup>Acts of the General Assembly, ch. 257, Sec. 10 (p. 282).

The city, according to charter provision, was divided into five wards, each of which elected by popular vote, two councilmen.<sup>36</sup> The mayor and council were charged with the responsibility of redistricting wards from time to time in order to equalize the number of inhabitants.<sup>37</sup> The number of wards was increased to six in 1836.<sup>38</sup> Two years later the council was again increased, this time to sixteen members, with the passage of a charter amendment dividing the city into eight wards. The same amendment also specified

That in the year 1840 and every five years thereafter, the council shall divide the city into eight wards, as nearly equal in population and voters as may be; and for that purpose, previous to any such division, it shall cause a census of the population and voters in each ward to be taken . . .<sup>39</sup>

The trend during the first half of the nineteenth century was toward a widening of suffrage. Tax-paying and property-holding qualifications, imposed by most states prior to 1830,<sup>40</sup> were being abolished in the wake of Jacksonian democracy which was sweeping the country. In Kentucky the franchise had been extended since 1799 to every free, white, male citizen who had attained the age of twenty-one and who had resided within the state two years or within the locality in which he

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<sup>36</sup>Charter of 1828, Sec. 3, loc. cit.

<sup>37</sup>Ibid.

<sup>38</sup>Acts of the General Assembly, ch. 257, Sec. 17. (p. 284).

<sup>39</sup>Amend., Jan. 16, 1838, Sec. 11, loc. cit., p. 77.

<sup>40</sup>Munro, Government of American Cities, p. 11.

was voting one year.<sup>41</sup> The Louisville charter of 1828 limited the vote to citizens who had lived in the city for at least six months.<sup>42</sup> Later, residence in the ward in which one voted was required,<sup>43</sup> and in 1838 the requisite length of residence within the city was extended to one year.<sup>44</sup>

Besides certain residence requirements, tax-paying qualifications were imposed. No person was eligible to vote who had not "been assessed and paid taxes for the preceding year."<sup>45</sup> An amendment passed in 1833 required payment of taxes at least twenty days previous to election.<sup>46</sup>

While there had been virtually no change in voting qualifications since 1792 in Kentucky, two issues, more or less closely related to suffrage arose about this time and were heatedly debated in the press and elsewhere. One of these issues was resolved in the convention debates of 1849 and its outcome legalized in the State Constitution of 1850. The second became a major issue in the adoption

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<sup>41</sup>Kentucky Constitution of 1799, Art. II, Sec. 8.

<sup>42</sup>Charter of 1828, Sec. 4, loc. cit.

<sup>43</sup>Acts of the General Assembly, 1836, Ch. 257, Sec. 17.

<sup>44</sup>An Act to amend the Charter of the City of Louisville, approved Jan. 16, 1838, Sec. 13.

<sup>45</sup>Acts of the General Assembly, 1831, Ch. 746, Sec. 14. There is no mention of taxpaying qualification in the Charter of 1828.

<sup>46</sup>An Act to amend the Charter of the City of Louisville, approved Jan. 16, 1838, Sec. 13, loc. cit.

of the new Louisville charter of 1851.

The first issue on the subject of suffrage arose with the influx of foreigners into the United States during the third and fourth decades of the century. Two states<sup>47</sup> had already permitted unnaturalized foreigners to vote. In Kentucky the controversy became a verbal battle waged in the newspapers and on the floor of the Constitutional Convention of 1849, but the 1851 Constitution was drawn up without extending the franchise to unnaturalized foreigners.

The second issue, more specifically related to municipal government, was the tax-paying qualification for voting in municipal elections. The question arose whether the provision of the constitution declaring that "all elections should be free and equal"<sup>48</sup> prohibited the tax-paying qualification. The traditional tax-payer viewpoint is expressed in an editorial appearing in the Daily Journal:

. . . In a local government like that of a city instituted merely for the purpose of regulating property and to raise a revenue for its improvement and protection, to allow a man, who neither has property nor pays a tax, to have an equal voice with him who has property and pays a tax in saying how the property shall be improved and protected, would be to establish a mode of election, which instead of being equal, would be grossly unequal and without any basis of fairness or justice . . .<sup>49</sup>

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<sup>47</sup>Michigan and Illinois. Illinois enfranchised all white male inhabitants twenty-one years of age or above, who had resided in the state six months. See Kneir, City Government in the United States, p. 167.

<sup>48</sup>Kentucky Constitution of 1799, Art. X, Sec. 5.

<sup>49</sup>Louisville Daily Journal, January 25, 1837.

This view was challenged by the proponents of the new charter of 1851 who rejected "property as the base representation" and denied it "as a qualification for the voter."<sup>50</sup> Nor was popular reaction against the tax-paying qualification for voting unique in Louisville. In St. Louis, for instance, it was maintained by some that the municipal election of 1844 was carried by the dog-tax. Citizens who had never owned a dog qualified as voters by paying a dog tax.<sup>51</sup>

It is difficult to ascertain the extent to which national party politics entered into the municipal elections of this period. It is, however, reasonable to assume from the editorials and other articles in newspapers of varying political views, that although party lines were not wholly disregarded, local issues were the determining factor.<sup>52</sup> It is also true that inasmuch as municipal elections were held in the spring, and state and national elections, in the fall, time separated the issues of the city from those of state and nation.

Elections were held the first Monday in March<sup>53</sup> under regulations made by the council. The council furnished lists of those who

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<sup>50</sup>Louisville Daily Democrat, Feb. 17, 1851.

<sup>51</sup>M. S. Snow, "The City Government of St. Louis" (Johns Hopkins University Studies in Historical and Political Science, Fifth Series, No. IV, Apr. 1887), pp. 14-15.

<sup>52</sup>Louisville Daily Journal, May 14, 1841, editorial; Louisville Public Advertiser, 1840-1844, passim.

<sup>53</sup>Charter of 1828, Sec. 4, loc. cit.

had been assessed and had paid taxes for the preceding year.<sup>54</sup> In each ward, elections were conducted under the auspices of three inspectors, appointed by the council. The authority to determine the validity of election results was a prerogative of the council, who had the power to declare an election void and order a new one or to award the election to the candidate with the second highest number of votes. Expenses of all elections -- municipal, state, and congressional -- held within the city were borne by the city treasury.<sup>55</sup>

While the first State Constitution had called for ballots for all elections,<sup>56</sup> this had been changed in 1799. An act on elections passed in that year provided that

. . . The persons entitled to suffrage shall in the presence of . . . judges and sheriff, vote personally and publicly, viva voce . . .<sup>57</sup>

The abuses of this method of voting are obvious and public voting did not go unchallenged by the local press of that period. The Journal complained that

. . . Elections instead of being decided by suffrage, are carried by bank notes, and the corruption is as much known and recognized at the polls, as if it formed a part of the consti-

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<sup>54</sup>Ibid.; Acts of the General Assembly, 1831, Ch. 746, Sec. 4., (p. 199).

<sup>55</sup>Amend., Feb. 1, 1833, Acts of the General Assembly, 1833, Ch. 204, Sec. 3.

<sup>56</sup>Constitution of Kentucky, 1792, Art. III, Sec. 2.

<sup>57</sup>Wm. Littell, Digest of Statutes of Kentucky, Frankfort, Ky., 1822, Ch. LXIII, Sec. 3.

tutional provisions for qualifying voters . . .<sup>58</sup>

and the Examiner, pointing out such evils of the system as the hiring of bullies and bribing, strongly advocated the adoption of the ballot.<sup>59</sup> Election reform was sorely needed, for the way was being paved for the election riots of later years.

#### The Mayor and Council

To be elected mayor or councilman of Louisville under the original act of incorporation it was only necessary for the aspirant to be a citizen of the Commonwealth of Kentucky and a resident of Louisville for two years.<sup>60</sup> Although it is doubtful whether, at that time, any person other than a property-owner would have run for office, and less likely that, had he run, he would have been elected, there was no written property qualification in the charter. Three years later, however, qualifications were so amended that no person was eligible for elective office who was not a "housekeeper or freeholder" and who had not paid taxes within the city for the preceding year. A councilman was also required to reside in the ward from which he was elected and to resign his office should he move from that ward during his term of

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<sup>58</sup>Louisville (Weekly) Journal, Oct. 4, 1839, editorial.

<sup>59</sup>The Examiner, Aug. 18, 1849, Sept. 22, 1849, and passim.

<sup>60</sup>Charter of 1828, Sec. 2., loc. cit.



office.<sup>61</sup> In 1838 qualifications for elective offices were again revised. An act to amend the charter provided

That no person shall be eligible as a member of the council . . . who is not of the age of twenty-five years; who is not a resident of the ward electing him; who has not resided in the city three years next preceding the election; who is not a freeholder, or housekeeper with a family, and who shall not have paid his city taxes at least twenty days previous to the election . . .<sup>62</sup>

The same act prohibited the mayor and members of the council from retaining their seats on the council upon becoming candidates for state or federal legislature<sup>63</sup> and also provided

That neither the mayor or any member of the council shall, directly or indirectly, be interested in any contract with the city . . .<sup>64</sup>

Between 1838 and 1850 no further changes were made in qualifications.

Members of the council served without pay. The mayor's salary was fixed in his absence by the board of councilmen and could not be changed during his term of office.<sup>65</sup> The salary actually paid was \$600 annually,<sup>66</sup> excluding fees,<sup>67</sup> until 1836 when it was increased

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<sup>61</sup>Amend., Dec. 23, 1831, Sec. 5, Acts of the General Assembly, 1831, Ch. 746, Sec. 5, (p. 200).

<sup>62</sup>An Act to amend the Charter of the City of Louisville, approved Jan. 16, 1838, Sec. 4, in Elliott, op. cit., p. 75.

<sup>63</sup>Ibid., Sec. 5.

<sup>64</sup>Amend., Jan. 16, 1838, Sec. 8, loc. cit., pp. 76-77.

<sup>65</sup>Charter of 1828, Sec. 6, loc. cit.

<sup>66</sup>City Journal, Vols. 2-6, passim.

<sup>67</sup>Charter of 1828, Sec. 6, loc. cit.

by statute to a minimum of \$2,000 a year.<sup>68</sup>

Councilmen throughout the period, and the mayor until 1837, served for one year only.<sup>69</sup> Reelection, however, was not uncommon, and during this period only three mayors held office.<sup>70</sup> In 1837 a charter amendment extended the mayor's term of office to three years and prohibited the incumbent from succeeding himself in office.<sup>71</sup>

The mayor and board of councilmen sat as one body and their meetings were open to the public. The mayor convened the board as often as he deemed advisable and presided at its meetings. He cast his vote only in case of tie, and had no power of veto. His chief influence within the council lay in his advisory powers for it was his responsibility to "recommend all such measures as may tend to the improvement of finances, the police, health, security, cleanliness, comfort, and ornament" of the city.<sup>72</sup>

A carry-over from the trustee type of government, certain judicial powers were accorded the mayor, and for a few years he retained these powers. The charter of 1828 bestowed on him

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<sup>68</sup>Amend., Feb. 25, 1826, Acts of the General Assembly, Ch. 257, Sec. 18.

<sup>69</sup>Charter of 1828, Sec. 2, loc. cit.

<sup>70</sup>John C. Bucklin, 1828-1833; James Joyes, 1834-1835; William A. Cocke, 1836.

<sup>71</sup>Amend., Jan. 16, 1838, Sec. 3, loc. cit.

<sup>72</sup>Charter of 1828, Sec. 6, loc. cit.

the power of justice of the peace of the county of Jefferson over slaves and free negroes, and the power of justice of the peace to require surety for good behavior, and for the peace, and in all matters of penalties for a violation of the laws of this commonwealth and the ordinances of the city council, and as to committing criminal offenders and sending them on for trial, he shall have the powers of two justices of the peace, but shall not have or exercise any judicial authority in civil matters.<sup>73</sup>

In 1833 the mayor's judicial powers were broadened. He was given the power to adjudicate all cases involving breach of the penal laws of the state which arose within the city<sup>74</sup> and he was also granted the power

to bind out orphan children of persons who are not able, or from their habits and character, are not likely to bring them up in honest courses . . . and the like power to hear and determine the complaints of apprentices bound out by him . . . and he may contract for additional advantages in favor of apprentices bound out by him.<sup>75</sup>

Along with the wider jurisdiction this act granted, it also enabled the mayor and council to select one or two magistrates of Jefferson County to preside with the mayor in court and in the mayor's absence to discharge his duties.<sup>76</sup> It gave the mayor's court the same authority within the city of Louisville as was accorded the Jefferson

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<sup>73</sup>Ibid.

<sup>74</sup>An Act to amend and continue in force An Act to incorporate the City of Louisville, approved Feb. 1, 1833, Sec. 19, Acts of the General Assembly, 1833, Ch. 204, Sec. 19.

<sup>75</sup>Ibid., Sec. 7.

