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Study of Law Enforcement

Committee on the Administration of Justice in the Commonwealth of Kentucky

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Foreword

This study of law enforcement reflects a genuine concern for improvement in the administration of justice in Kentucky on the part of many persons and groups. Every person bearing professional responsibility in the areas touched by the study should give considered attention to all parts of the report. It should serve also as a basic document for those who may propose specific reforms and those who may be called on to evaluate or implement immediate changes in policy and procedure. In breadth and depth the study is of more than local interest and is entitled to more than transitory impact. It should be of value in providing background and context for the resolution of law enforcement problems beyond Kentucky, wherever they may exist in a changing society.

For all the reasons mentioned, publication of the study as a regular issue of the *Kentucky Law Journal* is in the public interest. In this form the report will be distributed widely within Kentucky to the officials, agencies, and institutions now functioning in law enforcement. At the same time it will become a part of the permanent literature having to do with the administration of justice generally and will be available in all of the major libraries and centers for legal and governmental research throughout the nation and abroad.

The University of Kentucky College of Law and the editorial staff of its law review are pleased to provide this study with a publication worthy of its content and merit.

W. L. MATTHEWS, JR., Dean
College of Law

Foreword

On the 1st of May, 1961, the Committee on the Administration of Justice in the Commonwealth of Kentucky held its organizational meeting and authorized the conduct of a study of the Office of Attorney General, including its relation to state agencies, local officials, courts and the public. That report was published in February of this year as a Special Issue of the Kentucky Law Journal, being Volume 51, Special Issue, 1963, No. 5.

The Committee, in recognition of the importance of law enforcement at both the state and local levels of government and the paucity of an organized body of literature having to do with the subject in Kentucky, subsequently approved the preparation of a companion report concerning other law enforcement offices and agencies in the Commonwealth.

The most casual review of these two reports discloses the happenstance nature of the structure of the Commonwealth's law enforcement offices and agencies and the frustrations imposed thereby on the orderly administration of justice. With roots extending back into England's medieval past, and a proliferation of new duties, responsibilities, departments, commissions, agencies and relationships at all governmental levels to meet the complex conditions existing in our highly mobile society, during an era of nationally organized vice and crime which knows no political jurisdictional boundaries, it is abundantly apparent that a major re-thinking and reorganization of the state's law enforcement structure is a matter of the highest priority. If it is true that "everybody's business is nobody's", then and to that extent, the administration of justice appears to be no one's responsibility in Kentucky. It is to be hoped that the committee might continue its very useful function by the preparation and publication of an additional study, properly a part of this series, which would examine in detail Kentucky's judicial system as well as the offices of city, county and Commonwealth attorneys.

Steps have been taken to contact various foundations for the purpose not only of underwriting the completion of the parallel

study undertaken by the National Association of Attorneys General of that office, but also to permit the preparation of handbooks for Kentucky on such matters as law enforcement officers duties, powers, and responsibilities; arrests, search and seizure; and training manuals and courses for law enforcement officer's training institutes. We are continuing to explore the possibility of raising the necessary funds for these purposes, and trust that they may ultimately be forthcoming because of the importance of the projects involved.

Many people have cooperated in furnishing information and reviewing drafts for this study. Most of Kentucky's sheriffs, police chiefs, and state agencies replied to detailed questionnaires, which constitute a major basis of the information to be found herein. Many also furnished information through interviews and correspondence. While it is not possible to acknowledge each of the hundreds of contributors, both in and out of the state, the names of many are found in the footnotes throughout the report. A number of members of the Department of Law also participated. Assistant Attorneys General John B. Browning, Ray Corns, Walter C. Herdman, Ronald M. Sullivan and Joe Nagle reviewed those portions of the report which concerned their chief areas of activity and supplied information. Assistant Attorney General Robert L. Montague, III, reviewed the entire report and made many helpful suggestions. Three law clerks employed by the Department of Law in 1962, Jefferson V. Layson, William P. Snyder, and George E. Stigger, collected much of the initial material and prepared preliminary drafts.

Mrs. Patton G. Wheeler, Research Analyst for the Department has been directly responsible throughout the course of the study for its preparation, editing and final publication, with assistance of Mr. Thomas W. Bunch, Legal Aide.

JOHN B. BRECKINRIDGE, CHAIRMAN
Committee on the Administration
of Justice in the Commonwealth
of Kentucky

December, 1963

I. Introduction

Law enforcement is one of the chief functions of any government and is of vital concern to all citizens. Our structure for law enforcement involves all levels of government and reflects the development of American society. Elective local officers, such as the sheriff and constable, were part of colonial governments. City police were established as the population became increasingly urban. State police are a recent development, established initially to help meet the problems of modern traffic. Some federal police agencies are as old as the nation, while others were created to meet modern problems. Law enforcement is also a function of various state agencies, some of which are given police powers in regard to particular laws. New law enforcement problems have often required the development of new governmental agencies or the assumption of new duties by the traditional officers.

Surprisingly, there has been little systematic study of police systems. Considerable attention has been devoted to law enforcement efforts in such areas as traffic control, juvenile delinquency, and organized crime, and developments in these areas are of interest to citizen and specialist alike. Less interest has been shown in problems of police organization, relationship between law enforcement units, training and professional development, and in the wide range of traditional police duties. The role of county officials is seldom studied, although they play a major part in law enforcement. Agencies and functions have continued to expand without any analysis of the overall structure.

One expert points out that the variety and complexity of police forces makes their description difficult:

Our so-called [police] systems are mere collections of police units having some similarity of authority, organization, or jurisdiction; but they lack any systematic relationship to each other. Some police forces trace their origins back to Anglo-Saxon institutions and persevere today chiefly as relics of the past, without any real current use or value. Others have come into existence as a consequence of the rise of great cities, and more recently

in response to the challenge of organized crime or modern traffic hazards throughout wide rural areas. A few, including certain of the federal police agencies, have been created as mere convenient instrumentalities for the aid of other functions of government, or because federal criminal jurisdiction had expanded to a point where specialized police appeared to be necessary.¹

This study attempts to describe and analyze Kentucky's state and local law enforcement officers in terms of their history, their powers and duties, and their role in modern crime control.

CONSTITUTIONAL STRUCTURE FOR LAW ENFORCEMENT

Kentucky's constitution provides in detail for local government, including the structure of the judicial system and law enforcement officers. The General Assembly may create, divide, or consolidate counties, subject to certain restrictions.² It may not enact special or local legislation.³ The constitution, however, provides that cities and towns shall be divided into six classes, based on population, and that laws shall be enacted defining the organization and powers of each class.⁴ This has made possible some flexibility in the organization of municipal local government.

Each county must be divided into not less than three nor more than eight justices' districts. A justice of the peace and a constable are to be elected in each district every four years; their jurisdiction is co-extensive with the county.⁵

The constitution provides that the following officers will be elected in each county and serve four-year terms: a judge of the county court, a county court clerk, a county attorney, a sheriff, a jailer, a coroner, a surveyor, and an assessor.⁶ As a practical matter, the office of surveyor is not usually filled. Sheriffs and assessors are not eligible for re-election for an immediately succeeding term. The General Assembly is empowered to abolish the

¹ Smith, *Police Systems in the United States* 22 (Rev. ed. 1949).

² Ky. Const. §§ 63-65.

³ Ky. Const. § 60.

⁴ Ky. Const. § 156.

⁵ Ky. Const. § 99.

⁶ *Ibid.*

office of assessor,⁷ and the office of jailer.⁸ The General Assembly has created the elective office of tax commissioner in lieu of assessor,⁹ and has combined the office of jailer and sheriff in counties containing a city of the first class.¹⁰ The legislature may provide for the election or appointment of other county or district executive or ministerial officers.¹¹ The justice of the peace acts as a justice's court.¹² The county judge acts as a county court,¹³ and as a quarterly court.¹⁴ The fiscal court is composed of the county judge and the justices of the peace, or of the county judge and three commissioners, elected from the county at large.¹⁵

The constitution also provides that each city will elect a mayor or chief executive, a police judge, and members of its legislative board or council, except that the General Assembly may provide for appointment of mayors and police judges in fourth, fifth and sixth class cities.¹⁶ A police court may be established in each city, with the same criminal jurisdiction within city limits as justices of the peace have, and with jurisdiction over violations of city ordinances.¹⁷ The duties of county and district officers are not specified by the constitution.

The state is divided into judicial districts, established by the General Assembly, and a circuit judge is elected in each, to serve a six-year term.¹⁸ Each county with a population of 150,000 or more constitutes a district which is entitled to four judges, plus an additional judge for each increase of 40,000 in population.¹⁹ Each county with a population of 40,000 constitutes a district, and may be provided additional judges for specified in-

⁷ Ky. Const. § 104.

⁸ Ky. Const. § 105.

⁹ Ky. Rev. Stat. § 132.370 (1963) [hereinafter cited as KRS].

¹⁰ KRS 71.110.

¹¹ Ky. Const. § 107.

¹² Ky. Const. § 142.

¹³ Ky. Const. § 140.

¹⁴ Ky. Const. § 139.

¹⁵ Ky. Const. § 144. A 1957 statute requiring all counties with a population of 75,000 or more to have a commission form of government was held unconstitutional, on the grounds that section 144 of the constitution confers an option upon counties, and the legislature cannot compel them to adopt the commission form. *Billister v. Nelson*, 300 S.W. 2d 790 (Ky. 1957).

¹⁶ Ky. Const. § 160.

¹⁷ Ky. Const. § 143.

¹⁸ Ky. Const. § 128.

¹⁹ Ky. Const. § 137.

creases in population.²⁰ There are presently forty-nine circuit court district,²¹ with a total of fifty-nine judges. A Commonwealth's attorney is elected in each district for a six-year term,²² and a circuit court clerk is elected in each county.²³

The constitution provides for the election of the following state-wide executive officers every four years: a Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, Labor and Statistics, Secretary of State, Attorney General and Superintendent of Public Instruction.²⁴

It further provides that "inferior state officers, not specifically provided for in this constitution, may be appointed or elected, in such manner as may be prescribed by law."²⁵ The supreme executive power is vested in the Governor and "He shall take care that the laws be faithfully enforced."²⁶ Many elective and appointive state officers are given law enforcement duties by statute; these are discussed in Chapter X of this report.

The legislative power is vested in the General Assembly, with thirty-eight senators elected for four-year terms, and one hundred representatives, elected for two-year terms.²⁷ A Court of Appeals, which has appellate jurisdiction co-extensive with the state, is established, with eight judges elected from districts.²⁸ Kentucky's constitution, adopted in 1891, provides for a large number of elective state and local officers. The legislature has prescribed duties and created other offices within this constitutional framework, so that Kentucky's law enforcement system is complex and detailed.

HISTORY OF OFFICES

Earlier Kentucky constitutions were less detailed, particularly in regard to local government. The first constitution, adopted in 1792, provided for election of sheriffs and coroners, and appoint-

²⁰ Ky. Const. § 138.

²¹ KRS 23.040.

²² Ky. Const. § 97.

²³ Ky. Const. § 129.

²⁴ Ky. Const. §§ 70, 82, 91.

²⁵ Ky. Const. § 93.

²⁶ Ky. Const. §§ 69, 81.

²⁷ Ky. Const. §§ 29, 31, 33.

²⁸ Ky. Const. §§ 110, 113, 115.

ment of justices of the peace.²⁹ The second provided that the county court should recommend candidates for the offices of sheriff, coroner and justice of the peace to the Governor, who should appoint them.³⁰ The third constitution, adopted in 1850, provided for the present elective local officers.³¹

The offices of sheriff, constable, jailer and coroner have existed since medieval times, although their duties have altered somewhat over the centuries. Blackstone, writing in the Eighteenth Century, characterized sheriffs, coroners, and constables as very ancient officers.³² They were originally appointed by the King to represent his interests locally. For this reason they had very large powers, both as administrative officers and as peace officers. In general, the sheriff was the chief executive officer of his county. The constables had similar duties within smaller jurisdictions. The jailers were agents of the sheriffs. The coroners' duties were principally judicial, but included acting in place of the sheriff when the latter was unable to discharge his duties. The coroner, constable, or jailer are still required to discharge certain duties of the sheriff if his office is vacant or he is an interested party.³³

The history of each of these offices is described in the appropriate chapter. It will be noted that they have generally retained many common law powers and that most of their duties have not diminished with the advent of state police agencies. At one time, it appeared that state agencies might supplant local officers in law enforcement.³⁴ Today, the trend nationally appears to be toward a co-operative effort by all levels of government. One authority describes the current situation as follows:

Police-power action by local government is now and will continue to be the front line for all law enforcement; including enforcement against organized crime. It knows and combats local conditions as no distant observer can. . . . State responsibilities primarily supplement local action. . . . [State] enforcement actions are directed at: (a) taking

²⁹ Ky. Const. art. V, § 6, art. VI, § 1 (1792).

³⁰ Ky. Const. art. III, § 31, art. IV, § 8 (1799).

³¹ Ky. Const. art. IV, § 29, § 34, art. VI, §§ 1-5 (1850).

³² Blackstone, Commentaries 143-146 (Gavit's ed. 1892).

³³ KRS 116.160, 71.090, 454.140.

³⁴ E.g., Hickey, *Trends in Rural Police Protection*, 291 Annals 25 (1954).

reasonable measures to insure adequate local action within the basic home-rule concepts governing state-local relationships—laws, civil service, training and technical aid, personnel and operating standards, some limited direct police services; (b) providing supplementary specialist services that local agencies cannot develop or perform. . . ; (c) maintaining adequate forces and a legal framework for immediate, direct, state action in the event of local ineffectiveness, special racket problems, or actual breakdowns in law and order.³⁵

The following chapters describe at length the law enforcement powers and duties of Kentucky's county law enforcement officers, city police, state police, and state agencies. Analysis is complicated by the fact that Kentucky has 120 counties, which range in population from 3,867 to 610,947. Obviously, law enforcement problems and practices vary greatly among the counties and make it difficult to draw valid conclusions applicable to all. A similar problem exists in regard to city police, which are governed by statute, because different statutes apply to each of the six classes of cities. On the state level, the extent of an agency's law enforcement activities may not be apparent from the statutes prescribing its duties. Some of the larger departments are not specifically concerned with law enforcement, while some small agencies exist primarily to enforce particular laws. Various categories of peace officers are designated throughout the statutes, some with general powers and some limited to enforcing a single law.

This study attempts to examine constitutional provisions, statute law, common law, court decisions, and attorney general's opinions to describe the powers and duties of Kentucky law enforcement officers. It also attempts to describe actual organization and operation, using data derived from interviews, questionnaires, correspondence, and reports. Standards developed by professional organizations and experts are referred to for comparative purposes. While many problems are apparent, it is equally clear that there has been substantial progress in Kentucky's law enforcement system in recent years, and that the officials concerned show an increasing interest in improving their profession.

³⁵ Lumbard, *Local and State Action Against Organized Crime*, 347 *Annals* 84-85 (1963).

II. Sheriffs

CONSTITUTIONAL AND HISTORICAL BACKGROUND

Constitutional Provisions. Kentucky's constitution provides for the election of a sheriff in each county every four years. The sheriff is not eligible to re-election nor to act as deputy for the succeeding term.¹ A candidate for sheriff must be twenty-four years of age and a citizen of Kentucky. He must have resided two years in Kentucky, and one year next preceding his election in the county and district in which he is a candidate.² Before taking office, a sheriff must give such bond and security as may be prescribed by law.³ A sheriff may be indicted and prosecuted for misfeasance or malfeasance in office, or for willfully neglecting his official duties, and the office becomes vacant upon his conviction; the General Assembly may provide other ways of removing the sheriff from office.⁴ Sheriffs are subject to constitutional prohibitions against holding incompatible offices.⁵

The General Assembly may consolidate the offices of jailer and sheriff in any county or counties, but shall retain the office of sheriff in such event.⁶ If these offices are consolidated, the General Assembly may later re-establish them.⁷ The offices have been consolidated in counties containing a first class city.⁸

History of the Office. The office of sheriff is of ancient origins. In England, the sheriff was appointed by the King and represented him in the shires. The sheriff is mentioned in the *Magna Charta*,⁹ and existed many years before that time. The term "sheriff" derives from the Saxon words "shire" and "reeve" or "keeper"; thus, the sheriff is "a county officer representing the executive or administrative powers of the state within his

¹ Ky. Const. § 99.

² Ky. Const. § 100.

³ Ky. Const. § 103.

⁴ Ky. Const. § 227.

⁵ Ky. Const. § 165.

⁶ Ky. Const. § 105.

⁷ *Stickler v. Higgins*, 269 Ky. 260, 106 S.W.2d 1008 (1937).

⁸ Ky. Rev. Stat. § 71.110 (1963) [hereinafter cited as KRS].

⁹ *Magna Charta* ch. XVII (1215).

county."¹⁰ A great many duties evolved upon the office, involving judicial, financial and military affairs. Its importance resulted not only from the scope of the sheriff's duties, but from his direct relationship to the central government.

The office of sheriff came to America as part of county government. In those areas where local government centered around towns or townships, the sheriff was less important than in the South, with its county system. Appointment was initially by the governor, but it became elective in some states early in the Eighteenth Century. The duties remained those which were traditionally connected with the office.¹¹

Kentucky's first constitution provided that: "Sheriffs and coroners shall, at the times and places of elections of Representatives, be chosen by the citizens of each county. . . . They shall hold their offices for three years, if they shall so long behave themselves well, and until a successor be duly qualified."¹² The second constitution provided that the county court would recommend two persons to fill the office of sheriff, who were justices of the county court, and the Governor would commission one of them, to serve as sheriff. Terms were for two years.¹³ The third constitution provided for the election of a sheriff every two years.¹⁴

Other States. Twenty-two states provide by constitution for the election of sheriffs. Twenty-seven states limit his term by constitutional provision. Ten state constitutions set a two-year term, two states set a three-year term, and fifteen constitutions set a four-year term.¹⁵ All but three states provide by constitution or by law for the election of sheriffs. The length of term in those states which allow the sheriff to succeed himself is as follows: six years in one state; four years in twenty-four states; three years in two states; and two years in ten states. In Rhode Island, sheriffs are appointed by the Governor.¹⁶ Alaska and Hawaii do not have county sheriffs.

¹⁰ Bouvier, *Law Dictionary* (Rawle's 3d ed. 1914).

¹¹ 14 *Encyc. Soc. Sci.* 20-22 (1944).

¹² Ky. Const. art. VI, § 1 (1792).

¹³ Ky. Const. art. III, § 31 (1799).

¹⁴ Ky. Const. art. VI, § 4 (1850).

¹⁵ Legislative Drafting Research Fund of Columbia University, *Index Digest of State Constitutions*, 933, 935 (1959 ed.).

¹⁶ 6 R. I. Gen. Laws. § 42-29-1 (1956).

Duties of Sheriff. The Attorney General's office has said that sheriffs' duties were not defined by constitution because the common law duties of the office were generally known and accepted.¹⁷ The sheriff generally is an elective officer, is an officer of the court and subject to its orders and directions, and is conservator of the peace within his jurisdiction. He usually exercises all common law powers and duties of his office, except as modified by constitution or statute.¹⁸

It is not only the power, but the duty, of sheriffs in their various jurisdictions to preserve the peace, enforce the laws and arrest and commit to jail felons and other infractors of statutory or common law, and to execute all process to him directed and attend upon the trial courts of record and to preserve peace and quiet, to execute and carry out the mandates, orders and directions of the court. . . . In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, he [the sheriff] represents the sovereignty of the state and he has no superior in his county.¹⁹

The sheriff may direct inhabitants of the county to aid him in performing his duties. Such a group is called a *posse comitatus*, or power of the county, and persons over a certain age are bound to obey such a summons. The office of sheriff has always been one of the most important in government.

The sheriff's jurisdiction is county-wide. The Attorney General's office, in reply to a sheriff's inquiry as to whether he was responsible for law enforcement within the city, stated that:

. . . it is your duty to enforce the criminal laws of the Commonwealth, and that you rely on others to discharge this duty at your own peril.

Under the Kentucky Revised Statutes the fiscal court is responsible for determining how much money shall be allotted to your office. However, neither you, the fiscal court, precedent nor tradition can eradicate the responsibilities imposed upon you by law and your oath of office to enforce the criminal laws of Kentucky within your jurisdiction. Such matters are for the sole decision of the General

¹⁷ Ops. Att'y. Gen. # 62-698 (Ky. 1962).

¹⁸ 80 C.J.S. *Sheriffs and Constables* § 1 (1953).

¹⁹ 1 Anderson, *Sheriffs, Coroners, and Constables* 4-5 (1941).

Assembly, which imposed such responsibilities on the sheriff in the first place.²⁰

The National Sheriffs' Association manual for sheriffs emphasizes that the sheriff is charged with protecting citizens throughout the county:

The sheriff shares his responsibilities with both state and local officers who operate within his county, but this does not, in any degree, remove overall responsibility from him. The sheriff, almost universally, is empowered to correct any unlawful situation in his county whether it occurs in a municipality or in an unincorporated area.²¹

THE OFFICE OF SHERIFF IN KENTUCKY

Provisions for the office of sheriff appear throughout Kentucky's constitution and statutes. These provisions have been further defined by court decisions. Information on the actual operation of the office was obtained from a questionnaire sent to all sheriffs in 1962 by the Committee on the Administration of Justice. Fifty-six of Kentucky's 120 sheriffs replied to this questionnaire and their replies are cited throughout this report.

Election and Term. The constitution prohibits a sheriff from succeeding himself or as acting as deputy for his successor. The courts have held, however, that a sheriff who is appointed or elected to serve out an unexpired term is eligible for election to the succeeding full term.²²

The 1890 constitutional convention apparently adopted the restriction against sheriffs' succeeding themselves so that "the sheriff, the officer who collects the revenue from the voter, should not be placed in a position where he might be tempted to use the patronage of his office for the purpose of securing votes and bringing about his re-election."²³

A constitutional amendment to allow sheriffs to succeed themselves was defeated in 1959. However, forty-eight of the

²⁰ Ops. Att'y. Gen. # 62-698 (Ky. 1962).

²¹ King, Sheriff's Manual 56 (1960).

²² McGinnis v. Cassar, 230 Ky. 213, 18 S.W.2d 988 (1929).