<sup>76</sup>Ibid., Sec. 10.

circuit court in issuing warrants and determining cases involving riots, unlawful assemblages, or breach of the peace,<sup>77</sup> and re-affirmed the mayor's authority over negroes and mullatoes in Louisville, equalizing his authority with that vested in the justices of the peace and the county courts.<sup>78</sup>

In 1836 the mayor's judicial authority, which had never extended to civil matters, was terminated by the passage of An Act to establish a Police Court in Louisville and to amend the Charter of said City. This act abolished the Mayor's Court and provided for the establishment in its stead of a police court under a single judge appointed in the same manner as other state judicial officers, with jurisdiction concurrent with the Jefferson Circuit Court.<sup>79</sup>

The mayor was the executive officer of the city and as such was responsible for the execution of all laws and conduct of all subordinate officers. Yet, although he was authorized to have "all negligence, carelessness, and positive violation of duty . . . duly prosecuted and punished,"<sup>80</sup> his executive power was decidedly limited, for he had neither the power of appointing nor the power of dismissing

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<sup>77</sup>Amend., Feb. 1, 1833, Sec. 8, loc. cit.

<sup>78</sup>Ibid., Sec. 9.

<sup>79</sup>An Act to establish a Police Court in Louisville and to amend the Charter of said City, approved Feb. 22, 1836, Acts of the General Assembly, 1836, Ch. 257, Secs. 1, 2.

<sup>80</sup>Charter of 1828, Sec. 6, loc. cit.

city officials. Subordinate officers, such as the city treasurer, police officers, assessors, keepers of the poor and work house, and others, were appointed by the mayor and councilmen.<sup>81</sup> It should be remembered that the mayor could vote only in case of tie,<sup>82</sup> and that his only recourse in the event of neglect of duty on the part of subordinate officials was prosecution in court.<sup>83</sup>

Responsibility for efficient administration was somewhat more definitely allocated by the passage of an amendment in 1836 whereby the mayor was granted power of removal of all officers connected directly with police and health. These officers received their appointments through nomination by the mayor and confirmation by the council.<sup>84</sup> All other city officials were elected annually by the mayor and council and were subject to removal by a majority of the council. These officers -- the city clerk, treasurer and collectors, attorney, wharf-master, market master, trustees of the public schools, keeper of the poor and work house, sexton of the graveyards, and other minor officials -- were likewise under the supervision of the mayor, who could make known to the council any breach or neglect of duty.<sup>85</sup>

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<sup>81</sup>Charter of 1828, Secs. 11 and 17.

<sup>82</sup>Supra, p. 45, footnote 72.

<sup>83</sup>Supra, p. 47, footnote 80.

<sup>84</sup>Amend., Feb. 22, 1836, Acts of the General Assembly, 1836, Ch. 257, Sec. 20.

<sup>85</sup>Ibid.

With few exceptions city officials were elected annually. The record of the mayor and councilmen show that reappointments were rather frequent throughout the period from 1828 to 1850. For example in 1836, in the year of the election of a new mayor, out of eight of the appointments of the more important city officials, three were reappointments.<sup>86</sup> In 1841, also a mayoral election year, there were four reappointments among eight of the city officials elected by the council.<sup>87</sup> Most city officials held their positions more than one year, and some for several years. The same city marshal held office from 1832 to 1849, elected annually by the voters during the first four years, and thereafter appointed by the mayor and council.<sup>88</sup>

The council appointed the majority of the city officials, and, for the most part, the power of removal, also, belonged to that body. The power of the council to remove any of its own membership or the mayor from office was authorized by a charter amendment:

. . . the council, nine members concurring (after then days' previous notice) may expel any of its own body or remove the mayor from office, the reason therefor being spread on its journal.<sup>89</sup>

Likewise it was the responsibility of the council to remove the

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<sup>86</sup>City Journal, Vol. 6, May 20, 1836, p. 359.

<sup>87</sup>City Journal, Vol. 9, May 24, 1841, p. 331.

<sup>88</sup>City Journal, Vols. 3-9, passim.

<sup>89</sup>Ibid., Sec. 6.

mayor from office should he

. . . by improper interference with any city, state, or national election, attempt to control or influence the votes of another . . . the members of the council determining what is or is not such an improper interference with an election . . .<sup>90</sup>

Most powers and responsibilities belonged to the mayor and council jointly, but certain duties fell to the mayor alone. Fire control was one of the most important municipal functions in that time of horse-drawn vehicles and city pumps, and it was beholden upon the mayor to be present at all fires. He was likewise "visitor of the public schools."<sup>91</sup> He supervised the wharves and market houses of the city and with the consent of the council, made all contracts for municipal improvements.<sup>92</sup>

The charter bestowed on the mayor and councilmen in general

. . . all the powers and authority heretofore vested in the trustees of Louisville . . . with power and authority to adopt the by-laws and ordinances of said town, and the same to repeal, alter, and amend, as to them shall seem best, and with full power and authority to pass such by-laws and ordinances, with adequate penalties, as they shall from time to time deem expedient for the government of said city. . .<sup>93</sup>

and granted them specifically the following powers:

1. To open new streets and alleys, to keep streets and alleys open,

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<sup>90</sup>Ibid., Sec. 3.

<sup>91</sup>Amend., Feb. 22, 1836, Sec. 19, loc. cit.

<sup>92</sup>Ibid., Sec. 19.

<sup>93</sup>Charter of 1828, Sec. 7.

and to have sidewalks paved.<sup>94</sup>

2. To purchase, hold, and sell real estate within the city, and to purchase, hold, and sell personal property and stock in incorporated companies.

3. To borrow money on the credit of the corporation.

4. To appoint inspectors of flour, tobacco, whiskey, beef and pork, and others.

5. To appoint a health officer, to pass regulations necessary to prevent the introduction of smallpox, and to eradicate such disease in epidemic.

6. To organize a fire department.

7. To prohibit the erection of wooden buildings, to regulate height and size of buildings, etc.

8. To erect or procure suitable buildings for work and poor house.

9. To assess, levy, and collect taxes "on such real estate as they may designate in that part of the city, which composes the present town of Louisville, to the Third cross street of Preston's enlargement;<sup>95</sup> but such taxation shall be uniform on every description of property assessed."

10. To levy a poll tax on each free male of twenty-one and upwards, except paupers, and on all slaves over sixteen.

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<sup>94</sup>Ibid., Sec. 8.

<sup>95</sup>Boundaries of city and boundaries for taxation purposes did not coincide until passage of Charter of 1852, Sec. 12; ad valorem tax limit was forty cents on \$100.



11. To license and tax taverns, grocers, etc., and to license theatricals and shows. (The mayor was expressly forbidden by law to revoke a license.)<sup>96</sup>

12. To erect or procure suitable buildings as powder magazines, provide for conveyance of gunpowder, and to pass by-laws prohibiting introduction of gunpowder into the city.

13. To establish one or more free schools in each ward, to erect necessary buildings, and to provide necessary revenue for maintenance, and to levy a tax for school purposes on the ward where such schools may be established.<sup>97</sup>

14. To pass necessary by-laws with adequate penalties for their infraction, not exceeding fifty dollars "which penalties may be sued for in the name of the city and recovered before any Justice of the Peace."<sup>98</sup>

15. To purchase one or two pieces of property not exceeding fifty acres each outside the city to be used for burial grounds.<sup>99</sup>

It was mandatory that all by laws and ordinances passed by the mayor and council be recorded in the journal of their proceedings and

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<sup>96</sup>Amend., Jan. 16, 1838, Sec. 3, loc. cit.

<sup>97</sup>Charter of 1828, Sec. 11.

<sup>98</sup>Ibid., Sec. 18.

<sup>99</sup>Amend., Feb. 1, 1833, Acts of the General Assembly, 1833, Ch. 204, Sec. 5.

published.<sup>100</sup>

The original act of incorporation provided that

. . . In all meetings of the board, five councilmen, with the mayor, or in the absence of the mayor, six councilmen, shall constitute a quorum to do business, except in the cases of levying the taxes or the election of any officer of the city government, in which cases at least eight councilmen shall be present, and not less than five vote in the affirmative . . . <sup>101</sup>

The council conducted its affairs through standing committees and the number of these committees increased as the functions of the municipality expanded. In 1833 there were but three permanent committees of the council: Committee of Finance, Committee of the Poor, and Committee of Street Commissionery.<sup>102</sup> By 1839 there were eight, concerned with Finance, Streets, wharf, coffee-houses, public works, work house, fire department, and revision. These committees consisted of three members each, and were appointed by the mayor at the first regular meeting of the council. They had general superintendence of their various departments and made monthly reports to the mayor and council.<sup>103</sup>

The council fixed the salaries of most of the city officials, approved contracts for the pavement and repair of streets, bridges,

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<sup>100</sup>Charter of 1828, Sec. 14.

<sup>101</sup>Charter of 1828, Sec. 6, loc. cit.

<sup>102</sup>City Journal, Vol. 4, March 11, 1833.

<sup>103</sup>City Ordinances, 1839, Nos. 32 and 33, in Collection of Acts, 1839.

and other improvements, passed fire regulations, issued licenses, set the price of hire of hacks, regulated markets and wharves, provided for welfare -- in short, all municipal activities were carried out by the council or by a committee of the council.<sup>104</sup> All expenditures from "\$6.00 for four loads of wood for the poor house"<sup>105</sup> to \$20,000 for the purchase of "a wharf, warehouse and ferry"<sup>106</sup> were passed on by the council.

Before 1830 there had been no attempt made to budget the city's revenue. Payments were nearly always ordered "out of any money not otherwise appropriated." Mayor Bucklin in his opening address to the council in 1830 estimated the probable expenditures for the year<sup>107</sup> and from this time on it became customary for the mayor to present a statement of the city's financial status and probable expenditures for the coming year, as well as to make recommendations.<sup>108</sup>

The council was little concerned with most of the municipal services which are foremost today. Provision for health and welfare continued haphazard throughout the period. From time to time a board of health was established by ordinance,<sup>109</sup> but such a board was without

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<sup>104</sup>City Journal, Vols. 1-14, passim.

<sup>105</sup>Ibid., Vol. 2, Feb. 5, 1830, p. 140.

<sup>106</sup>City Journal, Vol. 2, March 11, 1831, p. 500.

<sup>107</sup>Ibid., March 12, 1830, pp. 187-188.

<sup>108</sup>Ibid., Vols. 2-14, passim.

<sup>109</sup>Ibid., Vol. 8, Dec. 30, 1839; May 22, 1849, p. 404.

the implication it would have today and concern for health was generally limited to periods of epidemic.<sup>110</sup> Poor relief was under the direct supervision of the council. Individual hardship cases were brought to the attention of the council for action, or, as happened from time to time, the councilmen appropriated a sum of money to be placed in the hands of some designated individual for care of the needy.<sup>111</sup>

Fire control was vested in independent companies subject to such regulations as the council imposed.<sup>112</sup> The first street lights were provided by contract with the Gas and Water Company in 1839.<sup>113</sup> Although as early as 1834 the city was authorized to borrow \$200,000 for construction of water works<sup>114</sup> or to contract for such service,<sup>115</sup> plans for water works did not materialize during this period.

Toward the end of the period the council became engaged in greater enterprise. By legislative acts the city was permitted in

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<sup>110</sup>See City Journal, Vol. 1, Oct. 12, 1830, pp. 392-3; Feb. 26, 1831, and passim.

<sup>111</sup>City Journal, passim.

<sup>112</sup>An Act to incorporate the Mechanics' Fire Engine and Hose Company of Louisville, February 24, 1834, in Collection of Acts, 1839.

<sup>113</sup>An Act to Incorporate the Louisville Gas and Water Company, Feb. 15, 1838, in Elliott, op. cit., p. 103.

<sup>114</sup>An Act to amend the charter of the City of Louisville, Feb. 22, 1834; Ibid.

<sup>115</sup>Ibid.

1838 to buy 4,000 shares in the Louisville Gas and Water Company,<sup>116</sup> and in 1848 an act was passed granting the city the right to raise a subscription of \$500,000 for the Frankfort and Louisville Railroad by a tax of one per cent in the real and personal estate of the city.

Each person who paid the tax was entitled to his pro rata share of stock.<sup>117</sup> There was some criticism of this method of financing the building of railroads for, as the Louisville Democrat pointed out

. . . The result was that nine-tenths of the taxpayers, as a matter of necessity in most cases, sold their tax receipts at half price. A few men got all the stock at an enormous discount . . .<sup>118</sup>

It was, moreover, such heavy investments as these by municipalities which helped to create the tremendous municipal indebtedness of later years.

#### The Council and Legislature

The story of municipal development in this country during the nineteenth century is the story of legislative interference in matters of purely local concern, and the relationship between Louisville and the Kentucky legislature was neither better nor worse than the average.

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<sup>116</sup>An Act to incorporate the Louisville Gas and Water Company, Feb. 15, 1838, loc. cit.

<sup>117</sup>An Act to amend the charter of the Frankfort and Louisville Railroad Co., Feb. 29, 1848, K. S., Ch. 450, Sec. 6.

<sup>118</sup>Louisville Democrat, March 16, 1851.

Some of the limitations on the actions of the mayor and the council were, to be sure, enacted by the legislature as safeguards from the municipality, to protect the people of the city against mismanagement by those in public office. The concurrence of a majority of the council were required.

. . . in electing any officer elective by the council; in the purchase and sale of real estate; in contracts involving the expenditure of money; in all acts for raising money; in all appropriations of money (except for the payment of fixed salaries and wages) and in the passage and repeal of ordinances . . . <sup>119</sup>

The fiscal powers of the council were likewise limited. Payment of all contracts, other than those specified in the charter, within the fiscal year, was made mandatory<sup>120</sup> and loans were limited to the anticipated revenue of the current fiscal year. The charter placed restrictions on both council and legislative action in providing that

. . . If the legislature shall, hereafter, authorize the council to make contracts, or obtain loans contrary hereto, unless otherwise specifically provided, it shall not be lawful for the council to make such contract, or obtain such loan without the previous assent of a public meeting of the citizens, to be convened for that purpose, after ten days' previous notice and publication of the law in two published newspapers printed in Louisville . . . <sup>121</sup>

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<sup>119</sup> Amend., Jan. 16, 1838, Sec. 6; also, Amend., Feb. 1, 1833, Sec. 5, loc. cit.

<sup>120</sup> There were certain exceptions; completion of the courthouse; erection of workhouse and jail; contract with Louisville Medical Institute; improvement of square designated for university; and purchase of city wharf.

<sup>121</sup> An Act to amend the Charter of the City of Louisville, approved Jan. 16, 1838, Sec. 6.

Certainly there is no outstanding instance during this period in which the State legislature attempted to impose its will against the best interests of the city inhabitants, although it did tie the hands of the council tightly with legislative red tape. The special legislation for the city might, at first glance, lead one to believe that very little discretionary power belonged to the councilmen. To a great extent this was true. On the other hand, much of the legislation concerning Louisville was initiated by the council. The City Journal makes frequent mention of committees appointed to petition the State lawmakers. At one time a committee was appointed for the general purpose of determining "whether any, and if any, what amendments ought to be made to the city charter."<sup>122</sup> Usually such council action was based on current needs and specific grants of authority were requested as, for example, the petition to the State legislature "for a portion of the funds and lands belonging to the Jefferson Seminary and the fines and forfeitures accruing within this city for the use and benefit of the public schools of this city"<sup>123</sup> or the Council resolution

. . . That our Representatives be requested to obtain a law at the next session of the Legislature, authorizing the city to purchase a site and right of way for the water works, within or without the city limits; to borrow the money necessary to their erection, etc.<sup>124</sup>

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<sup>122</sup> City Journal, Vol. 2, Oct. 30, 1829, p. 65.

<sup>123</sup> Ibid., Vol. 14, 1847-1849, p. 325.

<sup>124</sup> Ibid.

Initiation of legislation within the local community was common practice before 1850 throughout the country, and state legislatures devoted much time to special and local acts.<sup>125</sup>

While the Kentucky legislature in no wise rivalled the Ohio legislature which passed 545 special and local acts during one session (1849-50),<sup>126</sup> some 25 acts relative to Louisville were passed between 1828 and 1850. Many of these acts were local in scope and might well have been left to local action through more general grants of authority. It is indeed questionable whether a state legislature should concern itself with such details of local government as are contained in one act passed in 1835:

That it shall be lawful for the mayor and council of the City of Louisville, on the application of William H. Boothe, to discontinue the tobacco inspection at his warehouse in Louisville . . . and the mayor and council shall have power and authority to establish another tobacco inspection and warehouse in the City of Louisville . . .<sup>127</sup>

Such enactments by the general assembly, even when initiation of the law is local, are apt to result in a mass of piece-meal legislation determined by immediate expediency and political maneuvers rather than by long-range planning. The council was placed in the position of requesting more and more grants of authority as the city grew. Moreover, legislation for the largest town in the state often met with hostility according to the writer of the following:

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<sup>125</sup>Kneir, op. cit., pp. 54-55.

<sup>126</sup>Fairlie, Municipal Administration, p. 85.

<sup>127</sup>Act of Feb. 28, 1835, in Elliott, op. cit., p. 83.



The most superficial observer cannot but see that a spirit is rapidly developing itself in the Legislature of Kentucky which aims at depriving Louisville of that fair share of Legislative protection to which she is entitled . . . The hostile spirit we allude to is exhibited in the progress of every debate that takes place in the councils of our State. No matter what may be the subject of deliberation, . . . the damming of rivers, the formation of Railroads [etc.] . . . each and all are eagerly seized upon by a strong and united party as the theme of a loud and angry declamation against the interests of the city . . . <sup>128</sup>

By 1850 the laws governing the city had been amended in some instances to the point of ambiguity and contradiction. The city clerk found it impossible to prepare lists of voters because amendments and elections were so "contradictory, indefinite, and obscure." <sup>129</sup>

Pursuant to an amendment providing for a charter convention, <sup>130</sup> the council passed a resolution calling for a vote on the subject at the next election. The resolution declared, in part:

Whereas, there have been many conflicting amendatory acts of the Legislature passed since the Charter of 1838 which renders a correct understanding of the charter at this time difficult and whereas some of said acts are in contradiction to the will of the majority of the voters of this city as we believe

Therefore, Be it resolved . . . that the question of remodeling the city charter or making a new charter . . . be submitted to the voters of said city . . . <sup>131</sup>

The piling up of amendments had undoubtedly resulted in morass of vague and contradictory detail. But there was, possibly, another

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<sup>128</sup> Louisville Journal, editorial, Jan. 17, 1836.

<sup>129</sup> City Journal, March 18, 1850, p. 146; Amend., Mar. 5, 1850, Acts of General Assembly, 1850, Ch. 399, Secs. 2-3.

<sup>130</sup> Acts of General Assembly, 1850, Ch. 399, Sec. 6.

<sup>131</sup> City Journal, Vol. 14, Mar. 18, 1850, p. 145.

and more significant reason for revising the charter. After 1838 there had gradually emerged a changing viewpoint concerning the purpose and functions of municipal government. Increased urbanization was demanding expansion of municipal activities. The day had passed when it could be said that " . . . the power of laying, collecting, and disbursing . . . taxes, together with that of opening, grading, and paving streets comprise the whole or very nearly the whole of the powers and duties of the mayor and council."<sup>132</sup> Louisville, like other cities in the Mississippi Valley, was a focal point in the growing west. The era of railroad-building was at hand. Trade and commerce were the life-blood of a city located at the falls of the Ohio, and wisely or unwisely the city government sought to further those commercial interests. Meanwhile a group rose to champion the small taxpayer and the citizen who paid no tax at all. This group, which sought not only the abolishment of the tax-paying qualification for voting but also such increased benefits as better schools, extension of streets and gas pipes, became the proponents of the new charter.<sup>133</sup>

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<sup>132</sup>Louisville Daily Journal, Jan. 25, 1837, editorial.

<sup>133</sup>Louisville Democrat, 1851, passim.

## CHAPTER III

### LOUISVILLE UNDER THE SECOND CHARTER

1851-1870

The 1851 charter was adopted just at the moment when the sweep of democracy in government was at its height and when democracy had become synonymous with popular election of government officials. Prior to 1850 municipal administration in most cities had been in the hands of the council, who determined policy, elected city officials, and controlled action through council committees. After 1850 the power of the council, generally, began to wane as the tendency toward subdividing administrative functions among boards and departments headed by popularly elected chiefs came into vogue. At the same time there was a marked extension of municipal functions, which not only entailed an ever increasing amount of special legislation but also provided ample opportunity for the growing influence of the spoils system.<sup>1</sup>

Louisville's second charter introduced major changes in structure and administration, and the circumstances attending its adoption reflect the temper of the times. Instead of an election of delegates to the charter convention by the voters qualified under the amended 1828 charter, the election was thrown open to "all free white male

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<sup>1</sup>Fairlie, Municipal Administration, pp. 92 ff.; "Historical Development of Municipal Government in the United States," in McLaughlin and Hart, Cyclopedia of American Government, p. 481.

citizens of Louisville, entitled to vote for members of the Legislature of Kentucky."<sup>2</sup> Since there was no tax-paying qualification in the Kentucky constitution,<sup>3</sup> this provision extended suffrage to many who had never before voted on municipal affairs.

In July, four delegates from each ward were elected to the charter convention, which met in September. The new charter was submitted to the voters of the city on January 11, 1851, and while it was approved by a majority of 250, the decision was far from unanimous.<sup>4</sup> A newspaperman's report of a mass meeting held the night before the election presents an interesting account of the split in local public opinion:

. . . Generally speaking the aristocracy opposed, and the commonalty supported it [the new charter], and, as usual in such contests, the latter triumphed. The rich were opposed to the increase of taxation, which this charter would bring upon them. It proposed a new public school tax, laying out, lengthening and improving streets, extending the gas works, and various other matters. They were doing well enough -- were able to school their own children, and why should they be taxed to school others? And for the city improvements, she was growing fast enough, and let all those who want the streets, etc., extended, go ahead and build, and improve, and then we will let them have streets, alleys, side-walks, and gas fixtures, for then they will be able and willing to pay for them. But the other party reasoned thus: Let all property be taxed for public school purposes, and thus establish schools to educate the richest, as well as the poorest, for if "knowledge is the true guide to liberty," all are personally interested in its

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<sup>2</sup>City Journal, Vol. 14, May 29, 1850.

<sup>3</sup>Kentucky Constitution, 1850, Art. II, Sec. 8.

<sup>4</sup>Daily Courier, Jan. 13, 1851; Vote for the new charter, 1717; for the old charter, 1466.

spread. Also, extend the streets and sidewalks, and lay down the gas pipes, thus bringing cheaper lots into market, and offering inducements to every mechanic, and small liver, to build houses for themselves, instead of paying the present exorbitant rents. The increase of taxable property would soon reduce the taxes to the present rate, if not far below. This is the way to cause our city to thrive . . .<sup>5</sup>

The charter, drawn up and approved by the citizens of Louisville, was enacted into law by the legislature on March 24, 1851. Chief among the innovations incorporated in it were the bicameral council, the mayor's veto, white manhood suffrage, and the long ballot. The pattern of the national government was adhered to in the provision that

The corporate powers of the city of Louisville shall be divided into three distinct departments, viz: Legislative, Executive, and Judicial; and no officer in one of these departments shall exercise any power belonging to either of the others, except as hereinafter permitted . . .<sup>6</sup>

Legislative power was vested in a board of common councilmen and a board of aldermen, which together comprised the general council of the city. One alderman and two common councilmen were elected from each ward.<sup>7</sup>

#### Elections and Voting

The elector who under the old charter had voted for four candidates for office, in 1851 had sixteen choices to make. An alderman,

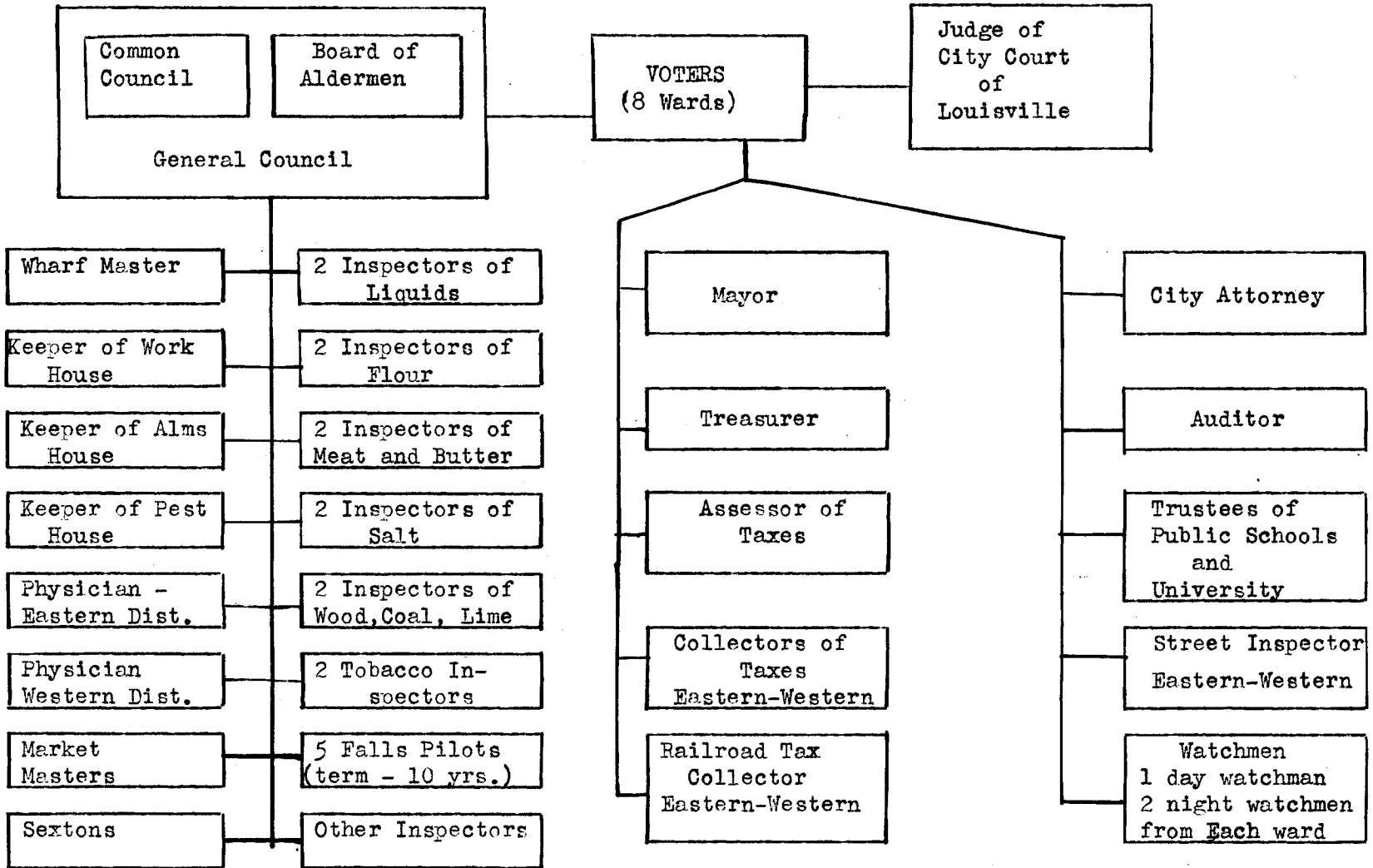
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<sup>5</sup>Account written for paper in Carrollton, Illinois, Jan. 20, 1851, reprinted in Louisville Democrat, Feb. 13, 1851, p. 2, col. 3.