²³ 3 Ky. Const. Deb. 4032 (1890) (remarks by Delegate Phelps, Chrm. on Executive Offices of Counties).

fifty-six sheriffs answering the committee's questionnaire believe this amendment is still needed. Six sheriffs had been elected for two terms, but fifty were serving for the first time. A vacancy in the office of sheriff is filled by the county court.²⁴ Until a vacancy is filled, the coroner acts as sheriff.²⁵

Compensation. Kentucky sheriffs are compensated by salary and by fees. A survey of thirty-five states showed that twenty-four pay sheriffs a salary, six states pay both salary and fees, four states allow counties discretion in compensating sheriffs, and one allows only fees.²⁶

The Kentucky Constitution provides that the fees of county officers shall be fixed by law and that sheriffs in counties with a population of 75,000 or more shall be paid a salary out of the State Treasury. There are four such counties: Campbell, Fayette, Jefferson and Kenton. The salaries of sheriffs and deputies may not exceed 75 per cent of the fees they collect and pay into the treasury.²⁷ The statutes set an annual salary of 7,200 dollars for sheriffs in such counties. They must send the Department of Revenue the amount of money collected each month as compensation for official duties, along with a sworn statement of the amount.²⁸

In all other counties, the sheriff's compensation and expenses are set by the fiscal court and amounts in excess of this must be remitted to the county. Fees for various services are set by statute.²⁹ These range from 75 cents paid by the state for summoning a witness in behalf of the Commonwealth in a felony case to 7 dollars for executing a writ of possession against a defendant. The sheriff is allowed a commission for collecting state, county and special district taxes.³⁰

Tax collections are the major source of revenue for the office, with the service of notices, subpoenas and summons second

²⁴ KRS 63.220.

²⁵ KRS 63.150.

²⁶ 9 S.D. Legislative Research Council, Sixth Biennial Report 27 (Sept., 1962).

²⁷ Ky. Const. § 106.

²⁸ KRS 64.345.

²⁹ KRS 64.060, 64.090.

³⁰ KRS 134.290, 75.040, 178.230, 160.500; according to Ops. Att'y. Gen. # 61-581 (Ky. 1961) the sheriff's fee in some instances, as the collection of school district taxes, must reasonably approximate the costs of collection.

in importance.³¹ The method of compensating the sheriff tends to make his civil duties of greater importance than his law-enforcement duties. One study noted that:

Revenue accruing to the sheriff from his court and law-enforcement duties alone is scarcely sufficient to compensate him for the cost of maintaining his office. . . . In the first place, the fees which he earns for performing his court and law-enforcement duties are very small in amount and in some instances are insufficient to cover the cost of their performance. . . . Secondly, he is required to perform duties for which he does not receive any compensation. . . . Finally, he does not receive any compensation for duties performed in misdemeanor cases unless the defendants involved are convicted and are willing to pay the costs (i.e., trial expenses) assessed against them.³²

The 1962 General Assembly substantially increased sheriffs' fees and mileage allowances to bring them more in line with the cost of performance.³³ An Attorney General's opinion indicated that the sheriff was entitled to an allowance, as an expense against the revenue of his office, for necessary official travel, but that the sheriff should show the distance and purpose of each trip.³⁴

Qualifications and Training. The constitution requires only that a candidate for sheriff be twenty-four years old and a resident of the state and county. When elected, he must take the constitutional oath of office and additional statutory oaths, including one that he "will do right, as well to the poor as to the rich, in all things belonging to my office as sheriff. . . ."³⁵ The statutes do not prescribe qualifications for the office. Only two other states set constitutional qualifications for the age of sheriffs.³⁶

The Committee on the Administration of Justice's survey found that thirty-nine of the fifty-six sheriffs responding had not previously held public office. Two sheriffs had served as county judge, two as chief of police, and two as justice of the peace. Eleven sheriffs had previously each held one public office; these

³¹ Legislative Research Commission, Financial Administration of Office of Sheriff 6 (Information Bull. No. 22, 1958).

³² Vanlandingham, *The Fee System in Kentucky Counties 15-16* (1951).

³³ KRS 64.060, 64.090, 64.095, 134.290.

³⁴ Ops. Att'y. Gen. # 60-127 (Ky. 1960).

³⁵ KRS 70.010.

³⁶ Legislative Drafting Research Fund, *op. cit. supra* note 15, at 934.

included service as mayor, city councilman, coroner, state representative, jailer, and magistrate. Previous public service is probably of value in assuming the duties of sheriff.

Only twenty-six sheriffs stated that they had any police training or experience. Five had served as military police; eight had previous service in the sheriff's office; eight had attended some type of police or sheriffs' schools; and the training of others included service as a private guard and one month's service with the state police. This general lack of prior public office or special training would appear to be a handicap in discharging the complex and important duties of the office of sheriff. As is noted elsewhere, however, opportunities for training have increased in recent years.

Deputy Sheriffs. The sheriff may, with the county court's approval, appoint deputies to serve at his pleasure.³⁷ A sheriff is ineligible to serve as a deputy during the succeeding term,³⁸ except that a sheriff who was elected to fill an unexpired term may succeed himself. A deputy is empowered to discharge all the official duties imposed on the sheriff, unless prohibited by statute. The statutes specify, for example, that the circuit clerk shall act in the sheriff's place if the latter is unable to serve on the county board of election commissioners.³⁹

The Court of Appeals has held that a deputy's appointment is not valid unless approved by the county court, by an order of record.⁴⁰ The county court's discretion, however, is limited to the deputy's qualifications and mandamus will lie if the court refuses approval without good cause.⁴¹ The sheriff may remove his deputies at will.⁴² The sheriff is liable by statute for the acts of his deputies.⁴³ The sheriff, however, is liable only when the deputy acts officially.⁴⁴

The fifty-six sheriffs who answer questionnaires employed

³⁷ KRS 70.030.

³⁸ Ky. Const. § 99; Ops. Att'y. Gen. # 60-253 (Ky. 1960).

³⁹ KRS 116.040.

⁴⁰ Wells v. Commonwealth, 195 Ky. 754, 243 S.W. 1032 (1922); Buckles v. Commonwealth, 113 Ky. 795, 68 S.W. 1084 (1902).

⁴¹ Fox v. Petty, 235 Ky. 240, 30 S.W. 2d 945 (1930); Dassey v. Sanders, 17 Ky. L. Rep. 972, 33 S.W. 193 (1895).

⁴² Buechele v. Petty, 265 Ky. 321, 96 S.W.2d 1010 (1936).

⁴³ KRS 70.040.

⁴⁴ Commonwealth v. Vincent, 282 Ky. 95, 137 S.W.2d 1091 (1940).

a total of 317 deputies. The number per county ranged from one to 140. Six sheriffs each employed one deputy; fourteen employed two deputies; fourteen employed three deputies; ten employed four deputies; four each had five deputies; three employed six; one employed nine; and one sheriff had 140 deputies. Evidently, the number of deputies relates to the population of the county. The seventeen sheriffs reporting who served in counties with a population of from 3,000 to 9,000 employed a total of forty-three deputies, or an average of 2.5 deputies. The seventeen sheriffs serving counties of from 9,000 to 14,000 population employed a total of fifty-three deputies, or an average of 3.2. The seventeen reporting sheriffs in counties of from 15,000 to 42,000 population employed a total of sixty deputies, or an average of 3.5 per county.

Twenty-five of the fifty-six reporting sheriffs had previously served as deputies, thus gaining experience in the work of the office. Six had served as deputies for less than four years, ten had served for four years, and nine had served for more than four years as deputies. One sheriff had previously been a deputy for twenty years.

Kentucky Sheriffs' Association. The Kentucky Sheriffs' Association was founded around 1941. Membership is open to all Kentucky sheriffs and former sheriffs and to one bonded deputy of each sheriff. Additional deputies may be non-voting members. This restriction prevents control of the association by those sheriffs who have a large number of deputies. The membership fee is 5 dollars a year.

The association holds an annual conference. Officers and directors are elected at the conference and meet regularly four times a year. The association also publishes an annual magazine and a monthly bulletin. The bulletin consists of articles of interest to Kentucky sheriffs, such as notes of court cases and Attorney General's opinions relating to sheriffs, announcement of meetings, and other items. The costs of these publications are met from association funds and from advertising.

The Kentucky Sheriffs' Association sponsors an annual school for sheriffs. The school is held at the State Police academy and is open to all sheriffs and their deputies. The 25 dollar fee for the institute includes room, board and tuition. The sheriff or

deputy's county usually pays the fee; if the county does not pay, the association pays half of the fee. The school lasts for a week and includes various phases of sheriffs' work, such as arrests, service of papers and law enforcement. It is conducted by personnel from the Federal Bureau of Investigation, the Kentucky Department of Law, the Kentucky Department of Finance, the Southern Police Institute and the Kentucky State Police Training Academy. The effectiveness of the school is limited by low attendance; only twenty-one sheriffs and deputies attended the 1962 session.

The association has divided the state into ten districts and encourages district meetings. Such meetings facilitate co-operative exchange of information among sheriffs. Apparently, districts in the western part of the state are better organized and hold more meetings than do those in eastern Kentucky.⁴⁵

POWERS AND DUTIES OF KENTUCKY SHERIFFS

Sheriffs are assigned numerous statutory duties. These range from law enforcement to tax collection and election duties. The statutes do not, however, show the relative importance of sheriffs' responsibilities, or the time required for their performance. Although this study is concerned with law enforcement, the sheriff's duties in other areas must also be considered, as they affect the amount of time he can devote to police work.

Relationship of Civil and Criminal Matters. The Committee on the Administration of Justice asked Kentucky sheriffs to estimate the percent of their office's work which was concerned with criminal matters (such as, apprehension of criminals, investigation of crimes), civil matters (such as taxes and foreclosure sales) and administrative matters. The results are shown in Table I.

The estimated per cent of work concerned with criminal matters range from 5 to 90 per cent, and averaged 37 per cent. The per cent of work concerned with civil matters ranged from

⁴⁵ Telephone interview with Mr. William King, former Secretary, Ky. Sheriffs Ass'n, in Frankfort, Ky., July, 1963.

TABLE I
WORK OF SHERIFFS' OFFICES

Criminal Matters		Civil Matters		Other Adm.	
No. of Sheriffs	Per Cent of Work	No. of Sheriffs	Per Cent of Work	No. of Sheriffs	Per Cent of Work
12	5 - 25%	8	10 - 25%	8	2 - 5%
12	30 - 45%	8	30 - 45%	4	10%
11	50%	8	50%	4	20%
13	60 - 90%	10	60 - 70%	2	50 - 55%
48 Replies		42 Replies		18 Replies	

10 to 90 per cent, and averaged 51 per cent. This indicates that sheriffs cannot be primarily law enforcement officers, but must spend the majority of their time on other matters.

Most sheriffs do not, however, generally believe that the criminal and civil duties of the office should be separated. Of fifty-three sheriffs answering, only 21 per cent believed that these duties should be separated; six sheriffs believed that the civil duties should be given to another agency; four believed that the criminal duties should be placed elsewhere; and one did not specify. Three of the sheriffs stated that they did not have adequate funds to perform both categories of duties: 79 per cent opposed this idea, with the main reasons given being that the sheriff could not afford to serve without both criminal and civil fees, and that the present duties could be handled by one official.

The convention which framed our present constitution considered relieving the sheriff of his revenue collection duties. The plan was not adopted because:

. . . . while it may be a wise and practical system for some of the counties of this state, it will not operate satisfactorily in all the counties of the state, several of which have experienced no little difficulty in getting satisfactory men to offer for the position of sheriff, because of the fact that, even under the present system, where he is allowed to collect the revenues and perform other duties, the income of the office is so small that it hardly furnishes inducements sufficient to attract capable and worthy men to the position.⁴⁶

A 1924 study of Kentucky government recommended that “. . . sheriffs be relieved of the tax-collecting function which consumes so much of their time, so that they may be able to perform properly the functions for which the office is primarily intended; viz. the execution of the orders of the courts and preservation of order.”⁴⁷

Most of the sheriff's statutory duties are summarized herein. The statutes tend to be more explicit about the sheriff's civil responsibilities than his law enforcement duties. This is probably because law enforcement is a common law duty of the sheriff.

⁴⁶ 3 Ky. Const. Deb., *op. cit. supra* note 22, at 4035.

⁴⁷ Efficiency Comm'n of Ky., *The Government of Kentucky* 574-576 (1924).

Tax Collection. The Kentucky Court of Appeals has said that the legislature may designate who shall be the collector of state and county taxes.⁴⁸ Many of these duties have been assigned to the sheriff. The statutes direct that: "The sheriff, by virtue of his office, shall be collector of all state, county and district taxes, unless the payment thereof is, by law, especially directed to be made to some other officer."⁴⁹ Specific statutes charge him with collection of county school taxes,⁵⁰ drainage district assessments,⁵¹ sanitation district taxes,⁵² levees taxes,⁵³ special road taxes,⁵⁴ bank shares taxes,⁵⁵ and others. The sheriff must mail a notice to each taxpayer, showing the total amount due on state, county and other taxes, the date due, and the discount for early payment.⁵⁶ Collecting and reporting various taxes obviously require a considerable amount of the sheriff's time.

Election Duties. The sheriff is a member of the county board of election commissioners, along with two members appointed by the Kentucky State Board of Election Commissioners.⁵⁷ He presides at board meetings and may vote to break a tie.⁵⁸ The board appoints election officers, certifies elections, and performs other duties. The sheriff is disqualified from acting as a member of the board if he himself is a candidate for office.⁵⁹ The statutes specify that if the sheriff or his deputy is a candidate at any election, all his duties pertaining to that election, except serving on the board, shall be performed by the coroner.⁶⁰ The Attorney General has held that this statute does not apply if a deputy is an unopposed candidate.⁶¹

The sheriff secures voting places in each precinct,⁶² and pre-

⁴⁸ Madison Co. v. Hamilton, 243 Ky. 29, 47 S.W.2d 938 (1932).

⁴⁹ KRS 184.140.

⁵⁰ KRS 160.500.

⁵¹ KRS 267.010(4), 267.310, 268.010(8).

⁵² KRS 220.360.

⁵³ KRS 266.150(1).

⁵⁴ KRS 178.230.

⁵⁵ KRS 136.270(1).

⁵⁶ KRS 133.220(4).

⁵⁷ KRS 116.040.

⁵⁸ KRS 116.050.

⁵⁹ KRS 116.080; Scott v. Roberts, 255 Ky. 34, 72 S.W.2d 728 (1934); Ops. Att'y. Gen. # 39,491 (Ky. 1957).

⁶⁰ KRS 116.160.

⁶¹ Ops. Att'y. Gen. # 63-387 (Ky. 1963).

⁶² KRS 118.060.

places for voting machines.⁶³ Proclamations of special elections to fill vacancies in the General Assembly are sent to the sheriff, who advertises the election.⁶⁴ He has statutory duties in regard to elections for removal of a county seat,⁶⁵ or to change a county's territory.⁶⁶ The sheriff is required to advertise local option elections.⁶⁷ Penalties are prescribed for any sheriff who willfully fails to perform any duty concerning an election.⁶⁸

Service to Courts. The sheriff is an officer of the courts and renders administrative services to them. He or his deputy is required to attend and keep order in the circuit, county, fiscal and quarterly courts and to obey the courts' orders.⁶⁹ The sheriff is required to execute and make due return of all notices and process which come to him,⁷⁰ and he may empower, by writing, any person to execute a process.⁷¹ When a sheriff vacates his office, his deputies shall complete the execution of any process; when his term expires, he shall complete the execution of any process in his hands.⁷²

Juries are summoned by the sheriff,⁷³ who takes an oath at the beginning of each term of court that he will summons impartial jurors and will not influence them.⁷⁴ He may be required to summons jurors from an adjoining county⁷⁵ or to summons bystanders,⁷⁶ in the event of a deficiency in the number of jurors.

The sheriff or his deputy convey persons to the penitentiary and execute the sentence of the court in other criminal cases, unless the court orders another officer to act in place of the sheriff.⁷⁷ When ordered by the court, the sheriff transfers prisoners to a jail in another county.⁷⁸ He commits defendants in civil

⁶³ KRS 125.110.

⁶⁴ KRS 121.040, 121.050.

⁶⁵ KRS 67.020(2).

⁶⁶ KRS 67.030(2).

⁶⁷ KRS 242.040.

⁶⁸ KRS 124.110.

⁶⁹ KRS 70.140.

⁷⁰ KRS 70.070.

⁷¹ KRS 70.050.

⁷² KRS 70.110(2).

⁷³ KRS 29.175.

⁷⁴ KRS 29.185.

⁷⁵ KRS 29.262.

⁷⁶ KRS 29.280.

⁷⁷ KRS 70.130.

⁷⁸ KRS 441.040.

actions to the county jail⁷⁹ and may take their deposits in lieu of bail.⁸⁰

Service of Process. Process in a civil action is directed to the sheriff, unless he is a party to the proceeding,⁸¹ or unless the court appoints another person. The Court of Appeals is specifically empowered to direct process to any sheriff⁸² and inferior courts may direct process to the sheriff, coroner, or constable at the option of the plaintiff.⁸³ The sheriff, or one of his deputies, must attend the clerk's office daily to receive any process that may be issued⁸⁴ and must endorse upon every process the day and hour he received it.⁸⁵ It is the official duty of the clerk to see that a process is delivered to the sheriff for service, and of the sheriff or his deputy to attend the clerk's office to receive process.⁸⁶ The sheriff is specifically directed by statute to serve subpoenas of the Workmen's Compensation Board⁸⁷ and orders of the Railroad Commission.⁸⁸

The sheriff having an order of attachment may enter the building or enclosure containing the property to take it and may break in, if necessary.⁸⁹ He may also break and enter buildings to execute an order of arrest.⁹⁰ The sheriff may not return a process on the grounds that he was prevented by force from executing it, or that the defendant was not found within the county unless the sheriff has actually been to the defendant's residence.⁹¹

Attachment and Execution. The sheriff executes orders to take property under an attachment, execution or distress warrant and may select appraisers if the defendant says that the property's value is improperly stated.⁹² The sheriff must keep the property

⁷⁹ KRS 425.035.

⁸⁰ KRS 425.040.

⁸¹ KRS 454.140, 454.145.

⁸² KRS 21.230.

⁸³ KRS 25.015.

⁸⁴ KRS 70.075.

⁸⁵ KRS 70.076.

⁸⁶ *Blue Grass Mining Co. v. Stamper*, 267 Ky. 643, 103 S.W.2d 112 (1937).

⁸⁷ KRS 342.260(3).

⁸⁸ KRS 276.380.

⁸⁹ KRS 70.077.

⁹⁰ KRS 70.078.

⁹¹ KRS 70.079, 70.080.

⁹² KRS 425.140, 425.145, 425.160.

for two days, or until delivered to the plaintiff or the defendant, under a bond.⁹³ When property has been removed to another county, the sheriff may enter and attach it.⁹⁴ The sheriff must make a detailed return on every order of attachment showing what he has done under it.⁹⁵ The sheriff has numerous other statutory duties for attaching property.

The sheriff is responsible for selling property used for unlawful sale, transportation, or possession of alcoholic beverages in dry territory.⁹⁶ He, or any peace officer, may seize and destroy gambling implements with or without a warrant.⁹⁷ The sheriff must post notices of abandoned property which has been reported to the state.⁹⁸

Preservation of the Peace. The sheriff is a peace officer⁹⁹ and possesses the law enforcement powers of such officers. He may arrest without a warrant for a public offense committed in his presence, or when he has reasonable grounds for believing that a felony has been committed.¹⁰⁰ If he is in actual pursuit of an offender, he may proceed across county lines for the purpose of making an arrest.¹⁰¹ He is authorized to carry a concealed deadly weapon when necessary for his protection in discharging his duties.¹⁰²

The sheriff retains the traditional power of commanding a *posse comitatus*: "Any sheriff, deputy sheriff or other like officer may command and take with him the power of the county, or a part thereof, to aid him in the execution of the duties of his office, and may summon as many persons as he deems necessary

⁹³ KRS 425.150, 425.165.

⁹⁴ KRS 425.275.

⁹⁵ KRS 425.285.

⁹⁶ KRS 242.330, 242.360.

⁹⁷ KRS 436.280.

⁹⁸ KRS 393.110(1).

⁹⁹ KRS 446.010(19).

¹⁰⁰ KRS 431.005(1).

¹⁰¹ KRS 431.045.

¹⁰² KRS 435.230(2); see *Voils v. Commonwealth*, 228 Ky. 149, 14 S.W.2d 381 (1929).

to aid him in the performance thereof."¹⁰³ If the power of the county appears insufficient to suppress rebellions, insurrections, riots or threats thereof, or any active, unlawful or threatened violence to any persons or property in the state, he may apply to the Governor to call and assign any part of the Kentucky Active Militia to active service, and to order the military forces thus called to report to the sheriff who will direct the specific object to be accomplished by the military forces.¹⁰⁴ The Court has held that a sheriff "as a conservator of the peace had the right to keep the peace and to subdue disorderly conduct, threats and demonstrations which might be calculated to lead to assault or to provoke others to commit a breach of the peace or other violations of the law."¹⁰⁵

Road Patrol. Any peace officer, including a sheriff, is required to enforce laws relating to motor vehicles.¹⁰⁶ The sheriff

¹⁰³ KRS 70.060. One of the most colorful examples of a sheriff's posse was described by William Townsend, Esq. The sheriff had been directed to call a *posse comitatus* and proceed to Whitehall, the home of General Cassius M. Clay and arrest him. The eighty-four year old gentleman met the heavily-armed posse alone. The sheriff's report to the county judge, quoted by Mr. Townsend, indicates how the thing came out:

Richmond, Ky., November 14, 1894.

Judge John P. Chenault. Dear Judge:

I am reporting about the posse, like you said I had to. Judge, we went out to White Hall, but we didn't do no good. It was a mistake to go out there with only seven men. Judge, the old General was awfully mad. He got to cussin' and shootin' and we had to shoot back. The old General sure did object to being arrested. Don't let nobody tell you he didn't. And we had to shoot. I though we him two or three times, but don't guess we did . . . he didn't act like it. We come out right good considerin'. I'm having some misery from two splinters of wood in my side. Dick Colliers was hurt a little when his shirt tail and britches were shot off by a piece of horseshoe and nail that come out of that old cannon. Have you seen Jack? He wrenched his neck and shoulder when his horse threwed him as we were getting away. My God, you would have supposed that Clay was the one that was after him, matter of fact, I think he was. Judge, I think you'll have to go to Frankfort and see [Governor John Young] Brown. If he could send Capt. Longmire up here with two light fielders, he could divide his men, send some with the cannon around in front of the house—not too close—send the other around through the cornfield and up around the cabins and springhouse and back porch. I think this might do it. Respectfully, Josiah P. Simmons, High Sheriff, Madison County.

Address by William Townsend, Civil War Round Table of Chicago, in Chicago, Ill., Oct. 17, 1952.

¹⁰⁴ KRS 37.240; see section on Department of Military Affairs in Chapter X.

¹⁰⁵ Lusk v. Commonwealth, 291 Ky. 399, 164 S.W.2d 389 (1942).