<sup>6</sup>Charter of 1851, Art. II, Sec. 1, Acts of the General Assembly, 1850, Ch. 692.

<sup>7</sup>Ibid., Art. III, Sec. 1.

Charter of 1851



two common councilmen, a day watchman, two night watchmen, and two University and school trustees were elected from each ward. Election on a city-wide basis included the mayor, city attorney, assessor, auditor, and treasurer; in addition, the city was divided into eastern and western districts, each district voting for a tax collector and a street inspector.<sup>8</sup> Between the passage of the second charter and 1870, several changes were made in elective offices. Watchmen were elective from 1851 to 1856 and again between 1860 and 1861.<sup>9</sup> In 1868, the office of chief engineer of the fire department became elective, and at the same time the office of city attorney was transferred to the county election slate.<sup>10</sup>

The qualifications and tenure of office for mayor and members of the council will be discussed later. Of the other elective officials it may be said that, on the whole, the terms of office were short and the qualifications for office, few. The status of qualified voter and bona fide resident of the city for one year, and a resident of the ward or district from which elected, were generally the only

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<sup>8</sup> Charter of 1851, Art. IV, Secs. 8, 12. Provision for the election of last two officials was left up to the general council, and while from 1851 on, a railroad tax collector was elected, the ballot never provided for a license inspector.

<sup>9</sup> Acts of the General Assembly, 1856, Ch. 442, Secs. 1 and 2; 1860, Ch. 852, Secs. 2-5.

<sup>10</sup> Amend., Feb. 26, 1868, Acts of the General Assembly, 1868, Ch. 568, Sec. 1; Ch. 569, Sec. 1.

requisites. The major exception was the city attorney who was required to have been for two years a licensed practicing attorney. The city attorney, auditor, treasurer, assessor, and trustees of the university and schools served for two years; other officers, for one year. Vacancies were filled by special election of the voters of the city, district, or ward in which the vacancy occurred.<sup>11</sup>

The charter granted suffrage in municipal elections to all free, white, male citizens above the age of twenty-one and required only that the voter be a resident of the city for one year or of the state for two years and a resident of the ward in which he voted for sixty days.<sup>12</sup>

No property or tax-paying qualifications for voters were contained in the charter, but an amendment requiring payment of a poll-tax in order to vote was submitted to the city electorate in April 1857, approved by them<sup>13</sup> and enacted into law the following year. This act provided that ". . . in elections for officers for the City of Louisville . . . no person shall vote who has not first paid his poll tax . . . twenty days before he offers to vote . . ."<sup>14</sup> A poll-tax of \$1.50 had been levied, by the Charter of 1851, on each white male inhabitant of the age of twenty-one or over; but the payment of such tax

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<sup>11</sup>Charter of 1851, Art. II, Sec. 8.

<sup>12</sup>Charter of 1851, Art. XI, Sec. 5.

<sup>13</sup>Louisville Democrat, Apr. 5, 1857.

<sup>14</sup>Acts of the General Assembly, 1858, Ch. 828, Secs 1 and 2



had not been made a prerequisite for voting.<sup>15</sup> The tax-paying qualification, however, was transitory, being repealed by the legislature two years later.<sup>16</sup>

The eight wards into which the city had been divided in 1838 continued to exist for some years after the passage of the second act of incorporation. The Charter of 1851 provided that the city be laid off into wards "not exceeding twelve" and further prescribed that the general council redistrict the wards of the city on the basis of enumerations of the city to be made in 1857 and every eight years thereafter.<sup>17</sup> No record has been found which indicates that this was done. An act of the legislature in 1861 divided the city into ten wards, again granting the general council permission to change the boundaries as the need arose, and a similar act in 1868 provided for eleven wards.<sup>18</sup> In 1860, for the first time, the city was laid off into precincts; this was accomplished by commissioners appointed by name for the purpose by the state legislature. Thereafter, in all municipal, state, and federal elections a voter was entitled to vote only in his own precinct.<sup>19</sup>

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<sup>15</sup> Charter of 1851, Art. VI, Secs. 1 and 2.

<sup>16</sup> Acts of the General Assembly, 1860, Ch. 567.

<sup>17</sup> Charter of 1851, Art. III, Sec. 3.

<sup>18</sup> Amend., Mar. 29, 1861; in Elliott, op. cit., p. 313; Amend. Mar. 2, 1863, Acts of the General Assembly, 1863, Ch. 944.

<sup>19</sup> Acts of the General Assembly, 1860, Ch. 880.

While state and county officers were still elected in August,<sup>20</sup> municipal elections continued to be held on the first Saturday in April.<sup>21</sup> The conduct of elections was in the hands of the general council who prescribed regulations and appointed election judges. The bi-partisan principle was observed in the charter provision that, "if practicable," election officers should be chosen in equal numbers from the two principal parties.<sup>22</sup> The method of voting was changed from viva voce to ballot by charter provision.<sup>23</sup> The council prescribed the order,<sup>24</sup> but provided for no official printing of ballots. It did require, however, that ballots be so folded that names should not be exposed and that they be written in ink or printed.<sup>25</sup> Warnings to voters appeared in the newspapers not to throw away their votes by writing with lead pencil!<sup>26</sup> Various ruses were apparently employed to nullify the secrecy of the ballot. Candidates were even accused of having their ballots printed on paper of

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<sup>20</sup>Kentucky Constitution, Art. III, Sec. 26.

<sup>21</sup>Charter of 1851, Art. XI, Sec. 1.

<sup>22</sup>Charter of 1851, Art. XI, Sec. 3. According to the Louisville Courier, April 5, 1858, judges were appointed from ranks of party without regard to this article.

<sup>23</sup>Charter of 1851, Art. XI, Sec. 4.

<sup>24</sup>Revised Ordinances, 1854, No. 24.

<sup>25</sup>Revised Ordinances, No. 73, approved Oct. 17, 1853, in Stratton, O. H. and Vaughan, J. M., A Collection of State and Municipal Laws, Louisville, Ky., Settle, 1857, p. 180.

<sup>26</sup>Louisville Democrat, Apr. 1, 1854.

unusual color that they might be more easily recognized by party workers.<sup>27</sup> The ballot hardly seemed the answer to the problem of corruption at the polls, and in 1860 the section of the charter providing for election by ballot was repealed and elections viva voce reestablished.<sup>28</sup>

Throughout the period special elections were held frequently. Proposed amendments, ordinances involving municipal indebtedness, and vacancies in certain offices were submitted to the voters; also, in the event of a tied vote between two candidates, a new election was held.<sup>29</sup> Such elections were held in accordance with regulations prescribed by the council, but an act of the general assembly passed in 1856 made it mandatory that notice of the special election authorized by that act should be published in two or more of the city's newspapers three days prior to the election.<sup>30</sup>

Contested elections were heard and decided by the general council.<sup>31</sup> An ordinance passed April 10, 1852, and continued in force until the adoption of a third charter in 1870, provided that, when the elec-

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<sup>27</sup> Louisville Democrat, Apr. 1, 1859.

<sup>28</sup> Acts of the General Assembly, 1860, Ch. 852, Sec. 1. Dumb persons continued to be entitled to vote by ballot.

<sup>29</sup> Charter of 1851, Art. IV, Sec. 16.

<sup>30</sup> Acts of the General Assembly, 1856, Vol. 1, Ch. 124.

<sup>31</sup> Charter of 1851, Art. IV, Sec. 16.

tion of any officer other than a member of the general council was contested, the presidents of both boards should constitute a committee to determine the contest subject to the approval of the council; and that each board should determine contested elections of its own members. It also prohibited citizens from contesting elections, except on grounds of ineligibility; on all other grounds only the defeated candidate was allowed to contest.<sup>32</sup>

The most outstanding characteristic of elections during the years under the second charter was the corruption which accompanied them. While the population of Louisville increased by a third during the decade between 1850 and 1860, the total vote cast in municipal elections (see graph on p. 72) dropped rapidly after 1855, reaching its nadir in 1857 and thereafter mounting gradually until the Civil War period. Even on the assumption that the population increase represented wholly an influx of foreigners, one would be forced to the unlikely conclusion that there was a simultaneous exodus of citizens. A study of newspaper accounts and commentary is, however, quite revealing. In 1855, the American or Know-Nothing Party, which the previous year had succeeded in carrying a few candidates into office, swept into power. The Daily Courier, while heralding the victorious party with praise, said of the election that

. . . considering the many elements brought to bear on the

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<sup>32</sup> Ordinance No. 55, Elliott, op. cit., pp. 553-55.

TOTAL VOTES CAST IN GENERAL MUNICIPAL ELECTIONS  
LOUISVILLE, KENTUCKY  
1851 - 1870

Source: Louisville Democrat - Apr. 7, 1851; Apr. 5, 1852; Apr. 4, 1853; Apr. 3, 1854;  
Apr. 5, 1868  
Louisville Courier - Apr. 9, 1855; Apr. 5, 1857; Apr. 5, 1858; Apr. 4, 1859  
Apr. 9, 1860; Apr. 8, 1861; Apr. 9, 1866; Apr. 8, 1867  
Louisville Journal - Apr. 8, 1856; Apr. 7, 1862; Apr. 6, 1863; Apr. 2, 1865  
Courier-Journal - Apr. 5, 1869; Mch. 6, 1870

Data

KEY = 1,000 votes cast

1851 - 3805	1856 - 2546	1861 - 6592	1866 - 8372
1852 - 3931	1857 - 1601	1862 - 3029	1867 - 9004
1853 - 3753	1858 - 3423	1863 - 4311	1868 - 10,000
1854 - 5076	1859 - 4476	1864 - No figures available	1869 - 10,667
1855 - 5600	1860 - 4800	1865 - 5363	1870 - 11,068

15,000

10,000

5,000

1,000

1851 1852 1853 1854 1855 1856 1857 1858 1859 1860 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870

many conflicting interests, and the deep feeling manifested, and the unusually heavy vote polled, it was remarkably quiet and orderly . . .<sup>33</sup>

Unfortunately issues of the Louisville Democrat, a forceful foe of Know-Nothingness, are lacking for this date. The victors already had the support of the partisan Daily Journal, according to whose view "the election . . . passed off with comparative quietness" with only "a few fights in the Second and Eighth wards."<sup>34</sup>

The number of votes cast in the 1856 municipal election decreased sharply, a decrease in all probability reflecting the mob rule of terror on "Bloody Monday," the August 6, 1855 state election date, when the quarrel between foreign-born and native Americans had culminated in bloody conflict. The election was again a Know-Nothing victory; but the Courier, which had earlier lauded the American party's rise to power, now expressed the opinion that ". . . there appeared to be a general feeling prevalent to acquiesce in the present maladministration of city affairs."<sup>35</sup>

The lowest point was reached in 1857, when only 1601 voters cast their ballots in what, according to the Louisville Democrat, was "by courtesy styled an election," for the Know-Nothing Party maintained their hold on the city without any other contenders for most offices.<sup>36</sup>

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<sup>33</sup>Louisville Daily Courier, Apr. 9, 1855.

<sup>34</sup>Louisville Daily Journal, Apr. 9, 1855.

<sup>35</sup>Louisville Courier, Apr. 7, 1856.

<sup>36</sup>Louisville Democrat, Apr. 5, 1857.

The following year a citizens' ticket was offered in opposition; but while the vote increased it was estimated that less than half of the voters went to the polls; and a Know-Nothing victory was again conceded. The Courier deplored "the process of disenfranchising citizens by allowing head breaking, terror, and fraud,"<sup>37</sup> and the Democrat agreed that "the election was attended with customary outrages and insults . . . rascality, ruffianism, and illegal voting."<sup>38</sup>

In 1859 there were reports of the "bruising and beating of naturalized citizens by a pack of lawless scoundrels" and according to the press, in one ward two Jewish persons were attacked and fired upon. "The policemen," the Courier noted, "made themselves conspicuous as usual by drumming up voters instead of attending to their legitimate duty and preserving public order."<sup>39</sup> During the same period similar violence was reported in other cities, notably Baltimore and New Orleans. New Orleans was under mob rule during the election of 1857 and three thousand registered voters were reported to have been driven from the polls.<sup>40</sup>

The Know-Nothings were defeated in 1861 after seven years' rule

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<sup>37</sup> Louisville Courier, Apr. 5, 1858.

<sup>38</sup> Louisville Democrat, Apr. 4, 1858. Of the "Citizens' ticket" only 2 aldermen and 1 common councilman were elected.

<sup>39</sup> Louisville Democrat, Apr. 3, 1859; Louisville Daily Courier, Apr. 4, 1859.

<sup>40</sup> Louisville Democrat, Apr. 2, 1857.

and at the same time rioting at the polls subsided, although reports of "lavish distribution of money," illegal voting and free use of "all electioneering appliances" continued throughout the period.

During the war years, the number of votes cast in elections diminished, as might reasonably be expected when a large segment of the voting population was under arms. Interestingly enough, despite the position of Kentucky in the Union, two pro-secessionist mayors were elected. In both instances, according to the Louisville Daily Journal, the choices were made on the basis of local rather than national interest. On the subject of Mayor Kaye's election in 1863, the Journal offered the opinion that

. . . The success of Mr. Kaye over the regular Union candidate is on many accounts deeply to be regretted, but it possesses no significance whatever as an index of the public sentiment of Louisville. The result was brought about simply by a conflict of local interests and feelings, in which the secession element of the city, ever on the alert to win at least a show of advantage for the rebellion, mingled as the deciding power . . . <sup>41</sup>

In the election of Mayor Tomppert in 1865, according to a Journal editorial:

. . . Less interest was evidently felt in the election than the occasion demanded. It seems that a community, watching in the distance the evolution and collisions of great armies and marking the grand procession of mighty events, cannot afford to give themselves much concern about the election of officers to control their municipal affairs.

We cannot imagine for a moment that the citizens . . . in electing Mr. Tomppert, had the least thought of indorsing his opposition to the furnishing of men and money to carry on the war . . . We can

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<sup>41</sup>Louisville Daily Journal, Apr. 6, 1863.



not understand why they ignored so important a matter, but they clearly did . . . <sup>42</sup>

In summary, it may be said that, although the suffrage base had been decidedly broadened by the 1851 charter, suffrage, prior to the Civil War was not truly representative. Between 1855 and 1860 it was actually restricted through violence at the polls. During the Civil War the voting "depression" can be accounted for partially by the absence of men for military duty and partially by the fact that national affairs eclipsed local issues. After the war violence was absent from elections, but it may be presumed from contemporary comment that bribery and corruption continued unabated. During the entire period national political parties played a far more important role in municipal elections than had been the case in earlier years.

#### The Mayor and Council

The qualifications for mayor and councilmen provided by the 1838 amendments to the old charter were retained in the 1850 charter with some few differences. The age of eligibility for the office of mayor was raised from twenty-five to thirty years; the minimum ages established for council members, which previously had been twenty-five years, were twenty-four for common councilmen and thirty years for aldermen. Citizenship and, until 1865, residence qualifications were virtually

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<sup>42</sup> Louisville Daily Journal, Apr. 2, 1865.

the same as before; after 1865 the length of residence required of any elective officer was reduced to one year in the city and two years in Jefferson County.<sup>43</sup> The really fundamental change, however, was the abolishment of all tax and property-holding requirements, a change in line with the general trend of popular government in most other municipal charters of the period.<sup>44</sup> Another modification of somewhat lesser importance, reflected the expanding function of municipal government in the area of public works. Although both members of the general council and the mayor were prohibited from having any direct or indirect interest in contracts, a new provision made stockholders eligible for office on the condition that they not vote on questions affecting that interest.<sup>45</sup> Unfortunately experience has proved that mere legislation against collusion does not assure honest and pure government.

The mayor was elected for a two-year term as were aldermen; common councilmen served for one year until 1865 when the term of office was extended to two years.<sup>46</sup> Because of the vague wording of the charter, the meaning of "term of office" as applied to the mayoralty became a source of confusion almost immediately. Mr. Delph, the first mayor,

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<sup>43</sup>Charter of 1851, Art. IV, Sec. 1; Art. III, loc. cit.; Amend., Mar. 4, 1865, Sec. 16; in Elliott, op. cit., p. 141.

<sup>44</sup>Fairlie, Municipal Administration, p. 84; Munro, Government of American Cities, p. 11.

<sup>45</sup>Charter of 1851, Art. III, Sec. 2, loc. cit.

<sup>46</sup>Charter of 1851, Art. IV, Sec. 2; Art. III, Sec. 4, loc. cit.; Amend., June 2, 1865, Elliott, op. cit., p. 141.

resigned his office after an incumbency of only a few months, but was subsequently elected by the general council to serve as mayor pro tem until April, 1852.<sup>47</sup> At that election the voters placed James Speed in the executive office. Whereupon, the question arose whether his office terminated in 1853 or in 1854 -- that is, whether a mayor was elected for a two-year term, or whether that term was fixed in certain definite years. For three years, it remained a moot point; legal opinion was divided and the two boards of the council could reach no agreement. Nevertheless, a sufficient number of voters continued yearly to write Speed's name on the ballot to enable him to retain office until 1855; during that period, however, he was never awarded an election certificate, so shifting was the sentiment of the council.<sup>48</sup>

In 1855, however, despite the declaration of Mr. Speed, supported by the opinion of the Chancellor of the Louisville Chancery Court, that no vacancy in the mayoralty existed,<sup>49</sup> the polls were opened for mayoral election by joint resolution of the general council,<sup>50</sup> in their first agreement on the matter. John Barbee received the majority vote of the electorate, and was recognized as mayor by the council in a resolution

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<sup>47</sup> Journal of the Board of Aldermen, Vol. 1, Oct. 9, 1851.

<sup>48</sup> Louisville Democrat, 1851-1854, passim; Louisville Journal, April 3, 1855; Journal of the Board of Aldermen, April 6, 1853, Mar. 13 and 22, 1854, and passim 1851-1855.

<sup>49</sup> Journal of the Board of Aldermen, Vol. 4, Feb. 1, 1855, pp. 43-5.

<sup>50</sup> Ibid., Feb. 23, 1855.

passed over the former mayor's veto.<sup>51</sup> Council action was upheld by opinion of the Court of Appeals which declared that a term is uniformly used to designate a fixed and definite period of time.<sup>52</sup>

An innovation in the charter of 1851 was the provision for payment of members of the general council at the rate of \$2.00 a day for each day in attendance, but this compensation was eliminated by vote of the citizens in April, 1857,<sup>53</sup> followed by statutory repeal.<sup>54</sup> The mayor's salary remained fixed at "\$2,000 per annum payable quarterly and no more" until 1864 when it was increased to \$2,500. The following year a more flexible policy provided a minimum and maximum salary of \$2,000 and \$4,000 respectively.<sup>55</sup>

The charter provided that vacancies occurring on either board of the council should be filled by a special election of the qualified voters of the ward in which the vacancy occurred, unless it occurred

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<sup>51</sup>Ibid., Apr. 10, 1855, p. 152; Apr. 13, 1855, p. 157.

<sup>52</sup>Barbee vs. Speed, MS Opinion, June term, 1855, cited in 3 Met (Ky. 60) 213 and 2 Duv (Ky. 63) 468 /Original opinion not available due to the fact that unpublished opinions were destroyed when clerk's office in Court of Appeals burned, November 1865/.

<sup>53</sup>Louisville Democrat, Apr. 5, 1857.

<sup>54</sup>Amend., Feb. 17, 1858, Acts of the General Assembly, 1858, Ch. 828, Sec. 2.

<sup>55</sup>Charter of 1851, Art. IV, Sec. 1; Amend., Feb. 18, 1864, Acts of General Assembly, Ch. 417, Sec. 3; Amend., Feb. 16, 1865, Sec. 1, Elliott, op. cit., p. 135.

within three months of the general municipal election; in that case the mode of choosing a successor was left up to the general council. The council decreed that vacancies of the latter category should be filled by election by joint session of the council. After 1864 the provisions of this ordinance were enacted into law.<sup>56</sup> Vacancy in the office of mayor has already been discussed in the section on voting and elections, but it may be added that, in the event of a temporary vacancy, it was prescribed by charter that a mayor pro tem be elected on joint ballot of the general council and that he serve during the continuance of the mayor's absence or until a mayor was elected.<sup>57</sup> An amendment made it permissible for the president of the Board of Aldermen to serve in that capacity.<sup>58</sup> The general council was empowered to fix the salary of the mayor pro tem and a yearly salary of \$2,000 was established by ordinance.<sup>59</sup>

The council was required to meet regularly once in every two weeks and neither board was permitted to adjourn when both were in session for more than twenty-four hours without the consent of the

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<sup>56</sup> Charter of 1851, Art. III, Sec. 10; Revised Ordinances, 1854, No. 9, p. 72; Amend., Feb. 18, 1864, Sec. 4, Acts of the General Assembly, 1864, Ch. 417, Sec. 4.

<sup>57</sup> Charter of 1851, Art. IV, Sec. 7.

<sup>58</sup> Amend., Mar. 9, 1868, Acts of the General Assembly, 1868, Ch. 1012, Sec. 1.

<sup>59</sup> Charter of 1851, Art. IV, Sec. 7; Revised Ordinances, 1854, No. 20.

other.<sup>60</sup> A majority of members constituted a quorum of either board although a smaller number was permitted to adjourn from day to day and to compel the attendance of absent members by fines. Each board determined its own rules of procedure, elected its own president and clerk annually, and judged the qualifications, elections, and conduct of its members.<sup>61</sup>

The procedure for the passage of an ordinance was essentially the same as that of a state or federal law. A proposed ordinance was read and freely discussed on two separate days by each board, unless, in cases of urgency, a two-thirds majority of the board agreed to suspend the provision.<sup>62</sup> After being passed by both boards, the bill was presented to the mayor for approval and became effective if signed by the mayor or if passed over his veto by a simple majority of both boards. Should the mayor fail to sign, the proposed ordinance took effect after one week unless in the meantime the council adjourned; in that event it became an ordinance unless the mayor returned it to the council at its next meeting. Whenever the mayor disapproved a proposed ordinance, he was required to submit his objections in writing; these objections were then entered into the journal of the board. Revenue bills originated solely in the Board of Common Councilmen, but

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<sup>60</sup>Charter of 1851, Art. III, Sec. 8.

<sup>61</sup>Ibid., Art. III, Secs. 5-6.

<sup>62</sup>Ibid., Art. III, Sec. 11.

could be amended by the Board of Aldermen provided that no irrelevant matter was introduced.<sup>63</sup>

Ordinances and proceedings of both boards were required by charter to be published " . . . at least once, in one or more daily newspapers printed in Louisville -- such newspaper or newspapers to be selected annually by the general council."<sup>64</sup> From newspaper comment one might judge that this method was open to abuse. In any event, the provision was revised in the 1870 charter to require publication in the Louisville daily paper "having the largest permanent circulation in the city."<sup>65</sup>

The office of mayor carried with it little more power under the 1851 charter than it had under the original act of incorporation. Other than the right of veto, which was accorded the mayor of Louisville some twenty years after similar authority had been granted the mayor of New York,<sup>66</sup> the mayor had little control in the administration of the city government. According to charter provision, the mayor was head of police. This, in fact, was little more than an empty title when one considers that the regular force of night and

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<sup>63</sup>Charter of 1851, Art. III, Sec. 12; Art. IV, Sec. 5.

<sup>64</sup>Ibid., Art. III, Sec. 7.

<sup>65</sup>Charter of 1870, Sec. 5, in Charter of the City of Louisville and Ordinances, June 24, 1869 to Jan. 1, 1873, pp. 7-8.

<sup>66</sup>A. F. MacDonald, American City Government and Administration, p. 51.

day watchmen were elected by the voters of each ward, that supernumeraries were appointed by the marshal with the mayor's consent, and that police were removable only by the Board of Aldermen sitting as a court of impeachment.<sup>67</sup> Nor was this position as head of police enhanced through the passage of subsequent amendments.

In March, 1856, the election of watchmen by the voters was abolished and the general council empowered to establish a police department and to appoint the watchmen, or prescribe the mode of their appointment.<sup>68</sup> Mayor Barbee at that time urged that since the mayor was held responsible for the efficiency and faithfulness of the police that he alone should have the power of appointment and dismissal subject to approval of the general assembly.<sup>69</sup> This was disregarded by the general council, who for the next four years elected annually a chief of police, who, in turn, with the council's approval, chose two assistants. The thirty-three regular and sixteen supernumerary watchmen were elected on joint ballot of the council. The mayor was given power to dismiss any watchman for misconduct or inefficiency.<sup>70</sup>

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<sup>67</sup>Charter of 1851, Art. IV, Sec. 8; Art. XI, Sec. 8; Art. IV, Sec. 15.

<sup>68</sup>Amend., Mar. 8, 1856, Acts of the General Assembly, 1856, Ch. 442, Secs. 1-2.

<sup>69</sup>Proceedings of Board of Aldermen, Apr. 7, 1856, Louisville Daily Journal, Apr. 10, 1856.