¹⁰⁶ KRS 281.765.

and his deputies have the following specific duties: (1) they shall patrol all public roads in the county and shall direct the traffic on such roads so as to maintain maximum safety; (2) they shall investigate all accidents and wrecks on the roads, and record their observations and findings; (3) when a person is injured or killed, or there is reason to believe that criminal negligence caused the accident, the sheriff shall take affidavits from witnesses and shall subpoena them, and shall return the affidavits and his report to the county attorney.¹⁰⁷

Sheriffs are allowed an amount not to exceed 1,500 dollars annually for patrol and inspections, to be paid by the state and computed at 7 cents per mile.¹⁰⁸ This is considered reimbursement of expense, not salary, but the sheriff must list the amounts so received as receipts of his office, and must itemize the travel involved.¹⁰⁹

Inspections. The sheriff or his deputies must inspect at least monthly all places where music or dancing are permitted, and all camps, restaurants, and roadhouses where intoxicating liquors are sold, or where men and women are furnished rooms for lodging. He shall report his findings in writing to the county attorney and circuit court clerk, who shall deliver the sheriff's report to the next grand jury.¹¹⁰ Another statute requires the sheriff, his deputy, or the county patrol to visit places of entertainment regularly and to arrest the owner or manager if they observe any violation of laws relating to places of entertainment.¹¹¹

Under a 1958 statute, no motor vehicle not previously registered in Kentucky shall be registered by the county clerk unless it has been inspected by the sheriff or another peace officer. The sheriff makes a record of inspection on forms furnished by the Department of Revenue.¹¹²

Other Duties. The sheriff is assigned various other statutory responsibilities. He acts as jailer if that office is vacant, or if the jailer has been committed to jail.¹¹³ When commanded by the

¹⁰⁷KRS 70.150.

¹⁰⁸ KRS 70.170(1).

¹⁰⁹ KRS 70.170(2); Funk v. Millikin, 317 S.W.2d 499 (1958).

¹¹⁰ KRS 70.160.

¹¹¹ KRS 231.130.

¹¹² KRS 186.235(1).

¹¹³ KRS 71.090.

county judge, he must attend and prevent obstructions to a mining survey by owners of adjoining land.¹¹⁴ The Commissioner of Public Safety may order the sheriff to act as deputy fire marshal for his county, which requires him to investigate fire loss.¹¹⁵

The county court may order the sheriff to administer an estate if there is no public administrator and guardian, and if no personal representative qualifies three months after death of the decedent.¹¹⁶ If the sheriff acts as administrator, his powers, rights, duties and liabilities do not expire with his office as sheriff.¹¹⁷

OPERATION AND PROBLEMS OF SHERIFFS' OFFICES

Legal Assistance. The number and variety of sheriffs' duties presumably make it difficult for many to keep adequately informed about their responsibilities. However, twenty-seven of the fifty-six sheriffs answering the committee's questionnaire reported that they, and the law enforcement officers with whom they work, have an adequate opportunity to familiarize themselves with the laws they are expected to enforce. Twenty-two sheriffs answered that they did not keep well enough informed, and seven did not answer. They were also asked how they keep abreast of changes in the law: fifteen sheriffs named the county attorney as the source of information, six named both the county and the Commonwealth's attorneys, five named the Kentucky Sheriffs' Association and eight said that they read new laws. Other answers included: "experience"; a monthly meeting of district sheriffs; and getting information from various other officials. One sheriff stated that keeping abreast of changes in the law "is our biggest problem."

The county attorney is the primary source of legal advice for the sheriff. All but three sheriffs said that they sought legal advice from the county or Commonwealth's attorney. Twenty-five sheriffs sought advice only from the county attorney, eighteen sought advice from both the county and Commonwealth's

¹¹⁴ KRS 352.500(3).

¹¹⁵ KRS 227.230.

¹¹⁶ KRS 395.390(1).

¹¹⁷ KRS 395.400; according to Ops. Att'y. Gen. # 63-453 (Ky. 1963), the sheriff may not legally refuse to act as administrator on orders of the court.

attorneys, and four from the county attorney and other officers. Most sheriffs said that the advice concerned all legal problems connected with their job. Few sheriffs ask advice from the state: in 1960, only eighteen of the 1,251 opinions issued by the Attorney General's office were directed to sheriffs.¹¹⁸

Co-operation with other Law Enforcement Agencies. Sheriffs reported that they work with city police, state police and state administrative agencies. All but four of the fifty-six sheriffs replying cooperate with city police within the city limits, in such matters as arrests, searches, "helping to keep order" and in exchanging information. One sheriff operates a twenty-four hour radio service jointly with the city police. Another says that he and the city police "jointly police the city." Sheriffs generally did not specify the basis of cooperation, but said that they worked closely with the city police, or assisted when called upon. Two sheriffs said that there were no city police forces within their counties; one said that he cooperated but the city did not; and one "did not interfere in local police matters unless requested." The replies indicate that some sheriffs do not recognize that they are responsible for law enforcement both within and without incorporated areas of the county. Twenty-two sheriffs thought that the police system should be consolidated on a county-wide basis and twenty-five opposed this idea.

Almost all sheriffs ask the State Police for help in carrying out their duties. Fifteen ask for help "whenever needed," seven in investigations, and five in raids and accidents. Other instances when help is requested include car theft, serving out-of-county warrants, when radio contact is required, in court testimony, "when we are short of help," and "as a courtesy to avoid embarrassment to them." Twenty-eight sheriffs said that they were often called on to help state administrative agencies in the enforcement of their particular areas of responsibility, and seventeen said that they were not. All those answering said, however, that they cooperate whenever asked.

Forty sheriffs reported that their duties did not conflict or overlap with those of any state agencies, while ten said there was some conflict. Two sheriffs said that the State Police investigate

¹¹⁸ 51 Ky. L.J. 119-S (1963).

crimes without notifying the county; one said there was a conflict about taking juveniles to reception centers; and four named alcoholic beverage raids as an area of over-lapping authority.

Facilities for Law Enforcement. Seventy per cent of the sheriffs answering thought that prosecuting attorneys should have an independent criminal investigatory power and staff. Among the reasons given were that some prosecutors have several counties in their districts; the prosecutor would know more about each case; the sheriff could give more time to civil matters; and the prosecutor could hire trained personnel. Opposition to this proposal was chiefly on the grounds that it was not necessary and would cause duplication and confusion. A previous survey found that 40 per cent of county attorneys, one-third of city attorneys, and 75 per cent of Commonwealth's attorneys felt they should have more direct control over local law enforcement agencies.¹¹⁹

Two-thirds of the sheriffs surveyed favored establishing a state bureau of investigation for the use of local law enforcement officials, and about the same per cent thought that it should have power to intervene in local law enforcement problems. Sheriffs were asked what kind of services such a bureau should perform, and the most frequent suggestions were: investigations, keeping records, aiding local officers when requested, and any services where the sheriff's power is restricted. Five sheriffs believed that the State Police perform these services adequately. Thirteen of the twenty-eight sheriffs who believed a state bureau should be able to intervene thought intervention should be allowed only upon the request of local officials and four thought it should intervene only when local agencies refuse to act.

Training and Informational Facilities. As noted previously, almost half of the sheriffs reporting had no police training or experience of any kind. Fifty of the fifty-three sheriffs answering the question thought that more educational, informational or training facilities or services should be made available to local law enforcement officials. Eight suggested that this be done through training sessions or schools, two through pamphlets, and one suggested more frequent meetings of law enforcement officials. Eighteen sheriffs thought the state should furnish such services,

¹¹⁹ *Id.* at 81-S.

four suggested that they be provided by the State Police, and ten thought the state should provide them in cooperation with the county and federal government.

Sheriffs wanted more information on a number of subjects, including physical training, public relations, fingerprinting, evidence, and self-defense. The most frequent suggestion was that information and training be given on the sheriff's general duties and responsibilities. A previous survey by the Committee on the Administration of Justice showed that most local prosecutors also thought that more informational and educational facilities should be furnished to local officers, particularly on such subjects as investigations, evidence and arrest.¹²⁰

Several states have informational brochures for sheriffs. For example, the Pennsylvania Sheriffs' Association published a manual describing the sheriff's duties as an officer of the courts, a peace officer, and other matters. A handbook for Georgia sheriffs described the sheriffs' duties generally, civil process, executions, judicial sales, etc.¹²¹ The National Sheriffs' Association publishes a 250 page sheriff's manual, with detailed information on twenty subjects such as arrest, personnel, budget, records, civil process, and public relations. This is an exceptionally comprehensive and well-planned manual, with all aspects of the sheriff's job described in clear language.¹²² Such a booklet undoubtedly would be useful to Kentucky sheriffs, particularly those who have not served previously in the office.

Other Suggestions for Improvement. Sheriffs were asked what changes in law or procedure would most improve the law enforcement of their office. Forty-five gave one or more specific suggestions. Four suggested training sessions or a brochure on the sheriff's duties. One said that sheriff should be put on a salary, and one requested more money for deputies. Another thought that deputies should be put under civil service.

A number of sheriffs feel that their powers and duties should be revised. Eight suggested that they be relieved of tax collection duties and another thought he should be relieved of some civil duties, but did not specify which. One sheriff, on the other hand,

¹²⁰ *Id.* at 82-S.

¹²¹ Pepper, *Sheriff's Handbook* (1953).

¹²² King, *Sheriff's Manual* (1960).

thought he should be relieved of criminal investigations. It should be noted, however, that only 21 per cent of the sheriffs had said in another question that either civil or criminal duties should be given to another agency.

Four sheriffs suggested stricter law enforcement: one thought that the judge should be required to obtain the sheriff's consent before dismissing charges; one wanted to "speed up the trial system"; one wanted to protect the sheriff from suits; and the fourth favored stricter juvenile laws. Five thought that requirements for search warrants should be less strict. One sheriff suggested a complete review of the criminal statutes. Two sheriffs wanted control of the jail. Three mentioned that the sheriff should be allowed to succeed himself and one suggested higher requirements for the office.

Seven sheriffs mentioned the need for more rapid exchange of information and adequate radio facilities; this need was mentioned elsewhere throughout the questionnaire. A 1954 statute authorizes the fiscal court of any county to purchase mobile radio communication equipment for the sheriff "if it deems the purchase of such equipment to be to the best interest of the county, considering the county finances and other permissible expenditures."¹²³

Many of these suggestions correspond to recommendations of the National Sheriffs' Association. The association believes that sheriffs should be allowed to succeed themselves, so that they can become more experienced and professional. It opposes the fee system of compensation. It believes that sheriffs should be relieved of tax-collecting functions so that they may serve primarily as law enforcement officers.¹²⁴

Training is discussed at length in Chapter XI. State Police laboratory and other services which are available to local officers are described in Chapter IX. References to sheriffs are found throughout this study, as they have many problems and duties in common with other local law enforcement officers.

¹²³ KRS 70.210.

¹²⁴ Letter from National Sheriff's Ass'n, Washington, D.C., to Ky. Att'y Gen. John B. Breckinridge, Oct. 15, 1963. See National Sheriff's Ass'n, *What a State Sheriff's Association can do for the Office of Sheriff* (1962).

III. Constables

CONSTITUTIONAL AND HISTORICAL BACKGROUND

The Kentucky Constitution provides that a constable shall be elected in each justice's district to serve for a four-year term.¹ Each county is required to have from three to eight justice's districts, with the number and limits of districts to be regulated by the general Assembly.² The constitution further provides that "Constables shall possess the same qualifications as Sheriffs, and their jurisdictions shall be co-extensive with the counties in which they reside."³ Constables are required to meet the age and residence requirements of other county officers⁴ and to give such bonds as may be required by law.⁵

Historically, the constable was an important law enforcement officer. One authority stated that:

While the office of constable is not of the same grade and dignity as that attributed to the office of sheriff, still perhaps it is a more important office in the immediate vicinity that the officer serves. The duties and administrations of the constable, with reference to the justices or magistrates courts, corresponds with the duties of the sheriff regarding the trial courts of record. . . . [H]e is in effect the sheriff so far as concerns any matter within the jurisdiction of the justice of the peace.⁶

Blackstone described the constables' historic function as "to keep the King's peace in their several districts, and to that purpose, they are armed with very large powers of arresting and imprisoning, of breaking open houses, and the like."⁷ In England, the office of constable declined until it was abolished by legislation in 1856.⁸ In America, it still exists in most states, although it has declined greatly in importance.

¹ Ky. Const. § 99.

² Ky. Const. § 142.

³ Ky. Const. § 101.

⁴ Ky. Const. § 100.

⁵ Ky. Const. § 103.

⁶ 1 Anderson, *Sheriffs, Coroners and Constables* 5 (1941).

⁷ Blackstone, *Commentaries* 146 (Cavit's ed. 1892).

⁸ Smith, *Police Systems in the United States* 90 (Rev. ed. 1949).

THE OFFICE OF CONSTABLE IN KENTUCKY

Compensation and Deputies. Constables' fees are set by statute and range from 20 cents for summoning a witness to 3 dollars for killing and burying a distempered horse.⁹ These fees are generally lower than those allowed a sheriff; for example, the sheriff gets 2 dollars for summoning a garnishee,¹⁰ while the constable gets 50 cents.¹¹ The constable's statutory fee for making arrests for violations involving a motor vehicle on the public highway was set at 50 cents by the 1956 legislature, presumably to discourage "speed traps."¹² The Attorney General's office has held, in connection with this statute, that any person who pays a fee bill which he believes contains an improper charge may present the bill to the circuit judge who may order the officer to repay any amount not authorized by law.¹³ For services not listed in this statute, the constable gets the same fee allowed sheriffs. Like sheriffs, constables get a mileage allowance for service of notices, subpoenas and summonses.¹⁴

In counties with a population of over 250,000, constables and deputies are compensated exclusively by a salary of from 5,000 to 7,200 dollars per annum.¹⁵ In such counties, all monies received or collected by constables are paid into the county treasury.¹⁶ In counties containing a first class city, constables and deputies who use their own automobile for official duty get an allowance of 75 dollars per month.¹⁷

In counties containing a city of the first two classes, constables may appoint deputies, with the consent of the county judge; constables in other counties may not appoint deputies or assistants.¹⁸ Deputies in counties containing a first class city are compensated by a salary set by the fiscal court, at from 4,000 to 5,500 dollar per year.¹⁹

⁹ Ky. Rev. Stat. § 64.190 (1963) [hereinafter cited as KRS].

¹⁰ KRS 64.090.

¹¹ KRS 64.190.

¹² Ky. Acts ch. 205 (1956).

¹³ Ops. Att'y Gen. #63-891 (Ky. 1963).

¹⁴ KRS 64.095.

¹⁵ KRS 64.200(1).

¹⁶ KRS 64.200(3).

¹⁷ KRS 64.210.

¹⁸ KRS 70.320(1); Ops. Att'y Gen. #62-1107, #62-151 (Ky. 1962).

¹⁹ KRS 70.320(3).

Powers and Duties. Constables may execute warrants, summons, subpoenas, attachments, notices, rules and orders of court in all criminal, civil and penal cases.²⁰ Process in an action is directed to the coroner if the sheriff is interested or a party; to the jailer, if the coroner is interested; or to the constable if all of the officers are a party to or interested in the action.²¹ The constable may not execute any process in which he is personally interested, except fee-bills for his own service.²² He may not buy or become interested in any claim put in his hands for collection.²³

A constable may exercise the duties of his office in any part of the county, but shall not be compelled to receive a claim against any person who is known to be and resides outside his district, unless it is a precept in behalf of the Commonwealth or a precept against property in his district.²⁴ The Attorney General has held that a constable may exercise his jurisdiction in any part of the county,²⁵ and that a city council cannot ban or limit the service of the constable within the city limits.²⁶

Execution and return of process and claims by constables are regulated by statute.²⁷ Other provisions regulate recovery for a constable's failure to pay over money collected,²⁸ and provide that writs shall be levied by the constable according to the time they were given to him.²⁹ At the expiration of his term, the constable shall return all claims, process and papers in his hand, or, if he is removed from office, the county court may require him to deliver them to his successor.³⁰

Special duties are prescribed for constables in counties with a population of over 250,000; Jefferson County is the only county with such a population. Such constables are required to attend sessions of the justices' courts held in their districts to act as baliffs, execute orders and process, and "perform such other

²⁰ KRS 70.350(1).

²¹ KRS 454.140(1).

²² KRS 70.350(2).

²³ KRS 70.400.

²⁴ KRS 70.350(3); see *Ellis v. Wright*, 237 Ky. 98, 34 S.W.2d 966 (1931).

²⁵ Ops. Att'y Gen. #62-115 (Ky. 1957).

²⁶ Ops. Att'y Gen. #40,776 (Ky. 1957).

²⁷ KRS 70.350, 70.360, 70.380, 70.390.

²⁸ KRS 70.420.

²⁹ KRS 70.370.

³⁰ KRS 70.340.

services incident to the speedy and orderly administration of the court's business as the justice of peace requires." The constable must make a monthly report on the performance of his duties to the justice of the peace; the content of the report is specified in detail and must be sworn to by the constable.³¹ The fiscal court of such counties must designate a common office in each justice's district for the justice, constable and recorder, and furnish it with necessary equipment and supplies.³² No attorney may share this common office.³³

One provision relates only to magisterial districts containing a sixth-class city. If there is no constable in such a district, the city marshal may perform the duties of constable, so long as the office is vacant.³⁴

Number of Constables. One national authority on police systems, after reviewing available studies of local law enforcement, concluded that:

. . . [I]n state after state the evidence accumulates that the constable has outlived his usefulness, that his law enforcement activities have lapsed, and that the time has come when he can be abolished without any concern about the effect such action would have upon the administration of justice. In fact, one may search the published sources and interview hundreds of state, county, and township functionaries without encountering more than an occasional half-hearted endorsement of the constable system.³⁵

Kentucky apparently is experiencing a similar decline in the office of constable. Information on the number of constables is not available from any central source, but a check of twenty-one of Kentucky's 120 counties showed that many no longer elect constables. The information in Table II was obtained by telephone from county court clerks; the counties were chosen at random, but are distributed fairly evenly among Kentucky's congressional districts to prevent any geographical bias. The number of magistrates was obtained from a list prepared by the Department of Highways.

³¹ KRS 70.430(1).

³² KRS 25.740.

³³ KRS 30.160(2).

³⁴ KRS 70.330.

³⁵ Smith, *op. cit. supra* note 8.

TABLE II
 NUMBER OF MAGISTRATES AND CONSTABLES
 IN SELECTED KENTUCKY COUNTIES

County	Number of		County	Number of	
	Magistrates	Constables		Magistrates	Constables
Barren	6	3	McCracken	3	2
Estill	3	3	Martin	7	2
Fayette	3	3	Mercer	6	1
Fleming	6	1	Nicholas	5	0
Grayson	6	3	Ohio	7	6
Greenup	3	1	Pike	8	8
Henry	6	1	Scott	3	0
Jefferson	3	3	Shelby	7	3
Knox	8	8	Trigg	7	1
Livingston	7	0	Washington	6	0
			Whitley	3	2

As previously noted, the constitution requires that a constable be elected in each magisterial district. Less than one-fourth of the counties surveyed, however, have a constable in each district. Four counties have no constables. In one county, McCracken, three constables had been elected, but one later was elected a magistrate. The only constable in Henry County was appointed, rather than elected. This sample showed a total of fifty-one constables in counties with a total of 113 magisterial districts; if the sample is representative of the state, less than half of the magisterial districts in Kentucky have constables.

Where no one has been elected to the office of constable a vacancy exists which, according to statute, would be filled by appointment by the county judge.³⁶ The length of the appointment would be controlled by provisions of the constitution, which requires an election to fill the vacancy at the next regular election in the area where the vacancy exists.³⁷ Apparently, however, vacancies in the office often remain unfilled by either election or appointment.

The reason for the low number of constables is simply that not enough persons run for the office and it is apparently gradually going out of existence in many parts of the state. One county clerk replied that "we haven't had constables for years," while another said, "no one runs for it." It remains, however, a constitutional office and neither the constitution nor the statutes provide for a method of officially terminating the office in a district.

³⁶ KRS 63.220(1).

³⁷ Ky. Const. § 152.

IV. Jailers

CONSTITUTIONAL AND HISTORICAL BACKGROUND

Kentucky's constitution provides for the election of a jailer in each county, to serve a four-year term.¹ The constitution also provides:

The General Assembly may, at any time, consolidate the Office of Jailer and Sheriff in any county or counties, as it shall deem most expedient; but in the event such consolidation be made, the Office of Sheriff shall be retained, and the Sheriff shall be required to perform the duties of Jailer.²

This has been done in Jefferson County. The constitution sets the following qualifications: the jailer must give such bond as may be required by law; must be at least twenty-four years old; he must have two years' residence in the state and one year in the county.³

The first two Kentucky constitutions did not refer to jailers. The third constitution, adopted in 1850, provided for the election of jailers.⁴ No other state refers to jailers in its constitution.⁵ Historically, the jailer is subordinate to the sheriff. Blackstone described jailers as "servants of the Sheriff, who himself is responsible for their conduct. Their business is to keep safely all such persons, as are committed to them by lawful warrants."⁶

POWERS AND DUTIES OF KENTUCKY JAILERS

Operation of Jail. The jailer has custody of the jail and must keep it clean and warm.⁷ He "shall receive and keep in the jail all persons who are lawfully committed thereto, until they are lawfully discharged. He shall treat them humanely and furnish

¹ Ky. Const. § 99.

² Ky. Const. § 105.

³ Ky. Const. § § 100, 103.

⁴ Ky. Const. art. VI, § 1 (1850).

⁵ Legislative Drafting Research Fund of Columbia University, Index Digest of State Constitutions 158 (1959 ed.).

⁶ Blackstone, Commentaries 141 (Gavit's ed. 1892).

⁷ Ky. Rev. Stat. §§ 71.020, 71.030 (1963) [hereinafter cited as KRS].

them with proper food and lodging. . . .”⁸ The jailer must receive and confine in jail persons committed by the United States, or by any city in the county, as well as county prisoners.⁹

The fiscal court is empowered “to secure a sufficient jail,”¹⁰ and the county court is required to prescribe rules for the jail’s operation.¹¹ The county judge must inspect the jail at least once a month and the county court may fine the jailer for disobeying its rules, or for neglecting his duties.¹² The Court of Appeals has held in a number of cases that the power of the fiscal court is superior to the authority of the jailer and that it may, for example, control the expenditure of funds appropriated to the jailer.¹³ The jailer may not purchase materials without the fiscal court’s approval, even if the materials are necessary to perform his statutory duty properly.¹⁴

Deputies. Any jailer may appoint not more than two deputies; additional deputies may be appointed with the county court’s approval. The jailer is liable for his deputies’ conduct and he may remove them at any time.¹⁵ He may also appoint a jail matron to care for female prisoners.¹⁶ If the office of jailer becomes vacant, or if the jailer is committed to jail, the sheriff performs his duties.¹⁷

Compensation. Jailers are compensated for their services according to a statutory fee schedule. They receive 2 dollars a day for “keeping and dieting” a prisoner in jail, except in counties containing a first class city, where they receive 2 dollars and 50 cents. This is a flat fee, and not based on actual expenses.¹⁸ They also receive 75 cents for imprisoning and releasing a prisoner. For services not enumerated in the fee schedule, the jailer receives

⁸ KRS 71.040.