<sup>70</sup>Ord. No. 218, Apr. 7, 1856; Ord. 219, Mar. 10, 1856; Ord. No. 220, Apr. 24, 1856 in Collection of State and Municipal Laws, prepared by O. H. Stratton and J. M. Vaughan, Louisville, 1857, pp. 284-86. These ordinances were passed over mayor's veto, see ref. in 69.



The police department underwent another major revision in March, 1860. Police administration was transferred to a police board composed of the mayor, ex officio, and two qualified voters, the latter being chosen by the chancellor of the city court who had the power to appoint and dismiss them at will. The mayor "with the advice and consent" of the other members of the board appointed a chief of police and as many supernumerary watchmen as the mayor deemed necessary. Watchmen were once again chosen by the voters of the city, one day watchman and one night watchman from each ward.<sup>71</sup> It is hardly surprising, in this age of political patronage, that the only qualification required for the positions of police chief and watchmen was that of being a qualified voter. Members of the police board had to meet a further requirement of belonging to the opposite political party from that of the mayor, a qualification which the courts subsequently found to be unconstitutional on the grounds that the term for which the officers were to be elected was not fixed in that "they must be removed whenever by a change of political opinion on their part or the part of the mayor they cease to agree."<sup>72</sup>

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<sup>71</sup> Act to provide a more efficient Police Department in the City of Louisville, March 1, 1860, Acts of the General Assembly, 1860, Ch. 852, Secs. 2-5.

<sup>72</sup> Speed and Worthington vs. Crawford, 3 Met (Ky. 60) 209, 213; the act was likewise declared unconstitutional on the ground that it provided for "the appointment by the chancellor or governor, of the two members of the police board, instead of requiring them to be elected."

The foregoing organization was short-lived, being superseded the following year by a police department established by the general council. An amendment passed in September, 1861, repealed the act of the previous year and returned to the council its former power of appointing watchmen and prescribing their mode of election, term, tenure, duties, etc.<sup>73</sup> A contemporary account of an election of watchmen may be of interest:

. . . the council chamber was crowded and an unusual stir was going on. The cause for the excitement was the election for the ensuing year. The members of the council, as they entered the building, were besieged on all sides by different parties who were urging their claims for the office of police . . . The contention between the rival candidates was quite lively and the process of electioneering was kept up until the Board was called to order, and the crowd were ordered outside of the railing . . .<sup>74</sup>

Meanwhile the mayor had been deprived of his right to remove policemen from office, a power transferred to the general council by a charter amendment passed October 1, 1861.<sup>75</sup> From this time until the adoption of a new charter in 1870, the mayor's control of the police was inconsequential.

Other powers and duties of the mayor may be noted briefly. He exercised general supervisory control over the executive officers of cities and had power to fill any vacancies in their ranks. The mayor

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<sup>73</sup>Amend., Sept. 20, 1861, Acts of the Assembly, 1861, Ch. 44, Secs. 1 and 3.

<sup>74</sup>Louisville Democrat, Mar. 28, 1865.

<sup>75</sup>Acts of the Assembly, 1861, Ch. 142, Secs. 1-2.

provided the council with needed information, made such recommendations as he deemed necessary, and could convene the council for reasons of urgency.<sup>76</sup> In addition, he served as one of the commissioners of the Sinking Fund and as a health officer of the city.<sup>77</sup> In effect, the position of mayor continued to be one of prestige rather than authority.

Chief among the powers of the general council were their powers of appointment and of negotiating municipal contracts. Jobs and contracts were powerful adjuncts to the spurt of municipal construction in these years and both powers opened the gates wide to all the evils of the spoils system. The Louisville charter permitted the council to elect annually, among others, the following: a wharf-master; keepers of the workhouse, almshouse, and pest house; two physicians, a number (prescribed by ordinance) of market masters; sextons; numerous inspectors, assistant tax-assessors, and falls pilots.<sup>78</sup> In addition, the general council provided for the election or appointment of nurses, guards, and attendants at the eleemosynary institutions of the city, for workmen at the city quarry, and for servants for various officials.<sup>79</sup> The hospital superintendent and even the graduate residents serving at the hospital were elected by the council.<sup>80</sup> The concensus seemed to

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<sup>76</sup>Charter of 1851, Art. IV, Secs. 4, 5.

<sup>77</sup>Ibid., Art. VI, Sec. 8, Art. VIII, Sec. 6.

<sup>78</sup>Ibid., Art. IV, Secs. 9, 10, 12.

<sup>79</sup>Ibid., Art. IV, Sec. 11.

<sup>80</sup>Revised Ordinances, 1854, No. 201, p. 162.

concur with the alderman who contended that the council were as capable of selecting the graduates as were the consulting and visiting physicians of the hospital who were elected by the council!<sup>81</sup>

Between 1851 and 1870 there was a continual creation of new offices by amendment and ordinance. The office of assistant city attorney at a yearly salary of \$400, elective bi-annually by the council, was created by ordinance in 1853.<sup>82</sup> In 1855, an Engineer's Department was created, composed of an engineer and his assistant.<sup>83</sup> An inspector of imported lumber and an inspector of flour were added to the city payroll in 1858;<sup>84</sup> and in 1865, a receiver of city taxes.<sup>85</sup> When municipal offices with salaries were not instituted, boards for spending city funds were established. A board of five guardians for the alms house, for example, was elected annually by the council. The ordinance creating the board also prescribed that in making appropriations the board should "be governed by the amount set apart by the General Council for that purpose from time to time, and shall not exceed such amount."<sup>86</sup>

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<sup>81</sup>Council Proceedings, June 10, 1850, Louisville Daily Journal, June 11, 1850.

<sup>82</sup>Proceedings of the Council, March 21, 1853, Louisville Democrat, March 22, 1853.

<sup>83</sup>Ordinance, approved May 19, 1855, Collection of Acts, 1857, p. 187.

<sup>84</sup>An Act to create the Office of Inspector of Imported Lumber in the City of Louisville, Jan. 14, 1858, Secs. 1-2; An act relating to the Inspection of Flour in Louisville, Feb. 15, 1858, Sec. 1. Elliott, op.cit., 1869, pp. 8, 198, 301.

<sup>85</sup>Amend., Mar. 4, 1865, Sec. 3. Elliott, op. cit., p. 135.

<sup>86</sup>Revised Ordinances, 1854, No. 202, Secs. 1, 7, 8; p. 162.

The power of removal of city officials belonged, for the most part, to the Board of Aldermen, who sat as a court of impeachment in accordance with a charter provision that

Executive and ministerial officers of said city shall be removable from office by the board of aldermen sitting as a court, duly sworn or affirmed, upon charges preferred by the mayor . . . (but in case of the mayor, upon charges preferred by the board of common councilmen) and no person shall be removed from office without the concurrence of two-thirds of the members of the board of aldermen. When a person has been removed from office, he shall not be re-eligible thereto until the expiration of the term for which he had been elected.<sup>87</sup>

The most frequent cases tried involved charges against watchmen. The record of one session chosen at random is possibly typical; whatever evidence was presented at the trials was not recorded, but in the journals of the board the charges and judgments were as follows:<sup>88</sup>

Case No.	Charges	Judgment
1	Passing counterfeit bill becoming embroiled in fight striking and wounding citizen.	Case dismissed
2	drunkenness gambling	Case postponed
3	failure to discharge duty frequenting coffee houses to neglect of business divulging confidential information	Charges dismissed
4	being in possession of stolen watch engaging in dog fight neglect of duty	Charges dismissed (watchman resigned)

<sup>87</sup> Charter of 1851, Art. IV, Sec. 15.

<sup>88</sup> Proceedings of Board of Aldermen, Vol. 1, August 3, 1851.

The most notable impeachment case, however, occurred some two years before the President of the United States was impeached. In December, 1865, Mayor Tompbert was charged with "disregarding, failing, and refusing to carry into effect the lawful orders and requests of the general council of the city." According to testimony produced in court and the records of the boards, the general council passed a resolution authorizing the mayor to sign and execute a contract with one Isham Henderson and associates for a street railway. The resolution was vetoed by the mayor, but was subsequently sustained by council vote of thirteen ayes to ten nays. The mayor, still refusing to sign the contract, sent the council a message stating that not only was the contract not binding on Henderson's associates but that improper influences had been used on members of the board in drawing up the contract; the mayor presented affidavits supporting his charge and suggested an investigation. Upon receipt of the message, the council preferred charges against Mayor Tompbert and a few days afterwards the Board of Aldermen sitting as a court of impeachment found him guilty of the charges.<sup>89</sup> Upon the removal of the mayor, James Lithgow was elected to the office by the general council. The action of the Board of Aldermen was upheld by the Jefferson Court of Common Pleas but the decision was reversed in January, 1867, by the Court of Appeals which declared:

The board of aldermen of the city of Louisville, acting as a court to try charges preferred against a city officer, is a court

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<sup>89</sup> Journal of the Board of Aldermen, Vol. 10, Dec. 18, 1865, p.276.

of limited jurisdiction, and everything essential to make it such a court must appear affirmatively . . . The board of Aldermen of the city of Louisville, as organized, not being legally sworn,<sup>90</sup> was not a legal court authorized to try Mayor Tompert /sic/; and the message, charges, and specifications preferred, made out no charge of official delinquency, and their proceedings, by which he was ousted, were illegal and void. There was, therefore, no vacancy in the office of mayor for the general council to fill, and Lithgow, the appointee of the council, became a usurper in legal contemplation.<sup>91</sup>

On February 14, 1867, fourteen months after he had been ejected from office, Tompert was reinstated in the mayoralty and was instrumental in obtaining the passage of an act to legalize the official acts of James S. Lithgow as mayor of the city of Louisville.<sup>92</sup>

An interesting sidelight on the impeachment of Mayor Tompert was the case of Common Councilman, N. S. Glove, against whom the mayor had preferred charges of bribery in connection with the Harrison Railway contract. Five days after the mayor had been removed from office, a resolution sustaining the bribery charges against Glove was defeated in the Common Council Chamber, whereupon, those voting in the affirmative presented their resignations from the board. The resignations were tabled and a new resolution expelling Glove for "unbecoming conduct" was introduced and passed.<sup>93</sup> This was probably an action designed to save face; the common council had the power to judge the

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<sup>90</sup>Neither the clerk of the Board of Aldermen, the court pointed out, nor the notary public who administered the oaths was so empowered.

<sup>91</sup>Tompert /sic/vs. Lithgow, 1 Bush 176.

<sup>92</sup>Laws of Kentucky, 1867, Vol. 2, Ch. 1699, Secs. 1-3, pp. 269-70.

<sup>93</sup>Journal of the Common Councilmen, Vol. 10, Dec. 23, 1865, pp. 77 ff.

conduct of its members, but sustaining the bribery charge would have necessitated trial by the Board of Aldermen.

These cases, along with other similar ones, would seem to indicate a high degree of irresponsibility in this phase of municipal government; but a lack of sufficient evidence in the records precludes any valid generalization.

Other powers granted the council under the earlier charter were retained or broadened in the charter of 1851; and in addition new powers were granted. Chief among its broadened powers was that of levying taxes. The 1828 charter had provided for an ad valorem tax not exceeding forty cents per hundred dollars assessed valuation of property. The 1851 charter authorized a similar tax of one dollar for general purposes, including five cents for the support of the poor and a minimum of twelve and one-half cents and a maximum of twenty-five cents for schools, and an additional ad valorem property tax of seventy-five cents for special purposes of capital investment.<sup>94</sup> The poll tax levy authorized by the earlier charter was retained in the 1851 charter and license fees not only underwent upward revision but the businesses required to pay such fees were extended to include practically all merchants, wholesalers and retailers.<sup>95</sup> In addition the power to levy a tax for gas lights was conferred by

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<sup>94</sup>Charter of 1851, Art. VI, Secs. 2, 12, loc. cit.

<sup>95</sup>Charter of 1828, Sec. 11, loc. cit.; Amend., 1838, Sec. 14; Charter of 1851, Art. IV, Sec. 14, loc. cit.



charter and in 1860 an amendment empowered the council to impose on property owners an ad valorem tax of twenty-five cents for sewer construction.<sup>96</sup>

In addition to its increased power of taxation, other fiscal powers of the council were enlarged. A sinking fund was created by charter and the general council was authorized

To subscribe for, hold and sell any real or personal estate within limits of said city, and to borrow money and to give or loan the credit of said city in aid of any person or corporation, but only for appropriate municipal objects.<sup>97</sup>

The borrowing power was limited by reason of the required approval of the voters for debts contracted beyond revenue of the current fiscal year<sup>98</sup> and the mayor and the council members were held personally liable for debt contracted contrary to statute.<sup>99</sup> From time to time the general assembly empowered the council to contract for municipal improvements and the city's capital investments became increasingly larger. In 1862, for instance, the council was authorized to borrow as much as \$75,000 for the two fiscal years ending March 10, 1862 and 1863 in addition to amounts previously expended or contracted for.<sup>100</sup>

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<sup>96</sup>Charter of 1851, Art. VI, Sec. 14, loc. cit.; Amend., Mar. 2, 1860, Acts of the General Assembly, 1860, Ch. 1159, Secs. 1, 2, 4.