⁹ KRS 441.020.

¹⁰ KRS 67.080(4).

¹¹ KRS 441.010.

¹² *Ibid.*

¹³ *Tolson v. Wolfe County Fiscal Court*, 243 S.W.2d 666 (Ky. 1951); *Ball v. Scott*, 281 Ky. 449, 136 S.W.2d 48 (1940).

¹⁴ *Fulton County v. Spartan Chemicals, Inc.*, 343 S.W.2d 125 (Ky. 1961).

¹⁵ KRS 71.060(1).

¹⁶ KRS 71.060(2).

¹⁷ KRS 71.090.

¹⁸ KRS 64.150; *Ops. Att’y Gen. #43,516* (Ky. 1959).

the same fees as the sheriff.¹⁹ These fees are paid from the city,²⁰ county,²¹ or state²² treasuries. In counties with a population of over 75,000, the jailer receives an annual salary of 7,200 dollars and the amount allowed for deputies and expenses is fixed by order of the circuit court and county court.²³ The Department of Finance shall collect, or direct the jailer to collect, amounts found due from the city, county, or United States, and credit such amounts to the jailer.²⁴

It has been held that the jailer has a prior claim for fees and expenses incurred in keeping and dieting prisoners and for purchasing necessary supplies, and that such expenses shall be paid by the fiscal court from the current budget.²⁵ The jailer must show the reasonableness and necessity of claimed expenses and must produce supporting records.²⁶ The jailer makes the actual purchase, but the fiscal court makes the appropriation for payment.²⁷

Consolidation of Sheriff's and Jailer's Offices. The 1934 General Assembly consolidated the offices of sheriff and jailer in Kentucky. The legislation was defective in form, and therefore invalid, but was re-enacted by an extraordinary session that year.²⁸ A 1936 extraordinary session repealed the valid act and ". . . the duties of jailer — like the farmer's brood, continued to roost in the same tree, and they became thereafter possessed by the jailer after the Legislature rescued him from his temporary submergence."²⁹

A 1948 law, effective in 1950, provided for consolidation of the offices of sheriff and jailer in Jefferson County, the only county containing a city of the first class.³⁰ The fiscal court of a county containing a first class city may establish a workhouse or penal

¹⁹ KRS 64.150(4).

²⁰ KRS 64.150(2).

²¹ KRS 64.150(1).

²² KRS 64.150(3).

²³ KRS 64.345(1) and (2).

²⁴ KRS 64.170.

²⁵ Ops. Att'y Gen. #63-734 (Ky. 1963).

²⁶ Funk v. Milliken, 317 S.W.2d 499, 511 (Ky. 1958).

²⁷ Ops. Att'y Gen. #42,388 (Ky. 1958).

²⁸ Ky. Acts ch. 129 (1934); Ky. Acts ch. 24 (Ex. sess. 1934).

²⁹ Stickler v. Higgins, 269 Ky. 260, 270, 106 S.W.2d 1008, 1013 (1937).

³⁰ KRS 71.110.

farm, with a superintendent appointed by the county director of welfare, but Jefferson County has not adopted this plan.³¹ If a workhouse is established, the jail shall function only as a hold-over or station house for persons awaiting trial, sentence or transfer. The sheriff administers the jail, but its purposes are limited to temporary custody of prisoners.³²

Other Provisions. Any fiscal court may establish a workhouse for prisoners,³³ and may appoint a manager who reports to the county court.³⁴ It may also contract with another county or counties for construction and management of a workhouse, including the right to the labor of prisoners therein.³⁵ Upon order of the county judge, the jailer must turn over to the workhouse manager a prisoner who has been sentenced to hard labor. This action releases the jailer from any further authority or responsibility concerning the prisoner.³⁶ Prisoners placed at hard labor receive credit of 2 dollars a day to satisfy their fine and costs; if they remain in jail and are not worked, they are credited with 1 dollar a day.³⁷

The jailer has certain other duties. In counties with a population of under 75,000, which do not have a second class city or circuit court of continuous session, he is “. . . superintendent of the public square and of all county buildings at the county seat.”³⁸ His custodial responsibilities are less extensive in other counties.³⁹ The jailer is defined as a peace officer⁴⁰ and exercises the powers of such officers, which are discussed in Chapter VIII.

³¹ KRS 441.205(1).

³² KRS 441.065.

³³ KRS 441.070.

³⁴ KRS 441.090.

³⁵ KRS 441.080.

³⁶ KRS 441.160.

³⁷ KRS 441.180, 441.190.

³⁸ KRS 67.130.

³⁹ KRS 67.140, 67.150.

⁴⁰ KRS 446.010; See also, *Mullins v. Commonwealth*, 294 Ky. 593, 172 S.W. 2d 211 (1943).

V. Coroners

CONSTITUTIONAL AND HISTORICAL BACKGROUND

History. The office of the coroner is an ancient one, originating in England some time between the tenth and twelfth centuries, but generally considered to have originated from article 20 of the Articles of Eyre in 1194.¹ The office was one of great dignity, and the holder was called the *Custos Placitorum Coronae*, or simply the coronator, since his job dealt principally with the pleas of or concerning the Crown, and with protecting and preserving the Crown's interest in certain lands. There were usually several coroners in each county. The lord chief justice of the King's bench was the chief coroner, with jurisdiction throughout the realm.²

The coroner's duties were principally judicial. If any person were slain, or died suddenly in prison, the coroner was required to sit at the place of death, and inquire into the manner of the death. This inquiry was made by a jury, over which the coroner presided, and this proceeding was called a coroner's inquest. If the jury found the death was by homicide, the coroner would commit the person responsible to prison to await trial and then check on the accused's lands and personal property, which were then or might be forfeited to the Crown. This was the original purpose of the coroner, since, without such an official, the Crown might be cheated out of its forfeiture. After the inquest, the coroner was required to certify the result and the evidence to the court of the King's bench, or to the next assize.³ To this extent, the inquest was considered a court of record.⁴ Upon determination of the accused's guilt at trial, the forfeiture to the Crown became final.⁵

As a ministerial officer, the coroner was simply to act as a

¹ Blackstone, *Commentaries* 143-144 (Gavit's ed. 1892); 18 C.J.S. *Coroners* § 2 (1939).

² *Ibid.*

³ Blackstone, *op. cit. supra* note 1.

⁴ 13 Am. Jur. *Coroners* § 2 (1938).

⁵ Blackstone, *op. cit. supra* note 1.

substitute for the sheriff when the latter was unable to discharge his duties,⁶ and when the sheriff was interested in the suit or was a kin to either party.⁷ When both officers were interested in the suit or were a kin to either party, the ministerial functions of the sheriff were performed by two elisors, i.e., clerks of the court or two persons in the county, named and sworn by the court.⁸ As a peace officer, the coroner had the authority to apprehend a felon within the county, without a warrant, as did the sheriff.⁹

In colonial America, the functions of the coroner were essentially the same as in early England. After America gained independence, the coroner's relation to the Crown ceased, but he remained as an important county official. His functions were connected only with unidentified and unclaimed bodies, the holding of inquests for determining the causes of deaths, reporting to the county court on his findings, and performing certain duties relating to the office of sheriff.

THE OFFICE OF CORONER IN KENTUCKY

The coroner was an elective officer under Kentucky's first constitution,¹⁰ and has remained a constitutional officer throughout the state's history. He was appointed by the Governor under the second constitution,¹¹ but was made elective again in the 1850 constitution.¹² The coroner is required to be elected by the constitutions of fourteen states and to be appointed by the constitutions of seven states.¹³

Election and Qualifications. Kentucky's constitution provides that a coroner is to be elected in each county.¹⁴ The coroner must be at least twenty-four years old at the time of his election, a citizen of Kentucky, a resident of the state for at least two years prior to his election, and a resident for at least one year in

⁶ 13 Am. Jur., *op. cit. supra* note 4.

⁷ Blackstone, *op. cit. supra* note 1.

⁸ Blackstone, *op. cit. supra* note 1, at 674-675.

⁹ *Id.* at 871.

¹⁰ Ky. Const. art. VI, § 1 (1792).

¹¹ Ky. Const. art. VI, § 8 (1799).

¹² Ky. Const. art. VI, § 1 (1850).

¹³ Legislative Drafting Research Fund of Columbia University, Index Digest of State Constitutions 110-112 (1959 ed.).

¹⁴ Ky. Const. § 99; *City of Lexington v. Hager*, 337 S.W.2d 27 (Ky. 1960).

the county in which he is elected.¹⁵ He must take an oath of office¹⁶ and must execute a bond that he will faithfully discharge his duties.¹⁷ The bond must be executed with sureties approved by the county judge, recorded in the county clerk's office, and entered upon the records of the court.¹⁸ One authority reports that some coroners, or more especially their deputies, neglect to execute this bond for some time after being elected.¹⁹

Deputies. At common law, the coroner could not appoint a deputy, so the deputy's powers depend entirely on legislative enactment.²⁰ Kentucky law provides that the coroner may appoint a maximum of two deputy coroners at no additional expense to the county or city.²¹ In a county with a population of 200,000 or more, he must appoint a chief deputy coroner and one other deputy coroner, whose salaries shall be 3,600 and 2,400 dollars per annum respectively.²² Every deputy must execute a bond in the same manner as required for the coroner.²³ If the coroner is in the county and able to attend to his duties, he or a deputy coroner authorized by him may hold an inquest. A deputy also may hold inquests and act as the coroner when the coroner is absent from the county.²⁴

Compensation. Under common law, coroners were not entitled to any compensation.²⁵ Prior to 1956, Kentucky coroners were allowed certain fees by statute, the largest being 12 dollars for holding an inquest.²⁶ This fee system of compensation some-

¹⁵ Ky. Const. § 100.

¹⁶ Ky. Rev. Stat. § 72.010 (1963) [hereinafter cited as KRS].

¹⁷ Ky. Const. § 103; KRS 62.010, 62.060, 72.010.

¹⁸ KRS 72.010.

¹⁹ Address by Dr. William W. Shepherd, Continuing Education Institute for Coroners, Commonwealth Attorneys, Sheriffs, and Law Enforcement Officials, Nov. 9-11, 1962, in Div. of Legal Medicine and Toxicology, University of Kentucky Medical Center, Continuing Education Institute for Coroners, Commonwealth Attorneys, Sheriffs, and Law Enforcement Officials M-1 (1962) [hereinafter cited as Institute].

²⁰ 18 C.J.S., *op. cit. supra* note 1, at § 9.

²¹ KRS 72.040(1).

²² KRS 72.130; Jefferson County is the only county to which this statute applies.

²³ KRS 72.040(2).

²⁴ KRS 72.040(1).

²⁵ 18 C.J.S., *op. cit. supra* note 1, at § 23(a).

²⁶ KRS 64.180, repealed in 1956.

times gave rise to the holding of as many inquests as possible, and other abuses of the coroner's powers. In one case the Court of Appeals held that of forty-three inquests held by a coroner, only two were authorized by the statutes then in force.²⁷

In 1954, a salary law was enacted by the General Assembly to supplement the fee system for coroners. This statute provided that the coroner's compensation was to be paid out of the county and city treasuries, subject to the following minimums.²⁸

<i>County Population</i>	<i>Monthly Minimum Compensation</i>
(a) 10,000 or less	\$ 25.00
(b) 10,001 to 20,000	50.00
(c) 20,001 to 40,000	75.00
(d) 40,001 to 60,000	100.00
(e) 60,001 to 100,000	125.00
(f) 100,001 to 200,000	150.00

In 1956, the legislature repealed the statute allowing the 12 dollar inquest fee to the coroner, leaving the coroners on a straight salary basis except for their peace officer duties.²⁹ The Court of Appeals held unconstitutional a law which required part of this minimum compensation to be paid by the city to the county coroner for services provided within the city.³⁰ The court, however, upheld the remaining part of the statute, thus making the minimum compensation payable entirely by the county.³¹ When the coroner performs any services common to peace officers generally, such as serving a summons, he is still compensated according to a statutory fee schedule.³²

If the coroner is convicted for malfeasance, misfeasance, or willful neglect in the discharge of his official duties, his fine shall be 100 to 1,000 dollars, and the office shall be declared vacant.³³

²⁷ *City of Ashland v. Miller*, 283 S.W.2d 195 (Ky. 1955).

²⁸ KRS 64.185(1); see *Ops. Att'y Gen. #41,090* (Ky. 1958); for method of determining population in computing the minimum compensation of coroners, see *Ops. Att'y Gen. #40,954* (Ky. 1957).

²⁹ Ky. Acts ch. 143, § 3 (1956).

³⁰ *City of Lexington v. Hager*, 337 S.W.2d 27 (Ky. 1960).

³¹ *Id.* at 30; see generally, *City of Louisville v. Kearney*, 267 Ky. 557, 102 S.W.2d 996 (1937).

³² KRS 64.060(1).

³³ KRS 61.170; see *Fuson v. Commonwealth*, 241 Ky. 481, 44 S.W. 2d 578 (1932).

A vacancy occurring in the office of the coroner is filled by appointment by the county court, such appointed coroner to serve until his successor is elected.³⁴

Kentucky State Coroners' Association. The Kentucky State Coroners' Association was chartered in 1950 and has held annual meetings since then. All coroners and their deputies are eligible for membership but only 50 per cent of the Kentucky coroners belong to the association. Annual dues are 5 dollars. Few Kentucky coroners belong to the 2,500-member National Coroners' Association.

An educational institute was held in 1962 at the University of Kentucky Medical Center, Lexington, Kentucky. The institute was conducted by the University Division of Legal Medicine and Toxicology in co-operation with the coroners' association, and the state departments of health and public safety. The fee was 25 dollars and the coroners' charges were paid by the association. Studies were presented on specific topics affecting coroners, sheriffs, Commonwealth's attorneys, and law enforcement officers. The speakers included a pathologist, medical examiners, coroners, a Commonwealth's attorney, an anthropologist, an insurance claims expert, a professor of legal medicine, and the Kentucky Attorney General. Another institute is planned for December, 1963.

The Kentucky Coroners' Association feels that, in comparison to other states which have the coroner system, Kentucky has a fairly good set of laws if they were used properly and if adequate facilities and finances were available. Counties do not or cannot appropriate sufficient funds for the coroners adequately to perform their function, and many pay only the statutory minimum salary. Only twelve coroners in Kentucky today are medical doctors and none of these are pathologists. Pathologists, when available, may not be accustomed to performing autopsies, or may not be interested in the work and, therefore, refuse the case. The association, in recognizing such problems hopes to improve the present system. It has worked in the past to modernize the office

³⁴ Ky. Const. § 152; KRS 63.220.

of the coroner and was instrumental in securing 1954 legislation which substituted a salary system for fees.³⁵

POWERS AND DUTIES OF KENTUCKY CORONERS

The Attorney General of Kentucky stated that:

the primary function of the coroner is to conduct 'inquests' or official investigations into the circumstances of violent or suspicious deaths. The purpose of the inquest is to aid in the enforcement of criminal justice by obtaining information as to whether death was caused by some criminal act. The result of an inquest is a ruling from the coroner or his jury, if one is used, as to the cause of death. The inquest not only has the function of making a medical classification of the death but also of fixing initial guilt if homicide is found.³⁶

The coroner has additional duties deriving from his role as a peace officer and from his obligation to serve as sheriff in certain circumstances. The statutes require that citizens and officials bring certain deaths to the coroner's attention.

Notification of Deaths. Citizens are required by statute to notify the coroner of deaths under certain circumstances. When any person finds or has possession of a body of a person who was slain, drowned, or otherwise suddenly killed, or whose death occurred from unnatural causes without the attendance of a physician, he must immediately notify the coroner, and he cannot remove the body or anything from it unless directed to do so by the coroner or other authorized person.³⁷ The Attorney General's office has held that this statute makes it the duty of hospital authorities to notify the coroner of deaths occurring in the hospital which result from any form of violence.³⁸ The body should never be moved by anyone but the coroner unless it is obstructing a highway or normal transportation and, even then, the death

³⁵ Information relating to the Ky. Coroners' Ass'n was obtained in a telephone interview with Dr. William W. Shephard, past president and secretary of the association, and coroner of Taylor County.

³⁶ Address by Ky. Att'y Gen. John B. Breckinridge, Continuing Education Institute for Coroners, Commonwealth Attorneys, Sheriffs, and Law Enforcement officials, Nov. 9-11, 1962, in Institute N-1.

³⁷ KRS 72.020.

³⁸ Ops. Att'y Gen. #63-964 (Ky. 1963).

scene should be checked with photography and measurements.³⁹ The law provides a penalty of 10 to 100 dollars, ten to fifty days in jail, or both, when a person finds a body and fails to notify the coroner, or removes the body or anything from it without direction from the coroner or other authorized person.⁴⁰

Another statute implies that the coroner must be notified when a person finds and brings ashore a dead human body from a navigable stream running along or through Kentucky. That person is to be paid a reward not exceeding 5 dollars by the county in which the body was found. The reward must be certified by the coroner after the inquest.⁴¹ The Attorney General's office has held that when a body is taken from water which forms the boundary between two counties, the coroner of either county has jurisdiction to hold the inquest.⁴²

The physician last in attendance on the deceased makes out and signs the death certificate, even if the death was the result of violence.⁴³ When a death occurs without a physician in attendance, the undertaker must notify the local registrar of vital statistics, who is appointed by the state Department of Health. The registrar then refers the case to the local health officer for investigation prior to the issuance of a burial permit. If it appears probable that death was caused by crime, suicide, drowning, or other sudden cause, or if there were no physician in attendance during the thirty-six hours preceding death, the registrar must refer the case to the coroner for certification. The case must also be referred to the coroner if the body is to be cremated or buried out of the state.⁴⁴ The disposal of a dead human body always requires a permit.⁴⁵

Inquests. The coroner is required to hold an inquest under certain circumstances. These are:

(1) When a responsible citizen requests one.⁴⁶ The Kentucky Court of Appeals, in considering related statutes and the

³⁹ Ops. Att'y Gen. #87,761 (Ky. 1955).

⁴⁰ KRS 72.990(1).

⁴¹ KRS 72.150.

⁴² Ops. Att'y Gen. #32,723 (Ky. 1956).

⁴³ KRS 213.080(2); Ops. Att'y Gen. #63-794 (Ky. 1963).

⁴⁴ KRS 213.090(1).

⁴⁵ KRS 213.110.

⁴⁶ KRS 72.030.

coroner's historical background has held that this "means a request that is accompanied by some indication of belief that the death was other than a natural one."⁴⁷

(2) When the coroner has reason to believe that the death was caused by suicide, crime, drowning, or other sudden cause, or where death resulted from one of these causes within 180 days from the onset.⁴⁸ This latter clause requires the coroner to hold an inquest the same as if death had occurred immediately. The time limit in most states is one full year.⁴⁹

(3) When a death occurs without the attendance of a physician at least thirty-six hours prior to death.⁵⁰ This provision was added in 1956, and serves to eliminate any doubt whether or not to hold an inquest where there is no apparent cause of death, but where the circumstances are so mysterious, unusual or suspicious as to indicate an unnatural cause. This provision allow the physician or mortician to refer the case to the coroner without offending the deceased's family, since he must obey the "thirty-six hour" law.

In cases of probable homicide or negligent death, or upon request of the decedent's family, the coroner must summon and swear in a jury of six reputable citizens of the county, each juror receiving 50 cents for his services. The statute implies that in all cases the coroner should conduct the inquest without a jury. It is the coroner's duty to summon the jury for the inquest and, after the jurors have been sworn, to inquire under oath and in writing, if they know when, where, how and by whom the death was caused.⁵¹ The Attorney General's office has held that a coroner's jury used in a case of homicide should indicate whether it believes that any guilt of murder or manslaughter attaches by virtue of the death; however:

It should be kept in mind that the verdict of a coroner's jury is merely advisory to law enforcement officials and it has no legal effect. 12 Am. Jur., Coroners, Section 12 page 113. Anno. 78 ALR (2) 1218. Although the coroner's jury

⁴⁷ City of Ashland v. Miller, 283 S.W.2d 195, 196 (Ky. 1955).

⁴⁸ KRS 72.030; Ops. Att'y Gen. #39,298 (Ky. 1956).

⁴⁹ Address given by Dr. William W. Shepherd, *op. cit. supra* note 19, at M-2.

⁵⁰ KRS 72.030.

⁵¹ KRS 72.050.

may return a verdict that the person causing the death is not guilty of murder or manslaughter he may nevertheless be arrested and subsequently prosecuted upon an indictment returned by the grand jury.⁵²

The coroner must swear in each witness and must commit to writing the substance of the evidence given before the jury. He then recognizes the witnesses to appear before the next circuit court and files the inquest verdict, the witnesses' testimony, and the recognizances in the circuit court clerk's office.⁵³ The court has indicated that this statute does not require that testimony taken at the inquest be turned over to the grand jury, or furnished to the accused.⁵⁴ The costs of the inquest are paid out of the county treasury, or if in a city over 30,000 population, out of the city treasury.⁵⁵

Post-mortem Examinations. An autopsy, or post-mortem examination, is the orderly assemblage of facts collected in a scientific manner by a medical expert primarily in order to determine the cause and, secondarily, the mode of death. The post-mortem examiner determines that a gunshot wound was the cause of death, but whether that wound was suicidal, accidental, or homicidal must be determined at the inquest from evidence derived from the autopsy. The autopsy, in actual practice, does not necessarily mean a complete dissection of the dead body, but ranges from withdrawing fluids from the body to a minute dissection of a specific body part. Such an examination is done in line with accepted toxicologic, serologic, and other types of clinical pathologic principles, including chemical and anatomical analyses. As used in the Kentucky statutes, the words "autopsy" and "post-mortem examination" are synonymous, with the latter term generally being used in a broader sense than the former.

The autopsy is said to be an integral part of the coroner's inquest.⁵⁶ So if the coroner is of the opinion that it is necessary to have a post-mortem examination of a dead unburied body, he

⁵² Ops. Att'y Gen. #63-952 (Ky. 1963).

⁵³ KRS 72.060.

⁵⁴ Poynter v. Commonwealth, 274 Ky. 813, 120 S.W.2d 649 (1938) (dicta).

⁵⁵ KRS 72.090(3); Ops. Att'y Gen. #39,804 (Ky. 1957); statute held constitutional in *City of Louisville v. Kearney*, 267 Ky. 557, 102 S.W.2d 996 (1937); *Wittenberg v. City of Louisville*, 238 Ky. 117, 36 S.W. 853 (1931).

⁵⁶ 18 C.J.S. *op. cit. supra* note 1, at § 18.

may so order one. For this purpose, the coroner may employ a physician or surgeon to conduct the autopsy, or if poisoning is suspected, he may hire a competent chemist.⁵⁷ In ordering an autopsy, the coroner cannot employ himself.⁵⁸ Thus the coroner has considerable discretionary power in ordering autopsies.

Whenever the coroner, county judge, or a justice of the peace receives an affidavit from any person stating that he "believes and has reasonable grounds to believe that a person who is dead and buried died from poisoning or other illegal cause unknown," it is the duty of the official to order the body exhumed and have the proper chemical or other examination made of the body to determine the cause of death.⁵⁹ If necessary, the official may order a post-examination or autopsy of the body, and for that purpose may hire a competent physician or surgeon, or if he suspects poisoning, he may employ a competent chemist to analyze the body or any part thereof.⁶⁰ For purposes of investigation, the coroner is empowered to inspect the registry of those establishments that sell poisons.⁶¹ An autopsy may also be performed by agreement of the coroner with the written consent of the deceased, or the written or telegraphic consent of the person who assumes the legal disposal of the body. If two or more persons claim the body, consent of one is deemed sufficient.⁶²

The Attorney General's office has held that it is essential before the coroner can order an autopsy that the death be one which warrants an inquest under Ky. Rev. Stat. § 72.030. If the death is one requiring an inquest the coroner may order an autopsy if he deems it necessary to determine the cause of death.⁶³ He may in the course of an inquest, without incurring liability, order an autopsy without consent of persons entitled to custody of the body, if after investigation of the death he considers it necessary to do so in order to enable him to discharge his statutory duties.

⁵⁷ KRS 72.070(1); Ops. Att'y Gen. #63-42 (Ky. 1963).

⁵⁸ Grinstead v. Carter, 181 Ky. 331, 204 S.W. 87 (1918).

⁵⁹ KRS 72.080(1); See Kastenbine v. City of Louisville, 3 Ky. L. Rep. 615, 77 Ky. 303 (1882).

⁶⁰ KRS 72.080(1).

⁶¹ KRS 217.400(2).

⁶² KRS 72.070(2).

⁶³ Ops. Att'y Gen. #63-769 (Ky. 1963).

The decision of whether a post-mortem is necessary during an inquest rests entirely with the coroner in the exercise of his discretion. He should not, of course, act arbitrarily but upon the basis of investigation into the circumstances of each death to ascertain if the cause of death can be otherwise determined.⁶⁴

If the coroner orders an autopsy performed without statutory authorization, he can be liable in damages.⁶⁵

Once a physician, surgeon, or chemist has been employed by the coroner to perform any autopsy, he is not required to inquire into the coroner's authority to issue the order, and will not be liable in damages if he performs the autopsy pursuant to the coroner's order.⁶⁶ This responsibility also covers the taking of blood samples from the body. "It is clear that whenever an authorized autopsy is performed by a physician at the direction of the coroner, it is legal without anyone's consent to remove samples of blood and conduct any and all scientific tests upon the blood which will help to determine the manner of death."⁶⁷ These examining experts must, immediately after the autopsy, sign and file in the county court clerk's office a full and concise report of their findings,⁶⁸ subject to a penalty of 100 to 500 dollars for failure to file such a report.⁶⁹ Apparently, however, this filing requirement is seldom complied with.⁷⁰

The physicians, surgeons or chemists so employed receive a reasonable fee as set by the fiscal court and paid out of the county treasury.⁷¹ In cities of 30,000 or more people, the fees are to be paid out of the city treasury. If the city and the county have insufficient funds to pay these fees, then, upon request to the Department of Health, the state will pay for the autopsy, the sum of

⁶⁴ Ops. Att'y Gen. #63-762 (Ky. 1963).

⁶⁵ *Streipe v. Liberty Mut. L. Ins. Co.*, 243 Ky. 15, 47 S.W.2d 1004 (1932); Address by Ky. Asst. Att'y Gen. John B. Browning, National Association of Coroners' Seminar, Aug. 20-24, 1957, in Proceedings of 1957 National Coroners' Ass'n Seminar 17.

⁶⁶ KRS 72.070(3).

⁶⁷ Ops. Att'y Gen. #63-42 (Ky. 1963); see also Ops. Att'y Gen. #43,145 (Ky. 1959).

⁶⁸ KRS 72.080(2).

⁶⁹ KRS 72.990(2).

⁷⁰ Letter from Dr. Rudolph Muelling, Jr., Director, University of Ky. Division of Legal Medicine and Toxicology, to Ky. Att'y Gen John B. Breckinridge, Oct. 10, 1963.

⁷¹ KRS 72.090(1) and (3).

which is not to exceed 100 dollars for each examination.⁷² The General Assembly has never appropriated any money for this purpose,⁷³ so the statute has been rendered ineffective.⁷⁴

Action Pursuant to Inquest. The coroner has the power to arrest and commit to the county jail any person found guilty by the inquest of murder or manslaughter or of being an accessory.⁷⁵ If the person so found guilty has fled, the coroner or his deputy may summon aid, pursue and apprehend the fugitive wherever he may be found in the state.⁷⁶

Disposition of Bodies. The coroner is required to bury the person over whom an inquest is held, or deliver the person to his friends. If the coroner buries the person, the expenses are paid by the county.⁷⁷ Another statute requires that the coroner, or other person having an unclaimed body in his possession must notify any known friends or relatives of the deceased where the body is. If no friend or relative claims the body within three days, the person shall deliver it to a professor or medical college who is entitled by statute to receive the body and who requests it.⁷⁸ The coroner is the proper official to sign an order directing delivery of an unclaimed body to a medical school in cases where the coroner had jurisdiction and possession of the body.⁷⁹

If the body is delivered to a medical school, the professor must immediately embalm the body and preserve it for thirty days before dissecting it. If anyone claims the body during this period, the professor must deliver over the body without any charge.⁸⁰ After dissection, the body must be decently buried at the expense of the professor or the college,⁸¹ and a record as to the final disposition of the body must be kept at the college and reported to the Kentucky Department of Health, Division of Vital Statistics.⁸²

⁷² *Ibid.*

⁷³ Telephone interview with Dr. Russell Teague, Comm'r, Dep't of Health, June, 1963.

⁷⁴ Address by Dr. William W. Shepherd, *op. cit. supra* note 19, at M-5.

⁷⁵ KRS 72.120; 18 C.J.S., *op. cit. supra* note 1, § 24.

⁷⁶ KRS 72.120.

⁷⁷ KRS 72.100.

⁷⁸ KRS 311.300, 311.330.

⁷⁹ Ops. Att'y Gen. #63-38 (Ky. 1963).

⁸⁰ KRS 311.330.

⁸¹ KRS 311.340.

⁸² KRS 311.350.

The coroner must make the certificate of death required for the burial permit, stating on such certificate the disease or other cause or causes of death and stating in his opinion whether the death was suicidal, accidental, or homicidal. This information must be included in a report sent to the state Division of Vital Statistics.⁸³ If the death occurred due to a motor vehicle accident, the coroner must report in writing the death and circumstances to the State Police on or before the tenth of the month following the accident.⁸⁴ Any money or property found on the body of an unknown person must be turned over to the county judge within ten days, to be used to defray the costs of the county burial. Any excess is retained by the county judge, and if not claimed by persons legally entitled to it, is paid into the county treasury.⁸⁵

Other Duties. When the sheriff's office is vacant, or the sheriff is running for election, his election duties are performed by the coroner or the coroner's deputy.⁸⁶ The sheriff, however, continues to serve as a member of the county board of election commissioners. If there is no sheriff, then it is the duty of the coroner to transfer prisoners to the county jail pursuant to the court's order, and to receive a receipt from the jailer for the prisoners, such receipt to be returned to the clerk of the circuit court.⁸⁷ The court may, at any time, order the coroner or the jailer to transport to the penitentiary all persons who have been condemned to confinement there, instead of ordering the sheriff to do this.⁸⁸ The coroner receives 10 cents per mile, and all expenses incurred for feeding, lodging and transporting the prisoners.⁸⁹

A summons, order for provisional remedy, and other process from quarterly courts or county courts can be directed to the sheriff, coroner, or constable, at the option of the plaintiff. If the coroner receives the order, he is to serve it and make return with an affidavit that it was served or that the party could not be

⁸³ KRS 218.090(2).

⁸⁴ KRS 189.590.

⁸⁵ KRS 72.100.

⁸⁶ KRS 116.160. See Chapter II *supra*.

⁸⁷ KRS 441.040.

⁸⁸ KRS 70.130.

⁸⁹ KRS 64.070(3)(a).

found.⁹⁰ If a process is directed to the sheriff and the sheriff is either a party to the process or an interested party, then the coroner must serve the process. If the coroner is a party to the process or an interested party, then the jailer serves process.⁹¹

OPERATION OF THE CORONER'S OFFICE

Coroners' Investigations. From January through August, 1961, 18,251 deaths occurred in Kentucky. Of these deaths, 92.5 per cent were natural, 5.8 per cent were the result of accidents, 1.1 per cent were suicides, and 0.6 per cent were homicides.⁹² Deaths of a certain nature must be investigated by the coroner and are called coroner's cases.⁹³ During this period, 3,002 deaths, or approximately 16 per cent, were coroners' cases, and were investigated by Kentucky coroners. Physicians handled 15,231 cases, or 83 per cent of the total deaths. A breakdown of the handling of death cases on a city-county basis is shown in table III on page 53.

Table III shows that more deaths in Kentucky occur outside of city limits. This may be because Kentucky is considered a rural state. Since the jurisdiction of the coroner is co-extensive with county, his work includes investigating deaths that occur within city limits. Kentucky coroners, therefore, generally investigate more county deaths than city deaths. An exception is in deaths classified as accidents, where more city accidents are investigated than county accidents. Table IV on page 54 illustrates this.

Some counties with large cities have a high percentage of coroner's cases. Fifty per cent of the Orleans Parish (New Orleans, La.) deaths are investigated by the coroners, 35 per cent of the deaths in Dade County (Miami, Fla.),⁹⁵ and 22 per cent in Cuyahoga County (Cleveland, Ohio).⁹⁶ One report, however, stated "most observers feel that about 25 per cent of urban deaths

⁹⁰ KRS 25.015.

⁹¹ KRS 454.140(1)

⁹² These figures are based on the classification of the death by the official signing the death certificate, see note 94 *infra*.

⁹³ See KRS 72.030,

⁹⁵ *Ibid.*

⁹⁶ Gerber, 1961 Cuyahoga County Coroner's Statistical Report 25.

TABLE III
HANDLING OF KENTUCKY DEATH CASES BY
CLASSIFICATION⁹⁴
January-August, 1961

Type of Death	Official Signing Death Certificate			
	Physicians	Coroners	Other	Total
Accidents:				
County -----	205	430	3	638
City -----	183	229	0	412
Total -----	388	659	3	1,050
Suicide:				
County -----	20	105	1	126
City -----	9	70	0	79
Total -----	29	175	1	205
Homicide:				
County -----	11	51	1	63
City -----	6	48	0	54
Total -----	17	99	1	117
Natural:				
County -----	7,964	1,062	13	9,039
City -----	6,833	1,007	0	7,840
Total -----	14,797	2,069	13	16,251
Grand Total -----	15,231	3,002	18	18,251

⁹⁴ Div. of Legal Medicine, Dept. of Pathology, University of Ky. Medical Center, Preliminary Study of the Method of Handling Deaths in Kentucky (1962).

TABLE IV

PERCENTAGE OF CASES DECLARED CORONERS' CASES
BY CLASSIFICATION

Type of Death	City	County	Total
Accidents -----	67%	56%	63%
Suicides -----	83	89	85
Homicides -----	81	89	85
Natural -----	12	13	13
Total Coroner's Cases -----	16	16	16

should be coroner's cases. In rural areas, because of greater knowledge of people's activities, etc., the rate may fall to 15 per cent."⁹⁷ Kentucky's 16 per cent of coroner's cases in both city and county areas, as shown by Table IV, is below this authority's average for urban deaths and within the authority's range for rural deaths.

Autopsies. The coroner's responsibility is to determine whether a death was natural, accidental, suicidal, or homicidal. Although his conclusion or the result of the inquest have no legal finality, the finding is of great importance. If the coroner erroneously decides that a death was natural, accidental, or suicidal, the investigation may stop at that point, and a killer will remain free. On the other hand, a natural death labeled a homicide may result in many useless hours of investigation by law enforcement agencies, or perhaps the eventual indictment of an innocent person. One of the most effective aids in determining the cause and mode of death is an autopsy. The number of autopsies per coroners' cases is indicative of the coroner's role in law enforcement; for example, 43 per cent of the coroner's cases in Cuyahoga County (Cleveland, Ohio) are autopsied.⁹⁸ Authorities believe that "it is usually necessary to autopsy 40-50 per cent of the coroner's cases."⁹⁹

⁹⁷ Div. of Legal Medicine, Dept. of Pathology, University of Ky. Medical Center, *op. cit. supra* note 94.

⁹⁸ Gerber, *op. cit. supra* note 96, at 69.

⁹⁹ Div. of Legal Medicine, Dept. of Pathology, University of Ky. Medical Center, *op. cit. supra* note 94.

Statistics available from January through August, 1961, show that Kentucky is far behind in the number of autopsies that authorities feel are realistic for a state. If 40 to 50 per cent of coroner's cases is taken as a standard, Kentucky should have had 1,200 to 1,500 autopsies performed during the January to August period. Only 336 were performed, or 11 per cent of the total coroner's cases. A breakdown on a city, county, and statewide basis of autopsies performed during this period is as follows:

TABLE V
 PERCENTAGE OF AUTOPSIES PERFORMED IN
 CORONERS' CASES

Geographical Unit	AUTOPSIES PERFORMED		
	Yes	No	Unstated
Kentucky:			
City -----	14%	85%	1%
County -----	3	76	21
State-wide -----	11	79	10

In Kentucky, the number of autopsies performed on persons who died in a city is far greater than the number for the county. Of the total number of accidents resulting in death in Kentucky, 6 per cent of those deaths occurring in the counties were autopsied, while 20 per cent of the city accidental deaths were autopsied. This is true for other classes of deaths: suicide, 4 and 11 per cent for county and city respectively; homicide, 17 and 70 per cent; and natural deaths, 4 and 15 per cent. Seventy per cent of the coroners' cases arising in cities and classified as homicides were autopsied. This is the only individual figure that exceeds the authorities' average percentage of autopsies. The statistics do not show why the averages for Kentucky are so far behind authorities' recommended figures. The statistics do show that the coroners are lagging behind in this very important function of their job.¹⁰⁰

Evaluation of the Coroner System. Even though the original concept of the coroner has been lost, the office retains several

¹⁰⁰ *Ibid.*

useful functions, determined by a University of North Carolina study to be as follows: First, the coroner can act as a safety valve for public sentiment when a particularly vicious crime has been committed and the public demands prompt action by law enforcement authorities. When the coroner arranges for a prompt inquest, the community has visible evidence that the wheels of justice are in motion. The purpose of the coroner's inquest is to determine the cause of death; a determination of guilt is the function of the judicial system. A second function may be that of a watchdog and check on the power of other county officials, which is an outgrowth of the coroner's original duty to watch over the revenues of the Crown. There can be no assumption that county law enforcement officers are always infallible or honest, and the coroner can act as a check against abuse of their authority. Homicides can not be concealed if the coroner performs his duties adequately.¹⁰¹

In Kentucky, as in many states, the coroner system has been subject to much criticism. In the absence of effective statutory qualifications, the office may be filled by someone with no medical experience or training. Such a person may not be able to detect homicides, if there are no external marks on the body and the death appears to be natural. Qualified medico-legal experts are reluctant to subject their work to the uncertainties of an elected position, most certainly where the compensation is so low. As a result, the office of coroner seldom attracts men of expert ability. Only twelve of the 120 coroners in Kentucky are physicians.¹⁰²

Under certain circumstances, stated previously, the coroner must conduct an inquest with a jury of six persons. This jury of ordinary people is less qualified to determine the questions as to time, manner and means of death than is an expert pathologist who is trained to determine these questions. In most cases, the jury can rely only on the opinion of the coroner who, in turn, has no medico-legal investigation qualifications.¹⁰³ Since the in-

¹⁰¹ Myren, *Coroners in North Carolina* 36 (1953), cited in Research Dep't, Kan. Legislative Council, *The Office of the County Coroner in Kansas* 29 (Pub. No. 212, 1956).

¹⁰² Letter from Dr. Rudolph Muelling, *op. cit. supra*, note 70.

¹⁰³ Vance, *A Critical Review of the Medical Examiner System*, 2 Am. J. Med. Jur. 243 (1939).

quest is a legal proceeding over which the coroner must preside, the coroner should know the rules of evidence and proof, the jurisdiction of the inquest's authority, and the proper form of the proceeding. This obviously requires legal training, but most coroners have none.

Political considerations may influence the coroner, who is an elected official and depends on the good will of his constituents. If the deceased's family opposes an autopsy, political influence may be used in an effort to force the coroner not to conduct such an investigation.¹⁰⁴ Business considerations may also influence the coroner. The majority of Kentucky's coroners are funeral directors. The performance of an autopsy requires the skill and knowledge of a trained pathologist, skill and knowledge which a funeral director does not possess. Statistics of the death, blood tests, position of the body, pattern of wounds and marks, pre-disposing diseases, and delineation of toxicologic factors must be determined by a pathologist.¹⁰⁵

These defects in Kentucky's coroner system have created considerable interest in alternative systems. The lack of effective statutory qualifications, the inexpert inquests, the low number of autopsies, and the lack of expert consultants and special facilities all indicate that some revision of the system is necessary.

THE MEDICAL EXAMINER SYSTEM

History. Due to defects in the coroner system there was an early trend in this country toward changing the traditional system. In 1877, Massachusetts originated the medical examiner system whereby the Governor would appoint physicians for seven-year terms to investigate violent and unexpected deaths, and, if necessary, arrange for autopsies. Trained pathologists were used by the physicians for the autopsies.¹⁰⁶ Since Massachusetts' pioneering move, a number of other states have changed to the

¹⁰⁴ Comment, *The Wisconsin Coroner System*, 1951 Wis. L. Rev. 529.

¹⁰⁵ Address by Dr. Rudolph J. Muelling, Continuing Education Institute for Coroners, Commonwealth Attorneys, Sheriffs, and Law Enforcement Officials, Nov. 9-11, 1962, in Institute A-1.

¹⁰⁶ 1 Mass. Gen. Laws ch. 38 (1932), enacted in 1877; Legislative Research Comm., *The Coroner System in Minnesota* 22 (Pub. No. 59, 1959).

medical examiner system. New York authorized the system in 1918 and New Jersey did so in 1927. Maryland adopted the plan in 1939, Wisconsin followed in 1942 and Virginia, Arkansas, and Georgia adopted the system in 1946, 1951, and 1953, respectively.¹⁰⁷

National organizations have developed uniform laws and model acts on a number of subjects. Where there is a demand for an act covering a specific subject in a substantial number of states, and uniformity between the states is considered necessary or desirable, a uniform act is drafted. Where uniformity is not considered necessary or desirable, or there is existing coverage by law in the field, or opposition to it, yet legislation tending toward state uniformity would be helpful, model acts are promulgated.¹⁰⁸ Two model state acts have been published concerning medical examiner systems.

In 1951, a "Model State Medico-legal Investigative System" was prepared and published by a committee representing the following organizations: American Academy of Forensic Sciences, American Bar Association, American Judicature Society, American Medical Association, National Civil Service League, and the National Municipal League. This act included an outline of a model law and an explanatory text argued for adoption of a medico-legal system to replace the traditional elective coroner.¹⁰⁹

The Commissioners on Uniform State Laws drafted, in 1954, a "Model Post-Mortem Examinations Act," or a "Model [Medico-legal Examiners] Act." This act allows the states to abolish the coroner's office, or to keep the coroner with duties specified by a state office of post-mortem examinations. Since the drafting, four states, Iowa, Oklahoma, Oregon, and Texas, have adopted the act.¹¹⁰

Provisions of the Model Acts. The Model State Medico-legal Investigative System act creates a medico-legal commission appointed by the Governor, with representatives from the depart-

¹⁰⁷ Legislative Research Comm., *op. cit. supra* note 106, at 23.

¹⁰⁸ See Handbook of the National Conference of Commissioners on Uniform State Laws 343 (1962).

¹⁰⁹ National Municipal League, A Model State Medico-legal Investigative System Act (1953).

¹¹⁰ Handbook of the National Conference of Commissioners on Uniform State Laws 291 (1962).

ment of health, the attorney general's office, the state bar or the law schools, the state medical society or the medical school, and the state police. The commission is directly responsible to the Governor. Its job is to establish minimum standards for the chief medical examiner and his staff, and to convey the chief medical examiner's annual report to the Governor.¹¹¹ The chief medical examiner is appointed by the Governor and must be a class "A" graduate physician with a minimum of two years training in pathology. His staff is appointed according to civil service procedures under the requirements set forth by the medico-legal commission. If necessary, the staff includes one or more assistant medical examiners.

Instead of a coroner, each county would have a county medical examiner who would be allowed to investigate and, if necessary autopsy ten specific types of deaths. These types may be classified as those deaths where: (1) there may be civil or criminal litigation or workmen's compensation proceedings; (2) the cause and manner of death cannot be recognized; and (3) the manner and disposal of the body may be an effort to conceal the true cause and manner of death. These county medical examiners would have available a central laboratory wherein to refer bodies for post-mortem investigations. A diagram of the proposed administrative organization for the state medical examiner department is set forth on page 60.¹¹²

Those favoring adoption of this plan argue that:

This system is based on the simple principle that the ascertaining of the cause of death in questionable cases is of a technical and a scientific nature and should not be entrusted to a politically elected officeholder, often unqualified. It is not held necessary that every local examiner be qualified to perform medicolegal examinations, *but the contention is* that physicians are the best qualified to know when a death is the result of some misadventure and should be subject to expert investigation.¹¹³

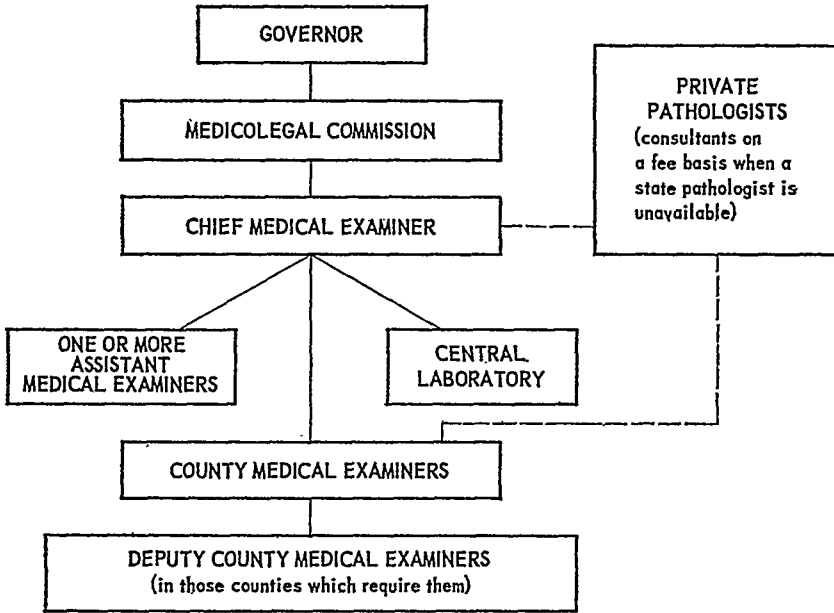
The Model Post-Mortem Examinations Act establishes a commission on post-mortem examinations, composed of the state's

¹¹¹ National Municipal League, A Model State Medico-legal Investigative System (1963); see Pilcher, The Medical Examiner in Texas 24 (1959).