<sup>97</sup>Charter of 1851, Art. VI, Secs. 10, 11.

<sup>98</sup>Ibid., Art. VI, Sec. 11.

<sup>99</sup>Ibid., Art. VI, Sec. 10.

<sup>100</sup>Amend., Feb. 19, 1862, Acts of the General Assembly, 1862, Ch. 383, Sec. 1.

By 1856 municipal indebtedness had reached \$2,582,000,<sup>101</sup> and by January 1, 1871 it rose to \$4,910,500.<sup>102</sup>

Other powers conferred on the council reflected the growing urbanization of Louisville. The council was empowered not only to prohibit the erection of wooden buildings but also

. . . to prohibit the erection of manufacturing establishments deemed likely to create the danger of fire or producing unpleasant effluvia; and to regulate the construction and management of such establishments within the thickly populated portions of the city . . .<sup>103</sup>

Administration of municipal functions passed out of the hands of the council to a large extent during the period between 1851 and 1870. In some instances this control went to popularly elected officials and in other cases to officials or boards chosen by the council. Administration of the schools was transferred to a board of trustees, composed of two persons elected from each of the wards.<sup>104</sup> Police administration fell theoretically within the jurisdiction of the mayor and, after 1868, the administration of fire protection was in the hands of a popularly elected chief engineer of the fire department.

On the other hand, the area of greatest municipal activity during this period, that of public works was more directly under council control. In 1855 an engineer department was created, headed by a qualified engineer, chosen by joint action of the two boards and an assistant

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<sup>101</sup>Mayor Barbee's message to the General Council, Apr. 11, 1856, Louisville Journal, Apr. 14, 1856.

<sup>102</sup>Collins, op. cit., Vol. 1, p. 222.

<sup>103</sup>Charter of 1851, Art. VII, Sec. 17.

<sup>104</sup>Ibid., Art. X, Sec. 1.

chosen by the engineer, both subject to removal at will by the council.<sup>105</sup> The duties of the engineer consisted primarily of making out plans, specifications and estimates for public works and drawing up contracts for the approval of the mayor and council.<sup>106</sup>

During this period there was a tremendous expansion in construction. In 1860 after many years of negotiation, the water works was finally erected and by the close of 1866 the city had forty-four miles of pipe and a daily consumption of some two million gallons of water.<sup>107</sup> In 1853 the city council had subscribed \$100,000 for the improvement of streets and wharf<sup>108</sup> and in 1860 was empowered by the assembly to provide for the construction of sewers.<sup>109</sup> By 1868 the city boasted of two hundred miles of streets and  $42\frac{1}{2}$  miles of street railway tracks, constructed by three companies which had received their franchises from the general council between 1864 and 1866.

#### The Council and the Legislature

From the earliest days of government under the original act of

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<sup>105</sup> Ordinance establishing and regulating the Engineer's Department, May 19, 1855, in Collection of Acts, 1857, p. 187.

<sup>106</sup> Ordinance prescribing Duties of the Engineer, Nov. 5, 1853, in Ibid., p. 188.

<sup>107</sup> Edward (ed), Louisville Directory, 1867-1868, Louisville: Southern Publishing Co., 1869, p. 74.

<sup>108</sup> Louisville Democrat, May 10, 1853.

<sup>109</sup> Amend., Mar. 2, 1860, loc. cit.

incorporation, public meetings had been called by the council for the purpose of acquainting the citizens of Louisville with proposed amendments to the city charter. Whether or not any expression of public opinion, by vote or otherwise, was ascertained at these meetings, or what influence such opinion, if it was determined, had on the legislative representatives, is not known; but, in any event, such expression had no legal validity. The 1851 charter, however, did attempt to give the voters of Louisville a voice in certain matters of local concern. The charter, while permitting the council to "contract debts and liabilities . . . beyond the amount of revenues of the current fiscal year" required that such an ordinance be published "at least three times in two daily newspapers" and be approved at a general or special election held at least sixty days after the first date of publication.<sup>110</sup> Moreover, no amendment to the charter could be presented by the council to the legislature unless approved by a majority of the qualified voters at a general municipal election. If approved, the amendment was then subject to enactment by the Kentucky legislature.<sup>111</sup> Such provision served only to limit the power of the general council; the actions of the general assembly were in no wise restricted, since the latter reserved for themselves the right to "change, alter,

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<sup>110</sup>This was changed to publication not more than thirty or less than ten days prior to the election date by Amend., May 15, 1861, Sec. 2, in Elliott, op. cit., pp. 314-15.

<sup>111</sup>Charter of 1851, Art. XIII, Sec. 9.

or repeal" the act at will.<sup>112</sup>

The legislature, moreover, indulged freely in its rights. In the years between 1850 and 1870 more than 150 laws affecting Louisville were enacted. Some of these were passed at the request of the city, to be sure, but had the legislature been less prone to legislate on matters of purely local concern, the ever recurring need for amendment probably would have been considerably lessened. One noteworthy illustration of such local regulation was the charter provision for the election of watchmen.<sup>113</sup> Within three years of the passage of the act, the increased population of the city had necessitated a larger police force; yet, the council lacked authority to remedy the condition effectively, especially since the citizens failed to approve at the polls a proposed amendment on the subject.<sup>114</sup>

Many of the acts concerning Louisville did not originate in the chambers of the general council. In 1868 the mayor complained that

Enactments vitally affecting our interests only are made at nearly every session of the legislature that have never been thought of or heard of by our citizens until they find them a law, and frequently, as I have reason to believe, are lobbied through by

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<sup>112</sup>Charter of 1851, Art. XIII, Sec. 11.

<sup>113</sup>Charter of 1851, Art. IV, Sec. 8.

<sup>114</sup>General Council Proceedings, January 12, 1854, published in Louisville Democrat, Jan. 13, 1854; possibly a single amendment on the subject of police organization would have passed at this time; the amendments submitted, however, constituted practically a complete charter revision, and the voters had only the privilege of voting "for the amendments" or "against the amendments."

individuals who have private and selfish ends to achieve . . .<sup>115</sup>

To trace any particular piece of legislation of this period through its lobbyists to the original source of financial or other interest would be extremely difficult and outside the scope of this writing.

It was, however, the hey-day of corruption, and no one was more aware of it than Mayor Tomppert who had been victimized in an attempt to stem its tide a few years earlier.<sup>116</sup>

The subject of the police organization act of 1868 deserves more than passing attention as a departure from the previous practice in local government in Kentucky. It was an attempt by the state legislature to remove the police functions from municipal control and was passed over the objections of the Louisville General Council.<sup>117</sup> By this act a police board was established comprising three commissioners elected by the voters of Jefferson County. The police officers, consisting of a superintendent of police, clerk, and lieutenants (their number being determined by the board) were chosen annually by the police board and were subject to removal by the same body for "good cause or any misconduct."<sup>118</sup> At best it was an attempt to establish responsibility for

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<sup>115</sup> Mayor Tomppert's Annual Message to the General Council, Louisville Democrat, Apr. 17, 1868.

<sup>116</sup> Supra, pp. 14-15.

<sup>117</sup> Journal of the Board of Aldermen, Vol. 11, Jan. 20, 1868, p.288.

<sup>118</sup> An Act providing for the Organization of a Police Force for the City of Louisville and Jefferson County, Feb. 24, 1868, Acts of the General Assembly, 1868, Ch. 549, Secs. 3, 8, 14.

an efficient police force. On the other hand, there is no doubt that the council was deprived of self-government to a certain degree. Despite the coordination of the city and county police under a single board, the two forces continued to operate as separate units and were even financed separately, a fact which would seem to negate any of the advantages of such coordination. The general council was, moreover, placed in the position of appropriating annually an amount over which it had little control to finance a governmental function outside its jurisdiction. The police board each year presented its budget for the city to the general council who were required

. . . in the appropriation ordinance for that year, to set apart and appropriate the amount so certified [sic] payable out of the net annual revenue of said city; provided, however, that such estimate shall not exceed the aggregate amount of the salaries of the commissioners, officers, policemen, and clerks specified . . . and a reasonable [sic] amount in addition thereto for office rent, fuel, stationery, and other necessary office expenses . . . 119

The mayor entered protest against the passage of the act on the grounds of unconstitutionality and refused to relieve the existing police; meanwhile, the commissioners made their appointments.<sup>120</sup> The general council sought, over the mayor's veto, to resolve the issue by electing the same police as had been appointed by the commissioners.<sup>121</sup> The question was ultimately submitted in a petition for

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<sup>119</sup> Ibid., Sec. 14.

<sup>120</sup> Louisville Democrat, Apr. 23 and May 9, 1868.

<sup>121</sup> Proceedings of the General Council, Louisville Daily Democrat, May 22, 1868.

mandamus to the Court of Appeals which declared the Act of 1868 constitutional.<sup>122</sup> Within two years, however, police administration underwent further changes in the new charter adopted March 3, 1870.<sup>123</sup>

Such legislative measures establishing independent or quasi-independent boards or commissions, while transient in this local instance, were fairly widespread in many other states during the decades of the fifties and sixties. The New York legislature, in reaction against the infamous "Forty Thieves Council" of 1852, began the next year a period of state interference in municipal affairs of the City of New York. In 1857 police power was vested in a metropolitan police board, originally appointed by the governor, and afterwards elected by the legislature; control of the police was not returned to the municipality until 1870.<sup>124</sup> Similarly, Baltimore, after a period of four years of Know-Nothing party rule during which time the city was subjected yearly to the terror of election riots, in 1860 turned over control of its police system to a Board of Police Commissioners composed of the mayor and four residents of Baltimore appointed by the general assembly.<sup>125</sup> More comparable to the Louisville and Jefferson

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<sup>122</sup>Police Commissioner v. City of Louisville, 3 Bush 599.

<sup>123</sup>Charter of 1870, Secs. 32-33.

<sup>124</sup>Munro, Government of American Cities, pp. 18-19; Cyclopedia of American Government, pp. 541-42.

<sup>125</sup>T. P. Thomas, "The City Government of Baltimore," Baltimore, 1896 (Johns Hopkins University Studies in Historical and Political Science, XIV, no. 2), pp. 68-69.



County Police Board were the popularly and independently elected boards found in many cities, such as the Cleveland Board of Waterworks established in 1852 and the Chicago water-board of 1851; the latter was even empowered to borrow money in its own right.<sup>126</sup> In general, state legislatures tended to place administration of many municipal activities in the hands of boards, either chosen by the state or popularly elected. As new municipal functions grew in importance, local councils became relatively weaker; administration and responsibility tended to become more and more decentralized; and municipalities found themselves in the penumbra of corruption.

Nor did the charter of 1870 offer much relief to Louisville government. In April, 1868, the question of a charter convention had been submitted to the voters and had been approved by an overwhelming majority.<sup>127</sup> Delegates were elected and a new charter drawn up in accordance with the procedure prescribed by the 1851 charter:

The general council may call a convention of delegates from each ward, to be elected by the qualified voters thereof . . . which convention . . . may amend this charter or make a new one, which amendments or new charter shall first be submitted to the qualified voters of the city . . . and if approved by a majority of the said voters voting for or against the same, and enacted by the legislature of Kentucky, the same shall form part or supercede the charter.<sup>128</sup>

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<sup>126</sup>Fairlie, Municipal Administration, p. 88.

<sup>127</sup>Louisville Democrat, Apr. 5, 1868; vote for charter convention, 4944; against, 1358.

<sup>128</sup>Charter of 1851, Art. XIII, Sec. 9.

By 1870 the size and population of the city had increased substantially,<sup>129</sup> and the new charter in general provided for the extended municipal functions which attended this growth. Provision was made for condemnation of property, division of the city into districts for the construction of public works, development of parks and maintenance and repair of public ways. It also provided for regulation of street railways, leveeing, municipal planning, and the erection of a city hall.<sup>130</sup> Twelve sections were devoted to the management and finance of schools, and the subject of public charities received more attention than formerly.<sup>131</sup>

The framework of the government was essentially the same as that provided by the 1851 charter and subsequent amendments. The same officers were elective with substantially the same powers and duties. There were, however, a few modifications. The mayor's term of office was extended to three years, and he became ineligible for office during the ensuing three years; qualifications for municipal office were slightly modified in that residence within the city for five years was made requisite for all offices; and the date of election was moved from April to the first Tuesday in December.<sup>132</sup>

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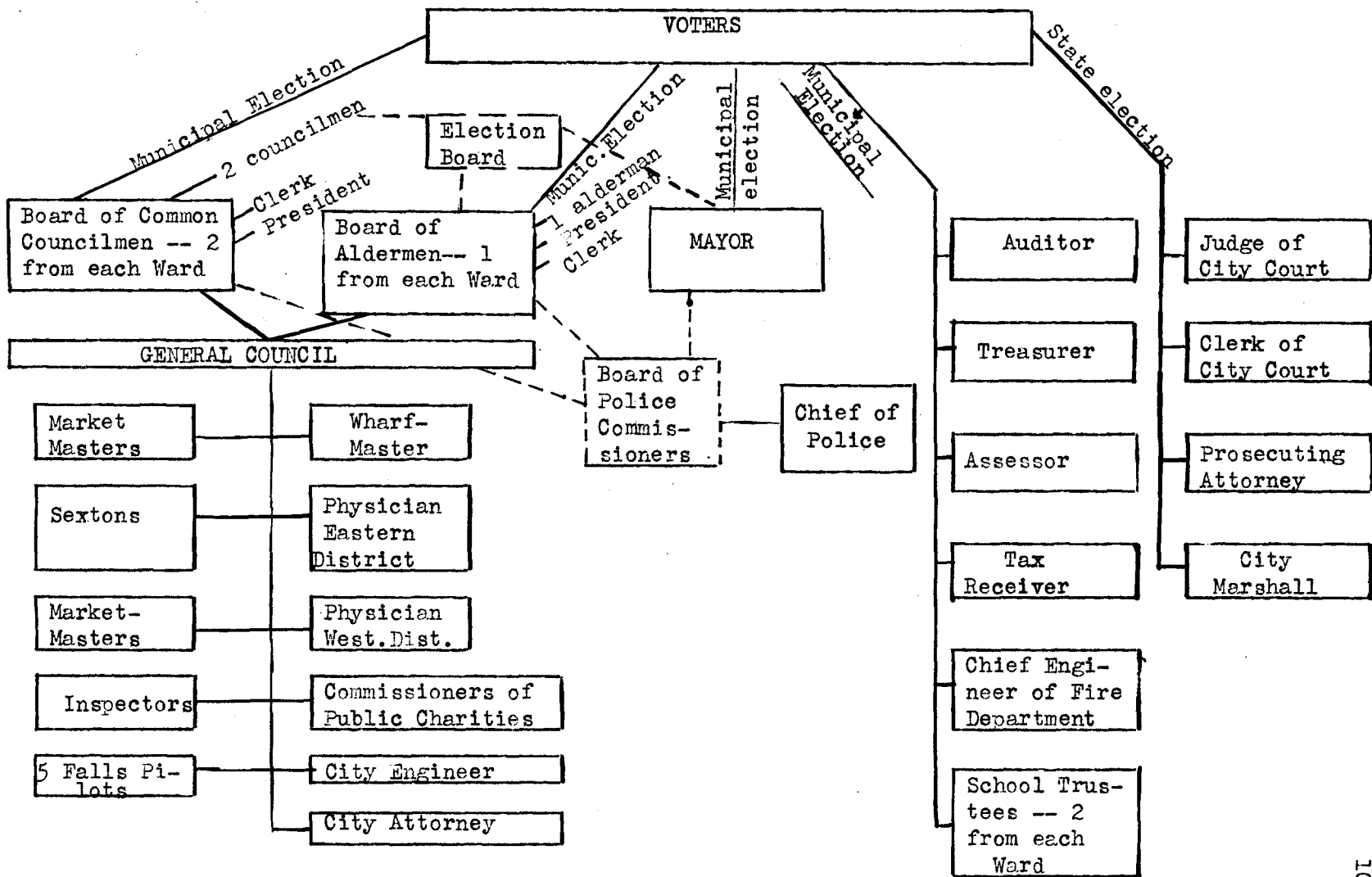
<sup>129</sup>Population of Louisville in 1850 had been 43,194 and by 1870 it had increased to 100,753.

<sup>130</sup>Charter of 1870, Secs. 10, 12, 13, 15, 16, 17, 64.

<sup>131</sup>Ibid., Secs. 76-95.

<sup>132</sup>Ibid., Secs. 19-20.

CHARTER OF 1870



The chief reform instituted by the 1870 charter was the re-organization of the police force. For the first time in the history of the city, policemen were required to meet more stringent qualifications than that of being a voter. In addition to being white, United States citizens who had resided in the city a minimum of three years, police were required to be at least twenty-four years of age, "moral, sober, and sagacious" and it was further stipulated that "none of them shall interfere in elections further than to vote." Also, for the first time the police force was organized on a semi-military basis with distinctions of rank and uniform.<sup>133</sup> In charge of the police organization was a Board of Police Commissioners, composed of the mayor, the president of each board of the council, and the Chairman of the Police Committee of each board, who annually elected the entire police force except the police chief who was nominated by the mayor and confirmed by the board.<sup>134</sup> Inasmuch as the tenure for police was one year and the force included in addition to the chief, two first lieutenants, eight second-lieutenants, and one hundred fifty policemen,<sup>135</sup> one may easily conjecture as to the morality, sobriety, and sagacity of the force!

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<sup>133</sup> Charter of 1870, Sec. 32.

<sup>134</sup> Ibid., Secs. 33, 34.

<sup>135</sup> Ord. No. 392, March 23, 1870, in Charter of City of Louisville and Ordinances prepared by Oliver Lucas, 1873, p. 130.

The board of commissioners of public charities, established by the 1870 charter coordinated the functions of the previous boards for the various charitable institutions under one management, including under their control the Louisville Marine Hospital, the alms house, the pest house, the city workhouse, houses of refuge and similar institutions. The board itself comprising the mayor with six other members with the same qualifications as aldermen were elected by the general council. Its members served without pay for staggered terms of three years; they passed regulations, appointed superintendents and all employees of the institutions, fixed salaries and heard complaints of inmates. The board was prohibited from creating indebtedness and its expenditures were limited to the amount appropriated for that purpose by the council.<sup>136</sup>

The paid fire department which had superseded the volunteer fire companies in 1858 was continued in the later charter. The chief engineer continued to be elected for a two-year term by the city voters and had the power of appointment of all subordinates subject to the approval of the general council.<sup>137</sup>

That the 1870 charter to some extent provided needed reform in the reorganization and coordination of municipal functions, particularly in the areas of police, fire, and welfare administration

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<sup>136</sup>Charter of 1870, Secs. 89-95.

<sup>137</sup>Ibid., Secs. 101-103.

is evident. But the real weaknesses inherent in the loosely constructed framework of the government, the absence of governmental responsibility, remained, providing ample opportunity for the continuation of the spoils system.

## SUMMARY

The period between 1780 and 1870 witnessed extraordinary changes in municipal government in the United States. The franchise, which usually had been limited during the latter part of the eighteenth century to a small group of property-holders, had gradually been extended until by 1850 the principle of white manhood suffrage was generally accepted.

In Louisville municipal affairs the franchise had had little meaning so long as the trustees were appointed by the Virginia Legislature. When the town of Louisville passed under the control of the Kentucky Legislature and the offices of the trustees for the first time became elective, suffrage in municipal elections was extended in accordance with provisions of the constitution to all free males who had lived in the state and in the county one year. This was a higher residence qualification than found in most frontier states, but the absence of property or tax-paying qualifications was in keeping with the growing spirit of liberalism of the west.<sup>1</sup> The Kentucky Constitution of 1799 excluded negroes, mulattoes, and Indians from the polls; later, an amendment to Louisville's first charter imposed taxpaying qualifications on voters. Actually, while prior to 1850 voting qualifications were gradually being liberalized in most other cities, in Louisville the trend was in the opposite

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<sup>1</sup>Kirk H. Porter, A History of Suffrage in the United States, Chicago, 1918, p. 24.

direction. The taxpaying qualification, however, was abolished by the charter of 1851 and even the length of residence was shortened by subsequent amendment. Negroes did not vote until after the first municipal election under the new charter of 1870. The Kentucky constitutional provision excluding negroes, mulattoes, and Indians from the polls remained effective until the ratification of the fifteenth amendment to the Federal Constitution on March 30, 1870, twenty-five days after the municipal election on March 5.<sup>2</sup>

Along with the extension of suffrage, there was a gradual increase in popularly elective offices. While council members since colonial days had been elected by popular vote in most cities, it was not until after 1820 that the office of mayor was made elective; after 1850 voters in many cities elected a large number of public officials, heads of departments, and independent boards. If certain practices well established in the larger cities were adopted in Louisville only after a lapse of years, the time lag can partially be accounted for by its lesser population. Thus it was that Louisville passed through the stages of having a mayor appointed by the state, chosen by the council and finally elected by popular vote -- an experience common to other municipalities some years earlier.

The structure of municipal government likewise underwent

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<sup>2</sup>Kentucky did not ratify the Fifteenth Amendment. Ky. House Journal, 1869, p. 776; Senate Journal, 1869, p. 628.



modifications. While prior to 1820, typically, a unicameral council exercised both legislative and executive, and in some few instances, judicial functions, there was a tendency in the charters adopted after 1820, to incorporate the bicameral system of council organization and mayoral veto. After 1850 the power of the council decreased with the disintegration of municipal functions into independent boards or departments. Until after 1870 the position of mayor was one of prestige rather than of power.

In ninety years Louisville had experienced various changes in government. The trustees appointed by the Virginia legislature had been chiefly concerned with fighting Indians and selling lots; their powers were few, and their functions limited chiefly to the improvement of streets and the establishment of markets with whatever revenue was derived from the sale of lots. Later trustees, whose offices became elective by Kentucky law in 1796, were accorded slightly broader powers, including a limited power of taxation, but their functions constituted hardly more than petty house-keeping. In 1828, under pressure of the growing population, Louisville was incorporated. The trustees were replaced by a popularly elected mayor and council, whose powers were increased as municipal activities continued to expand. Both administrative and legislative functions were performed by the unicameral council; the mayor was the executive head but his powers were chiefly advisory.

The turning point in the development of municipal government in Louisville came with the adoption of the charter of 1851.

Administration through council committees became increasingly impracticable as the city grew and municipal functions increased. The 1851 charter introduced the bicameral council and the mayoral veto; legislative, and executive functions became differentiated for the first time in the history of Louisville government. A number of city offices were made elective, and administration of most municipal activities passed out of the hands of the council to elected or appointed officials or to boards, popularly elected like the school board or chosen by the council, like the health board.

The fundamental idea of American government that "the people are the source of all political power and have the right to exercise it"<sup>3</sup> extended not to suffrage alone but to the right of self-government by the local community. Although home rule in the modern sense was not introduced until Missouri established the precedent in 1875,<sup>4</sup> charters of the larger cities were not uncommonly locally initiated. The New York City charters of 1830 and 1849 were framed by conventions of delegates elected by wards and ratified by the citizens before being enacted into law by the

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<sup>3</sup>Dillon, J. F., Commentaries on the Law of Municipal Corporations, Vol. I, Ch. 15, Sec. 9, p. 25.

<sup>4</sup>Macdonald, op. cit., pp. 59, 76-77.

State assembly,<sup>5</sup> as was the Louisville Charter of 1850. What was true of charters was likewise true of most municipal legislation. Prior to 1850 most laws regulating local affairs were drafted by the local community or at least embodied the will of the local council. After 1850, however, many state legislatures began to impose restrictions on municipalities without regard to local interests or welfare.<sup>6</sup> Boards entrusted with matters of vital concern to the city were often made independent of the council or mayor of the municipality. The only instance of this in Louisville prior to 1870, however, was the Police Board created in 1868. Cities, in brief, struggled to obtain legislation they desired or to prevent the passage of legislation they considered detrimental to their interests -- a situation which to a large extent still exists.

Throughout the nineteenth century the trend was toward expanding urbanization, but it was not until after 1880 that cities assumed a role of importance in national life. Even in 1870 there were but 226 municipalities with populations exceeding 8000. Until 1820 the growth of cities was slow and municipal activities, correspondingly meager. Between 1820 and 1850 municipal functions were expanded to some extent, and the period following 1850 is

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<sup>5</sup>Cyclopedia of American Government, pp. 541-2.

<sup>6</sup>Kneir, op. cit., pp. 54-55.

characterized by a rapid extension of municipal functions. Such expansion was attended by rapidly mounting municipal expenditure and by the growing development of the spoils system.

Municipal functions multiplied as the greater population created new demands, but the structure of government, for the most part, was not flexible enough to meet the challenge of this expansion. By 1870, most cities found themselves in the doldrums of corruption which elicited from the British political scientist some years later the remark that the government of cities was "the one conspicuous failure of the United States."<sup>7</sup> The challenge was only partially met by the reform governments which rose to power from time to time in the period following 1870. It was not until the twentieth century that basic reforms in the structure of municipal government were effected.

Louisville in 1870 was a rapidly growing city; in twenty years her population had more than doubled, and within the next thirty years it was to double again. Since 1850 the city had been engaged in expanding private business and public construction. Investments, both public and private, in railroads were tremendous. The first bridge connecting Louisville with the North had been completed, and already the importance of river traffic was beginning to decline. Since 1839 the city had been lighted by gas; the water works had been in operation for ten years, and the central

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<sup>7</sup>Bryce, James, American Commonwealth, Vol. I, N.Y., Macmillan, 1896, p. 608.

part of the city was serviced by a sewer system. Horse-drawn street-cars traversed a number of streets. The courthouse had been completed and the city hall was under construction. Louisville now had an organized police department and a municipally operated fire department. The school system was growing, and health and charities were receiving increased attention.

Since 1870 Louisville has had two new charters. The 1893 charter in some respects improved government by relieving the council of details of administration with which it previously had been saddled, but the framework of government which it established was clumsy and the responsibility of government was disseminated among a large number of elective offices. It was not until 1926 that efforts toward streamlining and simplifying the structure were achieved.

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