¹¹² National Municipal League, *op. cit. supra* note 111, at 13.

¹¹³ Legislative Research Comm., *op. cit. supra* note 106, at 23-24.

FIGURE I

ADMINISTRATIVE ORGANIZATION OF A MODEL
STATE MEDICAL EXAMINER DEPARTMENT

attorney general, superintendent of state police, commissioner of public health, dean of a medical school, and dean of a law school. The state may substitute other officials if it prefers. The members serve *ex-officio* and receive no compensation except expenses. The commission must meet at least once a year. The commission appoints a chief medical examiner, who must be a citizen of the United States and a licensed physician with a minimum of two years post-graduate training in pathology. The examiner is authorized to employ such assistant medical examiners, toxicologists, laboratory technicians, regional medical examiners, and other staff members as the commission specifies.

The act authorizes the office of post-mortem examinations to investigate the following types of deaths: (1) violent deaths, including deaths due to criminal abortion; (2) sudden deaths not caused by a recognizable disease; (3) deaths under suspicious circumstances; (4) deaths where the bodies would be unavailable

for examination after disposal, for example, cremation or dissection; and (5) deaths of persons confined in public institutions. Industrial deaths and deaths from diseases that might constitute a threat to public health are types of deaths in which the state may authorize investigations. In investigating any such types of deaths the chief medical examiner may order an autopsy if, in his opinion, it is in the public interest. A comment to the model act states that "it seems wise to make the conduct of autopsies specifically a matter within the discretion of the Chief Medical Examiner, to avoid vindictive civil suits charging the Office with improper handling of dead bodies."¹¹⁴ The autopsies are performed in the commission's laboratory. The records of the office are authorized by the act to be received as competent evidence in the state's courts, and the person preparing the record may be subpoenaed. The office's records, based on official investigations, and transcripts thereof, are thus admissible in evidence without invading the hearsay rule as it applies to extra-judicial statements made by witnesses or other persons.

The two model acts differ in some respects. Under the Medico-legal System Act, the Governor appoints the chief medical examiner, but this position is filled by the commission under the Post-Mortem Examinations Act. Both acts require the office of medical examiner to be filled by someone with medical training. The use of an appointed physician as examiner decreases the possibility of political influences and corrupt practices. Under a medical examiner system the examiner's office would not be another step toward private or political gain, nor a means of obtaining dead bodies, but would be an efficient determinant of the causes of deaths and an aid to the law enforcement agencies.

The provision authorizing investigation of certain types of deaths may be broader in the Medico-legal System Act. The medical examiner is required to investigate ten types of deaths under this act. The following of these types are not required to be investigated by the coroner in Kentucky: (1) resulting from disease related to injury; (2) relating to a hazardous or contagious disease; (3) of persons brought into the state for burial, and (4) of persons confined to public institutions. In both acts, how-

¹¹⁴ National Conference of Commissioners on Uniform State Laws, Model Post-Mortem Examinations Act § 5, comment (1954).

ever, the medical examiner is given greater protection from civil liability when he makes an investigation and, if necessary, an autopsy. The U. S. National Committee on Vital and Health Statistics recommends nine categories of deaths which should be investigated by medico-legal experts "because of the legal, statistical and research factors involved."¹¹⁵ These include the four types named above.

These medical examiner acts would render useless the traditional coroner's inquest. The medical examiner's investigation and official report would serve as a substitute for the fact-finding function of the inquest. Neither act, however, mentions who would perform the coroner's duties that are not connected with deaths; for example, the serving of process or substituting for the sheriff. The acts state that if the coroner is abolished, all of his duties are abolished; if the office is retained, it would be subject to the chief medical examiner's regulations, which might or might not cover these other duties of a non-medical nature. Both model acts eliminate the use of a coroner's jury.

State Medico-legal Systems. Those states which have adopted a medical examiner system have taken various approaches. A few have abolished the office of coroner entirely in favor of the medical examiner plan. Others have made adoption of the examiner plan optional on the part of counties. Others have superimposed many features of a medical examiner system on the traditional coroner system without abolishing the coroner. Some examples of each approach are described here.

In 1946 Virginia established a statewide medical examiner system which resembles the model acts. The word coroner has been completely removed from Virginia law. The state health commissioner, with the approval of the state board of health, appoints a chief medical examiner who must be a physician and a skilled pathologist. His office is in the department of health and he has administrative and clerical assistance. In addition to using facilities of the medical college of Virginia he has a central laboratory headed by a toxicologist. The state health commissioner also appoints a medical examiner in each locality from a list of doctors

¹¹⁵ U. S. National Comm. on Vital and Health Statistics, *Medical Certification of Medico-legal Cases* 15-16 (1960).

supplied by the local medical society. The local examiner sends copies of his death investigation reports to the chief examiner and to the Commonwealth's attorney.

Maine abolished the office of coroner in 1924 and provided for a medical examiner in each county, appointed by the Governor. The Governor of New Hampshire appoints "local medical referees," who have replaced coroners. In Rhode Island, the attorney general appoints a chief medical examiner, who appoints county medical examiners. The medical examiners in these states must be physicians.

Some states make a medico-legal system optional with counties, or establish it only in particular counties. A 1953 Michigan law allows local referendums to abolish coroners and appoint qualified medical examiners. A 1955 North Carolina law is also permissive, allowing county commissioners to come under the act. The office of coroner was removed from the constitution in 1961, so may be abolished in counties which elect the examiner system. In 1962 only two counties had come under the medical examiner law, indicating that "the progress of the relatively new medical examiner law will continue more as an evolutionary process rather than one of innovation."

In New York, four coroners are usually elected in each county, but New York City's five counties have a medical examiner system with a single chief medical examiner appointed by the mayor. Several other counties have changed to the medical examiner system, with the medical examiners appointed by the county executives or the county supervisors. In New York City the chief medical examiner must be a physician and skilled pathologist and microscopist. Approved pathological service is available within reasonable distance of most counties, but the service is not as great as in the metropolitan areas.

New York's approach to the coroner's role is one method of utilizing the medical examiner system where it is needed without eliminating the coroner system. Other states which allow the counties to adopt it at their discretion are Texas¹¹⁶ and Wisconsin.¹¹⁷

¹¹⁶ Filcher, *op. cit. supra* note 111, at 30.

¹¹⁷ Comment, *supra* note 104, at 533.

Another method has been to superimpose a medical examiner system over the traditional coroner system, with certain restrictions imposed upon the coroners' authority. This is a step toward a statewide medical examiner system, but apparently it is easier to get legislative approval of a program which does not require radical reorganization. It also makes it possible to adopt some type of medical examiner system in those states where the coroner is a constitutional officer and an amendment would be necessary to abolish the office.

In 1951, the Arkansas legislature created an *ex-officio* medico-legal commission of the dean of the University of Arkansas Medical School, the director of the state police, and the director of the state board of health. The head of the medical school department of pathology serves as director of the office of state medical examiner, with an appropriation and adequate facilities. The duties of elected county coroners remained unaffected, except that the new procedure required them to report deaths of suspected criminal cause to the state medical examiner who has authority to order an autopsy. The legislation was adopted "without stirring up opposition from coroners and other interested parties such as the State Embalmers' Association."¹¹⁸

Georgia retains the elective office of coroner, but requires that he call in a medical examiner in every case of sudden or violent death, or other unusual circumstances. The examiners are appointed by the department of public health and the director of the crime laboratory in the department of public safety, and must be physicians. In Tennessee a 1961 law provided for a chief medical examiner, appointed by the state board of health, with the Governor's approval. Local medical examiners, who must be physicians, are chosen by county quarterly courts from lists submitted by local medical societies. They report their findings to the county coroners, who remain elective constitutional officers.

Connecticut has taken a different approach. The coroner, who must be an attorney, is appointed by judges of the superior court, upon recommendation of the state's attorney for the county. The coroner then appoints a local medical examiner, who must be a physician. All autopsies are performed by pathologists who

¹¹⁸ National Municipal League, *Coroners, A Symposium of Legal Bases and Actual Practices* (1953).

have been certified by the state health department and all toxicology work is done in the department's laboratories.

In Washington, coroners are elected in counties of over 40,000 population, and the prosecuting attorneys serve *ex-officio* as coroners in the other counties. Coroners appoint local doctors as coroner's physicians, and a state toxicological laboratory serves all coroners.¹¹⁹

Alternatives to a Medical Examiner System. In some states, the coroner is a constitutional officer and may not be abolished by legislation. In other states, the defects in the coroner system may be recognized, but the state may not wish to use a medical examiner system. In such states, an effort may be made to increase the accuracy and effectiveness of their coroners without abolishing the office. One plan is to require the coroner to be a medical doctor, but to leave the office otherwise unchanged. Whether the coroner is appointed or elected under this plan, a revision of the fees or salary schedules would be necessary in order to attract physicians to the office. The suggestion that candidates for coroner be required to pass a medico-legal examination as a condition precedent to having their names placed on the ballot might merit investigation. Kentucky has successfully used a similar plan for the county tax commissioner who, before his name can be placed on the ballot, must take an examination and be certified by the Department of Revenue.¹²⁰ Again, a revision of compensation would be necessary to obtain experts with medico-legal experience.

Special training for coroners is another alternative. The state police, F.B.I., law schools, medical schools and other colleges, and coroners could conduct seminars or training courses for coroners. Emphasis could be placed on the medico-legal duties and responsibilities of the coroner, and the modern methods used by coroners' offices.¹²¹ Such a seminar has been held in Kentucky in 1962 at the University of Kentucky Medical Center, and another is planned in December, 1963.

Laboratory Facilities. An essential part of any sound system

¹¹⁹ *Ibid.*

¹²⁰ KRS 132.380.

¹²¹ See generally, Pilcher, *op. cit. supra* note 112, at 53-55.

is provision of adequate laboratory facilities for the investigation of deaths. The model acts set up a central laboratory, as do a number of states. It is obviously impossible for all local units to provide complete facilities, but it is feasible to establish a central laboratory for use by some or all units. Large cities, of course, can efficiently operate their own laboratories.

The office of the Cuyahoga County, Ohio, coroner is recognized as one of the best in the world. This county contains the city of Cleveland. The coroner, like all in Ohio, is elected for a four-year term and must be a licensed physician for at least two years prior to election.¹²² He may appoint assistant coroners, who must be physicians or pathologists, any necessary technicians, secretarial and clerical staff, custodians and investigators, all of whom receive salaries fixed by the coroner and payable from the county treasury.¹²³ The Cuyahoga County coroner's office is an outstanding example of laboratory and investigative facilities; and its organization would be equally applicable to a central state laboratory. It is located in the Western Reserve University, equidistant from the School of Medicine, the School of Law, and the Institute of Pathology.¹²⁴ The Cuyahoga County coroner system serves as a model "which other jurisdictions have studied."¹²⁵

An Ohio county coroner must determine the cause, mode, and manner of death "when any person dies as a result of criminal or other violent means, or by casualty, or by suicide or unusual manner. . . ."¹²⁶ The Cuyahoga County Coroner performs this function by the use of a forty-nine member staff, appointed by him subject to civil service regulations; Figure II shows the organization of his staff.¹²⁷ The salary ranges are shown in Table VI.¹²⁸

Whenever a body is received at the coroner's mortuary, the exterior of the body is examined by the pathologist to determine the necessity of an autopsy. The external evidence of the body, the reported circumstances of the death, any history of previous

¹²² Ohio Rev. Code §§ 311.08, 312.02 (1958).

¹²³ Ohio Rev. Code § 313.05.

¹²⁴ Gerber, *op. cit. supra* note 96, at 4.

¹²⁵ *Ibid.*

¹²⁶ Ohio Rev. Code § 313.12 (1958).

¹²⁷ Gerber, *op. cit. supra* note 96, at 8.

¹²⁸ Letters from Dr. S. R. Gerber, Cuyahoga County Coroner, to Ky. Att'y Gen. John B. Breckinridge, July 12, 1963, and October 7, 1963.

FIGURE II
 ORGANIZATION OF THE CUYAHOGA COUNTY, OHIO,
 CORONER'S OFFICE

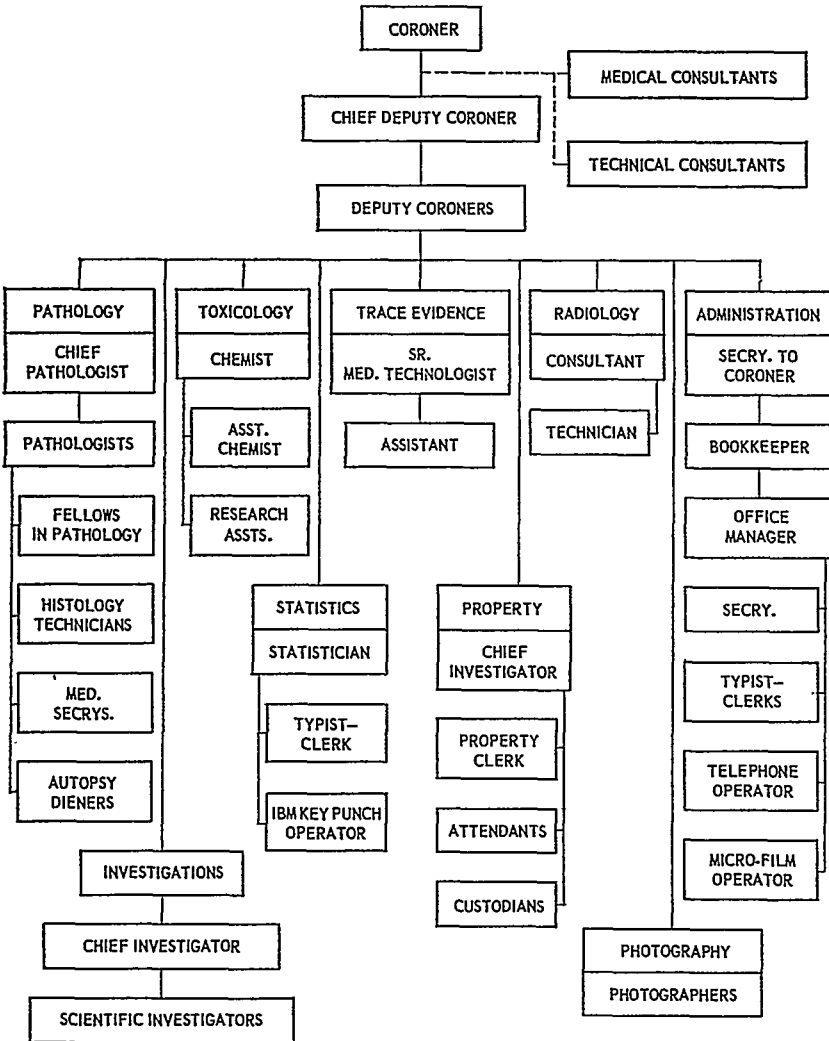


TABLE VI
STAFF AND SALARIES OF CUYAHOGA COUNTY
CORONERS' OFFICE

Position	Salary Range Per Annum	
Chief deputy and pathologists	\$13,000 - \$22,000	
Toxicologist and lab assistants	\$ 7,500 - \$14,000	
Toxicology research assistants	\$ 4,000 - \$ 5,300	
Scientific investigator and trace evidence technologist	\$ 7,700 - \$12,000	
Desk attendants, autopsy assistants and char-help	\$ 3,000 - \$ 4,350	
Property custodians	\$ 6,500 - \$ 8,500	
General office personnel	\$ 3,000 - \$ 6,000	
Full-time personnel	41	County Budget appropriation for maintenance of Coroner's Office, Laboratories, and Mortuary, for year 1963, \$324,620.
Part-time personnel	8	
Total Staff	49	

illness, and unusual circumstances are factors which may compel an autopsy to be performed. "In approximately 42% of the cases complete autopsies were performed. . . . in 1961, autopsies were performed on 53 per. cent of the cases of death induced by violence, including autopsies on all victims of vehicular accidents."¹²⁹ Of the 3,662 coroner's cases in Cuyahoga County in 1961, 72.8 per cent were natural, 2.7 per cent were homicidal, 4.3 per cent were suicidal, and 19.2 per cent were accidental.¹³⁰

The Cuyahoga County Coroner's Office has cooperated with the Western Reserve University in establishing a Law-Medicine Center. This center offers various subjects applicable to medico-legal investigations to attorneys, physicians, and law enforcement officers. "Members of the Coroner's Staff lecture to students in the regular classes of the Schools of Law and Medicine also."¹³¹ The coroner's office has also written a pamphlet entitled *Types of Deaths Which Are Reportable*, and has distributed it to all hospitals, physicians, and funeral directors in the county.¹³²

¹²⁹ Gerber, *op. cit. supra* note 96, at 9.

¹³⁰ *Id.* at 17.

¹³¹ Gerber, Office of the Coroner of Cuyahoga County, Ohio, available in the Office of the Coroner of Cuyahoga County, Cleveland, Ohio.

¹³² Cuyahoga County Coroner's Office, *Types of Deaths Which Are Reportable* (Rev. 1962).

Massachusetts also operates a laboratory in connection with a medical school. In 1940 a semi-official central medico-legal investigative laboratory was established in Massachusetts by combining the facilities of the state police laboratories with those of Harvard's department of legal medicine. Pathologists "from the medical school respond to requests from the medical examiners relayed to them by the state police." To complete the picture of informal centralization, one member of the department of legal medicine is a senior medical examiner for the Boston area and two other members are associate medical examiners.¹³³

Washington has a state toxicologic laboratory at the University of Washington Medical School to serve all coroners. Illinois has a toxicological service in the state department of health. Louisiana law authorizes the establishment of a forensic laboratory in each congressional district by mutual agreement of two-thirds of the coroners in the district. The cost, equipment and maintenance are shared by the participating parties.¹³⁴

A number of persons believe that some revision of the Kentucky coroner system is desirable. One expert notes that, because Kentucky has 120 counties, it would be impractical to have a medical examiner for each, but proposes that twenty-eight medico-legal districts be established.¹³⁵ This plan would group from two to seven counties in a district; the proposed districts are based on the total deaths, autopsies, coroners' cases, and the number of physicians per county. He further proposes that a central laboratory and records office be established in connection with a university, because:

The university affiliation allows easy and readily available consultation with auxiliary experts and specialists in many broad fields such as botany, dental identification, plant pathology, metallurgy, anthropology, archeology, etc. Also research granting agencies have been loathe to, and in some instances are specifically prohibited from, making grants to political units.¹³⁶

Under this plan, the coroner would be retained, and both he and the district medical examiner would sign the death certificate.

¹³³ National Municipal League, *op. cit. supra* note 119.

¹³⁴ *Ibid.*

¹³⁵ Letter from Dr. Rudolph Muelling, *op. cit. supra* note 70.

¹³⁶ *Ibid.*

Any revision of Kentucky's coroner system would require consideration of many factors and alternatives. Some changes would require constitutional revision, while others could be accomplished within the existing constitutional framework. While many problems exist, the office of coroner probably has been subject to more expert analysis than any of the other traditional county law enforcement offices, and a great variety of coroner and medical-legal systems have been established by the states.

VI. City Police

CONSTITUTIONAL AND HISTORICAL BACKGROUND

History of City Police. Although some police protection existed in early societies, modern police systems resulted from the growth of cities. In Anglo-Saxon England, every male from fifteen to sixty years of age was considered a policeman, and had to maintain certain arms and equipment. When the "hue and cry" was raised, these men were required to join in the pursuit of the criminal. They were divided into groups of ten, their leader being called the tithingman.¹ The tithingman was succeeded as the parish's chief peace officer by the constable.

As towns increased in population during the Seventeenth Century some town councils began to employ watchmen for police protection, although the constable was still the chief peace officer of the parish. This was a time of social and political upheaval and the populous cities were often the scenes of riots and crimes, which were aggravated by the non-existence of a civilian police. Social disorder continued into the Eighteenth Century, by which time professional criminals presented a serious threat to communities. These problems could be met only by skilled, full-time police forces.

The first such police force was the London Bow Street Runners, organized by a police magistrate to meet the criminal menace. Its success in rounding up several gangs of criminals² and the county's dire need for organized police paved the way for Parliament's passage in 1829 of Sir Robert Peel's Bill for a Metropolitan Police.³ The new police force, known as "Peelers" or "Bobbies," had a great impact upon city life:

Formed in the first instance for the London area, the new police saved the Capital, during the Reform Bill agitation two years later, from suffering at the hands of

¹Hall, *Police and Law in a Democratic Society*, 58 Ind. L. J. 133, 135 (1953).

²*Id.* at 136.

³10 Geo. 4, ch. 44 (1829); see Hall, *Legal and Social Aspects of Arrest Without a Warrant*, 49 Harv. L. Rev. 566, 578-579 (1936).

Radical mobs. . . . As Peel's police were generally established throughout the whole country, riot and the fear of riot ceased to have their former importance in English life.⁴

The early settlers in America had sheriffs and constables, as well as military forces, upon which to rely for police protection. The basic agricultural economy that existed in America did not create a widespread need for metropolitan police, but many towns employed uniformed watchmen, in addition to military guards. By the early part of the Eighteenth Century the "night watch" as an institution was well established in American cities.⁵ As the American cities began to increase in size in the early Nineteenth Century, law enforcement problems of great proportions were found to exist within and near the city limits. Organized law enforcement units eventually became necessary; so, in 1844, New York City copied Peel's London police plan. Chicago, Philadelphia, and Boston followed suit within the next ten years. By 1870, "the essential features of the London Metropolitan Police had taken firm roots in a number of American cities."⁶

History in Kentucky. Some Kentucky cities apparently have had police forces for more than a century, which evolved from city watchmen. In 1850, for example, an act amending Lexington's charter gave the mayor and council power:

to determine that so many watchmen shall be elected, either for day or for night, as, in their discretion, they shall judge best, for the safety and advantage of the city, and such watchmen shall be conservators of the peace, and vested with power to apprehend all felons, gamblers, rioters [and others].⁷

The word police was used in an 1856 act which gave Louisville's council the right to "establish a police department, and appoint the watchmen . . . and prescribe all needful rules and regulations to serve and maintain an efficient police."⁸

Local and special legislation was brought to an end by adoption of the present constitution in 1892, which required that laws

⁴Trevelyan, 4 *Illustrated English Social History* 19 (1951 ed.).

⁵Fosdick, *American Police Systems* 60 (1921).

⁶Hall, *supra* note 1.

⁷Ky. Acts ch. 107, § 31 (1850).

⁸Ky. Acts ch. 442, § 2 (1856).

be uniform for each class of city. By that date, city police were well established. The general act providing for government of first class cities, for example, established a board of public safety, which appointed a police chief. Members of the police department were given "all the common law and statutory powers of constables, except for the service of process."⁹

Constitutional Provisions. The power of a state legislature to create towns and municipal organizations and to confer upon them governmental powers of local taxation and police regulation is unchallenged.¹⁰ Delegation of powers, however, does not make the municipality an independent body; it is still an agent of the state and can govern only "in the limited manner and territory that is expressly or by necessary implication granted to it by the state."¹¹ The Kentucky Court of Appeals has rejected "positively and unequivocally, the theory that a right of local self-government inheres in Kentucky municipalities."¹² Local police departments, therefore, are under the control of municipalities, but subject to legislative regulation.

CITY POLICE IN KENTUCKY

Organization. Kentucky municipalities are divided into six classes, according to population, and the General Assembly may make general laws affecting the cities of each class.¹³ There is one city of the first class; eight cities of the second class; sixteen cities of the third class; sixty-seven cities of the fourth class; and eighty-seven cities of the fifth class. All other incorporated cities belong to the sixth class.

First Class Cities. The statutes require Louisville, the only city of the first class, to have a department of public safety under the supervision of a director who has exclusive control "of all

⁹Ky. Acts ch. 244, § 108 (1893).

¹⁰Cooley, *Constitutional Limitations* 389-390 (8th ed. 1927).

¹¹*Kentucky Institution for Blind v. City of Louisville*, 123 Ky. 767, 774-775, 97 S.W. 402, 404 (1906).

¹²*Board of Trustees of P. & F.R.F. v. City of Paducah*, 333 S.W.2d 515, 518 (Ky. 1960).

¹³Ky. Const. § 156; Ky. Rev. Stat. § 81.010 (1963) [hereinafter cited as KRS].

matters relating to the division of the police. . . ."¹⁴ The department contains a division of the police department, fire department, and other divisions set up by ordinance; the chief of police is appointed by the director of public safety.¹⁵ When necessary, the director may appoint special policemen to patrol duty anywhere within the city, under such rules and with such powers as he may provide.¹⁶ The chief and the members of the force are granted by statute "all the common law and statutory powers of constables except for the service of civil process."¹⁷ While on duty, no member of the force is liable to arrest on civil process or to service with subpoenas from civil courts.¹⁸ The rules for hiring, dismissal, reinstatement, and continued employment are prescribed by the city civil service board.¹⁹

Second and Third Class Cities. Cities of the second through sixth class may adopt a commission form of government,²⁰ in which case the statutes specify certain administrative departments of the city government.²¹ In a second class city with commission government, the city administrative functions are divided among the departments of public affairs, public finance, and public works. In third and fourth class cities, the police departments are generally placed in the department of public safety.

In other second class cities, the police officers and employees who are not required by statute to be elected or appointed in another manner are appointed by the mayor and serve at his pleasure.²² Each officer or employee receives a salary which is fixed by the city's general council before the appointment.²³ The mayor, members of the city council, the chief of police, and all the police officers are conservators of the peace, and exercise

¹⁴KRS 83.170(1).

¹⁵KRS 83.170(2).

¹⁶KRS 95.160(1) and (2).

¹⁷KRS 95.150.

¹⁸KRS 95.210.

¹⁹KRS 90.120(1).

²⁰KRS 89.010.

²¹KRS 89.180.

²²KRS 84.340(1).

²³KRS 84.340(3).

such powers in this capacity as are prescribed by statute or ordinance.²⁴

In cities of the third class, with a mayor – council form of government, the common council may pass ordinances that are necessary to carry into effect the provisions of the law relating to third class cities.²⁵ The chief and his officers are “peace officers of the city and the state, with the same powers to make arrests, execute process and enforce the laws as constables and sheriffs,” and their jurisdiction is coextensive with the city and extends one mile beyond the city limits.²⁶ In cities of the second and third class the legislative body has statutory control of the police and fire departments and their property and equipment.²⁷ It appoints a police chief and all policemen, sets the number of policemen, and determines their salaries.²⁸

Maximum hours of work are set by statute. Policemen in second and third class cities can work no more than eight hours per day for five days each week, except in emergencies, and shall have an annual leave of fifteen working days.²⁹ The statutes establish procedures for the discipline of police officers and employees to insure a fair hearing of the charges and fair treatment of an officer charged with inefficiency, misconduct, insubordination, or violation of city or state law.³⁰ If an officer is found guilty of a charge and suspended for more than thirty days, reduced in grade, or dismissed, he may appeal to the circuit court.³¹ An appeal will lie from the circuit court to the Kentucky Court of Appeals if the punishment was suspension for more than sixty days, reduction in grade, or dismissal.³² The appointment and continued employment of police force members cannot depend on their political opinion or service, sentiment, or affiliation, but only on their ability and willingness to enforce the laws and comply with the rules of the department.³³ Second

²⁴KRS 84.340(5).

²⁵KRS 85.120.

²⁶KRS 95.510.

²⁷KRS 95.430(1).

²⁸KRS 95.430(3), (4), and (5).

²⁹KRS 95.495(1), 95.497(1); Ops. Att’y Gen. #62-360 (Ky. 1962).

³⁰KRS 95.450.

³¹KRS 95.460(1).

³²KRS 95.460(4).

³³KRS 95.470.

and third class cities must set up a pension fund for their officers,³⁴ and may, by ordinance, obtain group life insurance for them.³⁵

The legislative body of a second or third class city may by ordinance establish an auxiliary police force "to perform special duties within the city on terms it deems proper."³⁶ The ordinance must prescribe the number of officers, the manner of their appointment, and rules governing their powers and duties. Prior to enactment of this law in 1960, the court upheld a city's right to appoint special policemen during an emergency, under the general police power conferred on cities of the second class by Ky. Rev. State. § 84.150(2).³⁷

Cities of the third class may abolish or restore the office of city marshal.³⁸ If the office is not abolished, the marshal is elected every four years by the voters of the city.³⁹ The marshal cannot engage in any business nor receive any process that interferes with his duties to the city, nor can he succeed himself or serve as deputy marshall for the succeeding term.⁴⁰ He may, with the legislative body's approval, appoint deputies, but is responsible on his official bond for their acts and omissions.⁴¹ The marshal is "a peace officer of the city and the state, and the chief ministerial officer of the police court" and his duties are prescribed by statute.⁴² He must attend and keep order at all sessions of the police court and the city legislative body, and must obey their and the mayor's lawful mandates. He must execute process issued by the police court and city officials, and he may execute process issued by other courts or officers. He must perform other duties prescribed by law or ordinance. The marshal's compensation is by salary, commissions and fees as prescribed by law or

³⁴KRS 95.520, 95.852.

³⁵KRS 95.630.

³⁶KRS 95.445.

³⁷Shepherd v. McElwee, 304 Ky. 695, 202 S.W.2d 166 (1947).

³⁸KRS 95.640(3).

³⁹KRS 95.640(1).

⁴⁰KRS 95.650(1) and (2).

⁴¹KRS 95.690.

⁴²KRS 95.680(1).

⁴³KRS 95.670(1).

ordinance.⁴³ Apparently, most third class cities have abandoned the elective marshal system.⁴⁴

Fourth and Fifth Class Cities. The mayor of a fourth class city is head of the city police and may command them. The same statute names him conservator of the peace and authorizes him to call any citizen into service when he considers it necessary to enforce the laws of the city, to save life or property, or to quell riots or mobs.⁴⁵ The chief of police is second in command to the mayor.⁴⁶ The city legislative body may appoint the members to the police department and provide for their number, grades, compensation, and regulation.⁴⁷ It may appoint the chief, for a term not exceeding two years or he may be elected if the legislative body enacts an ordinance for this purpose sixty days prior to the November election.⁴⁸ The chief may be paid a salary in lieu of, or in addition to, fees.⁴⁹ Fourth class cities must maintain a fund for pension, disability, and death benefits.⁵⁰

The city council of fifth class cities may enact such police regulations and other ordinances as are not inconsistent with the general laws,⁵¹ and the mayor must see that ordinances are strictly enforced.⁵² The city legislative body may establish a police department, appoint a chief and his officers for terms not exceeding two years, and provide for their grades, compensation, and regulation.⁵³ The chief has command of the police force.⁵⁴ Fifth class city policemen have statutory authority to make arrests anywhere in the county in which the city is located, but they are not required to police any territory outside the city limits.⁵⁵

The statutes enumerate certain duties of the police chief of fourth and fifth class cities. He must attend the meetings of the city legislative body, execute its mandates and preserve order at

⁴⁴None of the nine third class cities replying to the Committee's questionnaire had marshals.

⁴⁵KRS 86.200(3).

⁴⁶KRS 95.730(1).

⁴⁷KRS 95.700(1).

⁴⁸KRS 95.720(1) and (3).

⁴⁹KRS 95.720(4).

⁵⁰KRS 95.768-95.784.

⁵¹KRS 87.070.

⁵²KRS 87.130.

⁵³KRS 95.700(1) and (2).

⁵⁴KRS 95.730(1).

⁵⁵KRS 95.786; Ops. Att'y Gen. #62-760 (Ky. 1962).

such meetings; he or an officer designated by him, must attend police court, act as sheriff of the court, and execute all the court's process, orders or judgments; he or any member of the force must cause proceedings to be instituted against any person carrying on a business or doing an act without a license when a license is required.⁵⁶ In cities of the fifth class, he has supervision over the city jail or the chain gang.⁵⁷ The chief and officers may execute warrants of arrest, process, attachments and subpoenas for witnesses, and they may arrest for violations of municipal regulations. They have the same power of arrest for offenses against the state as a sheriff.⁵⁸

The chief and officers of fourth and fifth class cities are entitled to the same fees as the sheriff and other officers for similar services; when the chief and officers receive a salary, the city legislative body may order the fees paid into the city treasury.⁵⁹ The chief, with the consent of the city legislative body, may appoint deputies who have the same powers and duties as the chief, except that they do not command the force.⁶⁰ With the advice of the mayor, the chief may appoint special or extra police for one-week terms.⁶¹ These special officers must take the oath prescribed by law, but need not execute a bond.⁶²

Sixth Class Cities. The board of trustees of a sixth class city may appoint a city marshal for a term not exceeding two years, or may enact an ordinance sixty days prior to the November election to provide for his election.⁶³ The board of trustees is the city legislative body and includes the marshal, the police judge, and other statutory officers.⁶⁴ The marshal has the powers of a sheriff for the suppression of riot, disturbance of the peace, or resistance to law or authority; he has control of the city police; he may execute and return process issued to him by any legal authority, and he has control of the city police; he may execute and return process issued to him by any legal author-

⁵⁶KRS 95.730.

⁵⁷KRS 95.730(5).

⁵⁸KRS 95.740.

⁵⁹KRS 95.740(2); Ops. Att'y Gen. #60-380 (Ky. 1960).

⁶⁰KRS 95.740(3).

⁶¹KRS 95.760.

⁶²KRS 95.740(4).

⁶³KRS 95.790(1).

⁶⁴KRS 88.030.

ity and receives the same fee as a constable for such services;⁶⁵ he is in charge of city prisoners, must prosecute all violations of city ordinances in the police court, and perform other duties as required by city ordinance. The marshal, with the approval of the board of trustees, may appoint deputy marshals and, with the board's approval, may appoint additional policemen for one day only, when necessary to preserve public order.⁶⁶

A city of the second class through sixth class may, by ordinance, provide public liability insurance for police personnel and pay the premium from the city's general fund. The insurance shall be for the indemnity of personnel against claims for damages resulting from the use of automobiles or other equipment "in any activity within the usual and normal prescribed duties or purposes of the [police and fire] departments." The city must follow the terms of this statute in order to spend public funds to pay insurance premiums.⁶⁷

Qualifications. Certain minimum qualifications for city police are set by statute. These differ according to the class of city and are described below. Additional qualifications, adopted by the cities, are described subsequently.

Employees of safety departments in first class cities are covered by civil service, with the exception of a few enumerated positions.⁶⁸ Applicants must take competitive tests and meet qualifications set by the civil service board.⁶⁹ The members of the force, including the special policemen, must take an oath faithfully to discharge their duties.⁷⁰

An applicant for policeman in a second or third class city must be able to read, write and understand English and have "such other qualifications as may be prescribed." He must be "a man of sobriety and integrity" and "an orderly, law-abiding citizen." In a second class city, no person over fifty years old may be appointed. Before entering upon the discharge of his duties, each officer must take an oath that he will faithfully discharge

⁶⁵KRS 95.800(1), (2), (3), (6), (7), and (8).

⁶⁶KRS 95.800(5).

⁶⁷ KRS 95.820; Ops. Att'y Gen. #61-369 (Ky. 1961); *Chambers v. Ideal Pure Milk Co.*, 245 S.W. 2d 589 (Ky. 1952).

⁶⁸KRS 90.150(1) and (2)(a).

⁶⁹KRS 90.160.

⁷⁰KRS 95.200.

his duties, and must execute a bond with such surety as may be required by ordinance.⁷¹ The legislative body of a second class city shall, and the legislative body of a third class city may, require all the applicants to be examined as to their qualifications, including English and the law and rules governing the duties of the position applied for.⁷² An officer of a third class city must be at least twenty-one years of age and have resided in the city for at least two years next preceding his appointment.⁷³ He must execute bond with sufficient surety before he takes office, and the legislative body must approve the bond.⁷⁴

In fourth class cities which have civil service, applicants must be examined as to their qualifications, knowledge of English, and laws and rules governing their duties. They must be at least twenty-one years old, but not over forty, except that they may be fifty-five years old if they have had five years experience. An applicant may not be appointed "unless he is well known to be a man of sobriety and integrity, and has been and is an orderly, law-abiding citizen." It is further provided that no person may be appointed because of political considerations.⁷⁵ The chief and his deputies and officers must post a bond before they enter upon the duties of their offices.⁷⁶ Every member of the force must "take an oath to faithfully perform the duties of his office, and that he possesses the required qualifications. . . ." and "that he will not interfere in any election."⁷⁷

In fourth class cities without civil service, and in all fifth class cities, an applicant for the force must be at least twenty-one years old, able to read and write English, "sober, moral and sagacious," and may not have been convicted of a felony. If possible, he must have six months' residence in the city; in any case, he must have six months' residence in the county.⁷⁸ In a fifth class city, the chief and each officer must execute a bond.⁷⁹

⁷¹KRS 95.490(1) and (2).

⁷²KRS 95.440.

⁷³KRS 85.280.

⁷⁴KRS 95.640(2).

⁷⁵KRS 95.762(1) and (2).

⁷⁶KRS 95.750(1).

⁷⁷KRS 95.760.

⁷⁸KRS 95.710.

⁷⁹KRS 95.750(2).

The officers must also take an oath to perform faithfully their duties and that they possess the required qualifications.⁸⁰

No person may hold any office in a sixth class city unless he is an elector and has been a resident of the city for one year prior to taking office. The one exception is the city marshal, who is required only to be a resident of the city and a voter in the magisterial district.⁸¹ Before entering upon the duties of the office, the marshal must execute a 1,000 dollar bond. The marshal and his sureties are liable on the bond for any unlawful arrest or unnecessary or cruel beating or assault in making an arrest, and for the acts of the deputies.⁸²

In summary, the statutory qualifications for policemen are minimal, so that cities have considerable discretion in setting personnel standards. Except in cities with civil service, all policemen are required to be residents; the constitution also provides that all city officers shall reside within their respective cities.⁸³ In cities of the first two classes and in cities of the fourth class with civil service, applicants must be examined as to their qualifications. Twenty-one is the minimum statutory age in fourth class and fifth class cities. In second, third, fourth and fifth class cities, the applicant must be sober and moral. In most cities, there is no statutory requirement regarding knowledge of policemen's duties. There are no statutory requirements concerning education other than literacy, and none governing physical qualifications. All but third and sixth class cities require the officers to take an oath, and all cities but Louisville require the officer to execute a bond.

The Committee on the Administration of Justice's questionnaire to city police chiefs asked them to list requirements for the selection of members of their police forces. Of the seventy police chiefs who answered this question, fourteen said that they had no such requirements. Three others said that they followed the appropriate statute. The other fifty-three police chiefs listed a total of 139 requirements.

Good physical condition was the most often mentioned requirement. Thirty cities require good health, and six others re-

⁸⁰KRS 95.760.

⁸¹KRS 88.170.

⁸²KRS 95.790(3), 95.800(4).

⁸³Ky. Const. § 234; KRS 95.440(2); Ops. Att'y Gen. #61-157 (Ky. 1961).

quire a physical examination or certification by a physician. Fourteen have some age limits, with twenty-one being the usual minimum age. Seven cities set weight or height requirements, or both.

Twenty cities require that applicants be of good character, morals or disposition. Two require that they be married. Three cities require prior experience in police work and three report that they require residence. Eighteen cities require that policemen have a high school education and ten cities require an eighth or ninth grade education. Five cities give applicants a written examination and nine others require that the applicant be intelligent or literate. One city reports that its requirements are the same as the Kentucky State Police.

There are considerable differences between the requirements set by law and those listed in responses to the questionnaire. Many police chiefs are apparently not familiar with statutory requirements; for example, only three listed residence as a requirement. Good physical condition is not a statutory requirement, but is the one mentioned most frequently by police chiefs. One fourth class city police chief said that the statutory requirements were "impossible due to low pay and long hours." As might be expected, the requirements listed were usually higher in the larger cities; for example, all but one of the cities which reported no requirements were cities of the fourth through the sixth class.

Experience. Police chiefs were asked how many years they had served in that position. The answers are shown below:

TABLE VII
NUMBER OF YEARS SERVICE AS POLICE CHIEF

Years of Service	Number of Police Chiefs						All Cities
	(Class of City)						
	1	2	3	4	5	6	
Less than 1 Year.....	-	-	-	4	2	-	6
1 - 4 Years	1	1	2	12	12	1	29
5 - 9 Years	-	-	3	12	8	3	26
10 - 14 Years	-	1	3	3	4	-	11
15 - 19 Years	-	-	1	1	3	-	5
20 or more Years.....	-	1	-	2	-	-	3
Total Cities	1	3	9	34	29	4	80

Police chiefs are able to acquire much more experience than those constitutional officers who may not succeed themselves. Continuing service undoubtedly helps these officers learn more about their duties and the law enforcement problems of their cities.

Training. The committee questionnaire asked police chiefs if any formal training were required of a new policeman before he is placed on duty and, if so, what type of training was required. Twenty-five answered that they require some training, and fifty-one said they did not. In some cases, training consists only of accompanying another officer on duty for a few weeks.

The only city of the first class requires three months' classroom training in criminal and civil law, physical culture, city government, police tactics and firearms. The three second class cities reporting require some training: one requires six months' probation; one requires attendance at a three-week training school conducted by a college in the city; another, a month at a police school conducted by local officers.

Five of the nine third class cities reporting require some training; three of these require training by city policemen, then a period of patrol duty with an experienced officer. One city requires a year's training before a person is hired as a regular policeman and another requires recruits to attend a Kentucky Peace Officers' Association sponsored school at the State Police academy. Only nine of the thirty-four fourth class cities reporting required training, although two others reported that they required policemen to understand basic laws or gave legal instructions later. In two cities, training consisted merely of putting the recruit on duty with a veteran officer for a few weeks, in three others it consisted of putting the recruit on duty with a veteran officer for a few weeks, and in three more it consisted of instruction in basic laws by other members of the police force. Only four fourth class cities replied that they require attendance at a police school or academy. Six of the thirty-one fifth and sixth class cities require some training, although four of these require only training by other members of the police force. Two require attendance at a formal police training course.

The general absence of training requirements in most cities

is undoubtedly a handicap to good law enforcement. Police must enforce numerous statutes and master many skills. The new recruit could not be expected to know the law, or his duties in such matters as arrests. This problem is not unique to Kentucky. A Kansas study, for example, was based on a questionnaire to cities, and found that:

In-service training of personnel is practically non-existent in Kansas cities. Explaining this, of course, is the fact that the cities in the state are not sufficiently large, with two or three exceptions, to carry on an adequate program supported by training aids. Larger areas of at least several governmental units (or statewide) must join together in equipping a central agency to solve this problem.⁸⁴

Some states have attempted to meet this problem by establishing state training commissions to co-ordinate programs. Training facilities are discussed in detail in Chapter XI *infra*.

Need for More Training. When asked if more educational facilities were needed approximately 95 per cent of the responding police chiefs answered in the affirmative. Thirty-four chiefs remarked that the facilities should instruct in all phases of law enforcement. Twenty-three chiefs felt the emphasis should be on interpretation of laws, including arrest and search and seizure. Other chiefs were more specific: seven cited ballistics, fingerprinting, and other technical subjects as the main curriculum, four cited weapons and firing as being important, and five indicated that the facilities should instruct in traffic and traffic control. The chiefs were also asked who should furnish these facilities. Forty-eight chiefs thought this should be done by the state, fifteen stated that the city should provide the training, six chiefs cited the State Police, one the F.B.I., four stated that the federal government should provide the facilities, and three listed the Kentucky Peace Officers' Association.

Of the four chiefs who felt Kentucky does not need more peace officer training facilities, one was from Louisville, two from fourth class cities, and one from a sixth class city. The Louisville chief stated that his city had its own program, which was suf-

⁸⁴Governmental Research Center, University of Kansas, A Study of Police Employment and Training in Kansas 15 (1953).

ficient. One fourth class city police chief stated that there are "plenty of schools available if advantage is taken" of them; the other fourth class city chief felt that "actual experience is the best training." The sixth class city police chief, in answering that Kentucky needs no more police educational facilities, said that we "have enough at our disposal."

The results of this phase of the questionnaire indicate that Kentucky police chiefs feel overwhelmingly that there should be more educational facilities for Kentucky police. The only disagreement arises as to who shall provide these facilities and what should be taught.

Size of Departments. The size of police departments usually relates to the population of the city, its geographical area, the size and population of the surrounding county, the prevalence of crime and available funds. "Necessary or desirable police strength for any given city . . . can be computed or estimated only with the aid of extensive knowledge of many demographic factors, and a firsthand acquaintance with local geography and similar physical elements, some of which do not lend themselves to direct measurement."⁸⁵

Table VIII shows the number of citizens per city police department employee in those cities which are included in the F.B.I. Uniform Crime Reports. These figures for a particular city may be compared with the 1961 and 1962 national average of 1.9 police employees per 1,000 population.⁸⁶ The data in the table are for December, 1962 and may differ from current figures in some cases.

The number of police employees in these cities ranges from 634 in Louisville to three in several cities. The population per police employee ranges from 1,556 in Bellevue to 415 in Scottsville. Five of the eight cities with more than 900 citizens per police employee are in counties which have county police, which may supplement the city forces. The median population per police employee in these forty-two cities is 620, as compared to the national median of 526 persons per policeman.

⁸⁵Smith, *Police Systems in the United States* 124 (Rev. ed. 1949).

⁸⁶U. S. Dep't of Justice, *Uniform Crime Reports* 21 (1961).

TABLE VIII

NUMBER OF CITY POLICE DEPARTMENT EMPLOYEES
IN KENTUCKY

SELECTED CITIES—DECEMBER, 1962			
City and Classification	Number of Police Dept. Employees ^(a)	Population of City ^(b)	Population Per Police Employee
1st Class			
Louisville	634	390,639	616
2nd Class			
Ashland	38 ^(c)	31,283	823
Bowling Green	38	28,338	745
Covington	93	60,376	649
Frankfort	34	18,365	540
Lexington	147	62,810	427
Newport	61	30,070	492
Owensboro	78	42,471	544
Paducah	59	34,479	584
Other			
Bardstown	8	4,798	599
Bellevue	6	9,336	1,556
Benton	5	3,074	614
Berea	5	4,302	860
Cynthiana	10	5,641	564
Danville	17	9,010	530
Earlington	3	2,786	928
Elizabethtown	12	9,641	803
Flatwoods	5	3,741	748
Fort Thomas	14	14,896	1,064
Franklin	8	5,319	664

Fulton	8	3,265	408
Georgetown	9	6,986	776
Glasgow	16	10,069	629
Greenville	7	3,198	456
Harlan	10	4,177	417
Highland Hgts.	4	3,491	872
Hopkinsville	35	19,465	556
Jenkins	3	3,202	1,067
Lancaster	6	3,021	503
Lawrenceburg	6	2,523	588
Lebanon	9	4,813	534
Mayfield	22	10,762	489
Middlesboro	17	12,607	741
Monticello	3	2,940	980
Mt. Sterling	10	5,370	537
Murray	14	9,303	664
Paris	12	7,791	649
Park Hills	3	4,076	1,358
Prestonsburg	5	3,133	626
St. Matthews	9	8,738	970
Scottsville	8	3,324	415
Shively	16	15,155	947
Somerset	16	7,112	444

(a) U. S. Dep't of Justice, Uniform Crime Reports for the United States 114, 122 (1962);

(b) U. S. Dep't of Commerce, Bur. of the Census, Census of Population: 1960 (1960);

(c) Number of employees of Ashland from U. S. Dep't of Justice Uniform Crime Reports for the United States 113 (1961).

POWERS AND DUTIES

Functions of City Police. Police functions are universal. Every society has within it certain forces that must be controlled.⁸⁷ "The police no longer consist of a loose collection of public watchmen. They are made responsible for the day-to-day regulation of a complex society. Upon them is imposed the administration of a highly diversified group of activities."⁸⁸ The functions of a city police force generally include field operations, auxiliary services, and administrative functions. Field operations include basic and specialized patrolling, including traffic enforcement, and investigation of crimes, juvenile delinquency and vice conditions. Auxiliary services include communications, identification and records, laboratory services, and detention facilities for arrestees. The administrative functions of the department include the selection and training of recruits, in-service training programs, planning, evaluation of procedures and methods, public relations, and other duties such as budgeting, payroll, reporting, and purchasing.⁸⁹

The most important function of the police is to preserve the public order and to prevent offenses against the state and city. The police must insure to every citizen the enjoyment of his personal rights so far as those rights are "reasonably consistent with a like enjoyment of rights by others."⁹⁰ The city police must not only preserve order and prevent offenses against state laws, but they must also enforce city ordinances, such as those to regulate public health and local traffic safety.⁹¹ Cities can become breeding grounds for criminal activity, so it is important for the city police to detect any attempts at crime and to combat organized and occasional crime of all types. The city police are a law enforcement arm of both the state and local government.⁹²

A large city police force, such as in Louisville, may contain

⁸⁷Hall, *supra* note 1, at 138.

⁸⁸Mo. Ass'n for Criminal Justice, Missouri Crime Survey 21 (1926), quoted in Cal. State Dep't of Education, Police Organization and Administration 13 (1951).

⁸⁹Misner, *Metropolitan Law Enforcement*, 50 J. Crim. L., C.&P.S. 497, 500 (1959-1960).

⁹⁰Cooley, *op. cit. supra* note 12, at 1223.

⁹¹72 C.J.S. *Police* 206-207 (1951).

⁹²See generally, The International City Managers' Ass'n, *Municipal Police Administration* 1 (1954).

several specialized branches. One branch may be equipped for criminal investigation, another branch for traffic control, and another for general patrol work. The Covington police consists of four bureaus: crime, traffic, patrol, and identification and records.⁹³ In the smaller towns, one officer may be responsible for each of these areas of police administration, or there may be no division of responsibility. One authority stated that "a great many of the smaller cities are turning in a very creditable performance and extending a high degree of police protection."⁹⁴ The smaller cities often have an individualized approach to law enforcement. Law enforcement in the larger cities is an impersonal affair; in the smaller cities the officers are generally known by most people of the community and accepted on both a business and social level. Where such personal acquaintances exist, law enforcement may be easier.⁹⁵

Police forces may vary according to the type, as well as the size, of a city. Co-operation of the people with police in an industrial area may be much different from that in an agricultural section. In Texas, detailed questionnaires from 125 cities revealed that variations exist, in part at least, because of differences in the social, economic, and political character of urban communities in different sections of the state.⁹⁶ A social problem giving rise to police activity in one city may be unimportant or even non-existent in a community of equal size in some other section of the state. Even where identical law enforcement problems do exist, variations in community attitudes and financial resources may spell the difference between a competent, well-trained, and well-equipped police force in one and a mediocre police department in the other.

The policeman's job includes a wide range of activities and requires many skills and aptitudes. The Louisville Civil Service Board, in a job position sheet, describes the work of a city policeman as follows:

His work normally consists of patrol tasks that are performed according to accepted practices of police science.

⁹³Covington, Ky., Division of Police, Manual of Rules and Regulations.

⁹⁴Gleason, *Policing the Smaller Cities*, 291 *Annals* 14 (1954).

⁹⁵*Id.* at 15-16.

⁹⁶Institute of Public Affairs, *Municipal Police Administration in Texas: A Survey 85-86* (Pub. Affairs Series #41, 1960).

He receives general and special instructions from commanding officers who review work methods through personal inspection and discussion, but a Patrolman must be able to act without direct supervision and to exercise independent judgment in meeting emergencies. The assignments of a Patrolman may vary. He may walk a beat, a given area of a district in a cruiser or on a motorcycle, or direct traffic at a busy intersection. A Patrolman responds to calls or complaints involving accidents, law violations and emergency situations. The work sometimes includes an aspect of danger and always demands courteous but often firm treatment of the public.

Power of Arrest. Police cannot always prevent crime, but they can arrest or apprehend the criminal either before or after the commission of the crime.⁹⁷ An arrest is the taking of another into custody for the purpose of bringing him before a court, or securing the administration of justice.⁹⁸ The arrest is effectuated by the officer's taking, seizing, or detaining a person, by any act which indicates an intention to take him into custody. The person arrested must be under the actual control and will of the officer and must understand that an arrest is taking place.⁹⁹ Although no physical force or restraint is necessary, the intention to effect an arrest must be made.¹⁰⁰

Kentucky policemen are peace officers,¹⁰¹ and have the power to arrest.¹⁰² A police officer can exercise the power of arrest either with or without a warrant. He can arrest without a warrant only "when a felony or misdemeanor is committed in his presence or when he has reasonable grounds to believe that the person being arrested has committed a felony."¹⁰³ Reasonable grounds means that the officer must act upon a belief in the person's guilt, based upon facts or circumstances known by the officer or upon information from reliable and credible third parties, provided the officer has no knowledge of circumstances that materially impeach the information received.¹⁰⁴ Reasonable

⁹⁷Wilson, *Police Arrest Privileges in a Free Society: A Plea for Modernization*, 51 J. Crim. L., C.&P.S. 395, 398 (1960).

⁹⁸Restatement, Torts § 112 (1935).

⁹⁹KRS 431.025(2).

¹⁰⁰KRS 431.025(1); 4 Am. Jur. *Arrest* § 2 (1936).

¹⁰¹KRS 446.010(19).

¹⁰²KRS 431.005(1).

¹⁰³*Ibid.*; Davis v. Commonwealth, 280 S.W.2d 714 (Ky. 1955).

¹⁰⁴Turner v. Commonwealth, 191 Ky. 825, 231 S.W. 519 (1921).

grounds means a probable cause, and not prima facie evidence of guilt.¹⁰⁵

The arresting officer may summon as many persons as he deems necessary to aid in making an arrest.¹⁰⁶ In arresting a person who committed a misdemeanor, or preventing his escape, an officer is never justified in killing the offender; he may, however, use as great a force as is necessary or apparent for his own protection or to prevent the prisoner from escaping by overpowering the officer with force and violence.¹⁰⁷ When arresting a person charged with a felony, the officer may use force even to the taking of life.¹⁰⁸ The police officer is never justified in killing on a mere suspicion that a felony has been committed.¹⁰⁹ A city policeman's power of arrest in his official capacity is limited to the territorial boundaries of the city,¹¹⁰ unless his jurisdiction has been extended by statute, as is the case in some cities.

Enforcement of Ordinances. The general powers of city legislative bodies to enact ordinances are set forth by statute. These local ordinances regulate many activities. Second class cities, for example, are given statutory authority to enact ordinances regulating such matters as building standards, traffic on city streets, nuisances, and trades and occupations; they may "prevent the hitching of animals on a street," regulate stone quarries," "restrain riots, routs, noises, disturbances and disorderly assemblages," to select at random from a long list of powers.¹¹¹

Police must be adequately informed of their duties in enforcing ordinances and understand their content. When any ordinances are enacted by the city of Louisville, copies are sent to the police department. The officers are informed by roll call and daily bulletins as to the content of the ordinances and the department's methods of enforcement. The Lexington Police Department training staff explains their ordinances to the officers in special training sessions.¹¹² In smaller police departments,

¹⁰⁵Darden v. Commonwealth, 298 S.W.2d 687 (Ky. 1957).

¹⁰⁶KRS 431.035.

¹⁰⁷Rice v. Commonwealth, 288 S.W.2d 635 (Ky. 1956).

¹⁰⁸See Collins v. Commonwealth, 192 Ky. 412, 233 S.W. 896 (1921).

¹⁰⁹Young v. Amis, 220 Ky. 484, 295 S.W. 431(1927).

¹¹⁰Brittain v. United States Fidelity & Guaranty Co., 219 Ky. 465, 293 S.W. 956 (1927); Ops. Att'y Gen. #42,326 (Ky. 1958).

¹¹¹KRS 84.150-84.260.

¹¹²See Chapter IX *infra*.

word-of-mouth explanation by the police administrators is the general practice.

Telephone interviews with selected police chiefs of second through sixth class cities indicated that their agencies are primarily concerned with the enforcement of traffic ordinances, especially those relating to parking meters. Chiefs of fourth and fifth class cities, said they also enforced their city's business or occupational licensing laws. A third class city chief stated that his copy of the city ordinances was published in 1927.

The effectiveness of enforcement of city ordinances is generally determined by the city police department and by the content of the ordinances themselves. Some ordinances are quite antiquated. Other ordinances may be unpopular or place a strain on other law enforcement functions if the police attempt to enforce them. These ordinances may be either half-heartedly enforced or ignored altogether. In any event, the effectiveness of police protection under city ordinances depends on police department resources and policy.

Enforcement of Laws. Each level of government is responsible for the enforcement of the law; hence, the city police department, as well as the state, enforces the law within the city's limits. Most common law crimes in Kentucky are now codified in the statutes. Crimes are classified as crimes against: (1) the state and public justice,¹¹³ (2) property by force,¹¹⁴ (3) property by fraud,¹¹⁵ (4) persons,¹¹⁶ (5) morality,¹¹⁷ (6) public peace,¹¹⁸ and (7) public health and safety.¹¹⁹ These statutes are phrased in precise legal language, but police must understand them in order to enforce the law. The Committee on the Administration of Justice's questionnaire asked police chiefs whether they sought legal aid and, if so, from whom and concerning what subjects. All eighty responding police chiefs answered that they had, at times, sought legal aid. The frequency of the need for legal assistance ranged from "two to three times per year" to "approximately 125

¹¹³KRS ch. 432.

¹¹⁴KRS ch. 433.

¹¹⁵KRS ch. 434.

¹¹⁶KRS ch. 435.

¹¹⁷KRS ch. 436.

¹¹⁸KRS ch. 437.

¹¹⁹KRS ch. 438.

times per year." The sources of such aid are shown in Table IX. Since many chiefs used more than one source, the totals exceed the number of chiefs responding.

TABLE IX
PERSONS RENDERING LEGAL AID
TO CHIEFS OF POLICE

Sources	Class of City						Total
	1st	2nd	3rd	4th	5th	6th	
City Attorney -----	1	3	6	30	17	2	58
County Attorney -----	1	3	7	16	11	1	39
Commonwealth's Attorney -----	1	3	4	8	5	2	23
Other -----	1	-	3	3	1	-	8
Totals -----	4	9	20	57	34	5	128

The chiefs were also asked what type of problems they referred to legal counsel. Nine chiefs indicated that they sought legal advice on "various problems," while seven said they sought advice on "problems of law enforcement." Questions on the interpretation of statutes and ordinances was the reply of nine chiefs, while nine other chiefs answered that they sought advice on "any problem." Criminal cases constituted the largest type of problem presented to legal counsel, twenty-one chiefs giving this as their answer. Thirteen chiefs sought advice on search, seizure, raids, and warrants, and twelve on trials. Other answers listed new laws, alcoholic beverage control, and uncollected taxes. Twelve of the eighty responding chiefs did not answer the question.

Preservation of Peace. A city police officer's job, in the broadest sense, involves the preservation of peace. The adequacy of police performance of this job depends upon skillful administration.

For administrative purposes, the larger city police departments, such as Louisville and Lexington, are divided into three divisions: patrol, investigation, and traffic. Officers are perma-

nently assigned to duty in one division. The smaller departments usually have all officers responsible jointly for these duties. The police officer on patrol, however, continues to be the basic method of law enforcement.¹²⁰

Police patrol a city either by car or on foot. A prowl or beat car patrols a given area of a city and generally contains two men, whose duty is to follow a certain route and watch for actual or suspected crimes. The presence of a police car, thus, may deter a person from committing a crime; if he does, the car may be in a position to apprehend him quickly. Any criminal activity reported to the police station can be relayed by radio to officers in a car near the scene of activity. The other method of patrolling is by assigning one or two officers to walk a given beat. The foot patrolman can familiarize himself with the citizens of his area, the routines of the neighborhoods, and places where criminals may strike or have struck. He can contact the police station quickly by telephone when necessary. The mere fact, however, that an officer is on a foot patrol does not always mean that he will know the area well, and he is subject to fatigue and weather conditions, which may handicap the quality of his service and limit the extent of the area served.¹²¹

The Lexington police patrol is divided into three shifts. Twenty-nine officers patrol during the night shift, thirty during the day-morning shift, and twenty-nine during the day-afternoon shift.¹²² Middlesboro, a third class city, keeps three shifts of two men each on patrol at all times.¹²³ Paris, a fourth class city, keeps seven men on patrol during the day and five at night.¹²⁴ Fifth and sixth class cities report that at least one officer is on active police patrol duty during the night hours.¹²⁵

¹²⁰The beat originated from patrol posts, constructed according to military principles, that were established on the roads leading to London. After the London police were established, territory was divided according to the measurement of the ground and, later, on the basis of population. Cal. State Dep't of Education, *op. cit. supra* note 88, at 161.

¹²¹Schrotel, *Changing Patrol Methods*, 291 *Annals* 46, 48 (1954).

¹²²Interview with Maj. Wallace MacMurray, Ass't Chief, Lexington Police Dep't, in Lexington, Ky., Sept. 24, 1963.

¹²³Telephone interview with George Ridings, Chief, Middlesboro Police Dep't, in Frankfort, Ky., Sept. 24, 1963.

¹²⁴Telephone interview with Garlon S. Jordan, Chief, Paris Police Dep't, in Frankfort, Ky., Sept. 24, 1963.

¹²⁵Telephone interviews with Ass't Chief Watson, Jamestown Police Dep't, and Chief Hicks, Bardwell Police Dep't, in Frankfort, Ky., Sept. 24, 1963.

Investigation of Crimes. Police must also investigate crimes, and examination of the crime scene requires the application of modern criminal investigation techniques. There is, however, no generally accepted standard of training for criminal investigators.¹²⁶ Some detectives on Kentucky city police forces are graduates of the F.B.I. National Academy, the Southern Police Institute, or other schools that teach criminal investigation techniques. Other detectives are older police officers who learned investigation techniques by experience. In the smaller cities, there are no detectives, so the chief, an experienced policeman, or other person must make the investigation.

The Louisville and Lexington police forces have a detective bureau within the department. These bureaus are organized with police officers trained in investigation techniques and crime scene analysis. The detectives work in shifts to provide services to the department when needed. Lexington has ten detectives on duty during the day and eight on the night shift.¹²⁷ Other second class cities, such as Ashland, have trained detectives on the staff.¹²⁸ Telephone interviews with the chiefs of a third, fourth, fifth, and sixth class city, chosen at random, revealed that none of these departments had detectives. A third class city police chief indicated that, since he had no detectives, his officers conduct the investigations on an overtime or spare-time basis. A State Police detective is often contacted.¹²⁹ One fourth class city police department reported investigations are conducted by the chief, and, if necessary, the nearest State Police detective.¹³⁰ The fifth and sixth class cities contacted reported that they rely on the State Police detectives or the sheriff for criminal investigations.¹³¹

Evidence derived from an investigation of a crime may become the basis of the indictment and prosecution. Police investigations are, then, an important phase in effecting the eventual administration of justice. The Committee on the Administration of Justice's questionnaire asked Kentucky police chiefs when they

¹²⁶Kirk, *Progress in Criminal Investigation*, 291 Annals 54 (1954).

¹²⁷Interview with Maj. Wallace MacMurray, *op. cit. supra* note 122.

¹²⁸Telephone interview with Lewis Mutters, Chief, Ashland Police Dep't, in Frankfort, Ky., Oct. 7, 1963.

¹²⁹Telephone interview with George Ridings, *op. cit. supra* note 123.

¹³⁰Telephone interview with Carlon S. Jordan, *op. cit. supra* note 124.

¹³¹Telephone interviews with Chiefs Watson and Hicks, *op. cit. supra* note 125.

considered a case completed. Eight chiefs answered that they considered a case closed after completion of the investigation. Ten chiefs said their cases were considered completed when the cases were prepared for court, fifteen said after arrest and charging, and thirty-one chiefs replied that their cases were not considered completed until after the conclusion of the case before the judge and jury.

The results of a police investigation are invaluable to prosecutors. Attorneys for the Commonwealth, however, need not rely solely upon the police investigations for evidence. The Kentucky statutes require the Commonwealth's attorney in Jefferson County to appoint four detectives.¹³² These detectives have the same power of arrest as sheriffs, and must investigate the evidence and facts connected with criminal cases in the circuit court.¹³³ The Commonwealth's attorney in a county containing a city of the second class must appoint one district detective to investigate the evidence and facts of cases tried by the Commonwealth's attorney.¹³⁴ In counties containing a population of 40,000 or more, but not containing a city of the second class, the Commonwealth's attorney, with approval from the fiscal court, may appoint a district detective to aid in the investigation.¹³⁵ There are no statutes providing detectives for city or county attorneys.

Traffic Control. Toward the end of the Eighteenth Century, some city police departments employed bicycle-mounted officers to apprehend speeding cyclists. The advent of the automobile late in the Nineteenth Century increased the complexities of traffic supervision. Police used motorcycles to arrest speeding autos, horse-mounted police officers were frequently used for parking control duty, and foot officers were regularly assigned to direct traffic at intersections.¹³⁶

By 1925, about nineteen deaths were occurring for each hundred million vehicle miles of travel. Such a high rate of fatalities caused public indignation and a cry for more police control. Traffic congestion in larger cities became so clogged that automobile

¹³²KRS 69.110(1).

¹³³KRS 69.110(3).

¹³⁴KRS 69.110(2) and (3).

¹³⁵KRS 69.110(5).

¹³⁶Kreml, *The Specialized Traffic Division*, 291 *Annals* 63 (1954).

speeds were no greater than in the days of horse-drawn vehicles.¹³⁷ The public demanded from the police realistic enforcement measures.

The establishment of specialized police traffic divisions to meet the accident and congestion problems occurred in the late 1920's and the number of such divisions began increasing in the thirties. One authority describes this development of police duty as follows:

Enforcement action against violators involved in accidents became the rule rather than the exception. Reasonably reliable information as to times, places, and proximate causes of accidents was recorded and filed in usable form. Analysis of the accumulated data made possible an effective assignment of traffic personnel by time and place. Some traffic divisions consisted only of administrative staffs responsible for traffic planning, and in their staff capacity supplied traffic data to the uniformed forces; but most of the newly created specialized bureaus were centralized line operations.¹³⁸

This authority shows that, despite the tremendous increase in the number of automobiles on the highway, specialized police traffic divisions have brought about favorable results in safety. Cincinnati, Ohio, for example, adopted a specialized traffic division in 1936 when the death rate for 10,000 registered motor vehicles was 13.3; by 1952, the death rate was 3.8. Cleveland followed suit in 1937 with a specialized division and the death rate fell from 10.2 to 3.8. Chattanooga's death rate fell from 10.5 in 1938 to 2.4 in 1952.¹³⁹

The statutes regulate traffic and motor vehicle equipment on all highways, roads and streets.¹⁴⁰ Enforcement of these laws is one purpose of the State Police,¹⁴¹ but city police enforce state traffic laws as well as city traffic ordinances within their jurisdictions. A good traffic program has three main functions: accident investigation, traffic direction, and traffic law enforcement. Accident investigation requires that the policeman determine what

¹³⁷Smith, *Widening the Traffic Enforcement Front*, 291 *Annals* 73 (1954).

¹³⁸Kreml, *supra* note 146, at 64-65.

¹³⁹*Ibid.*

¹⁴⁰KRS ch. 189.

¹⁴¹See Chapter IX *infra*.

happened, who and what was involved in the accident, give first aid, summon medical help, prevent pilferage, direct traffic and bystanders, check the vehicles, take notes and measurements, search for witnesses, evaluate the proximate cause of the accident, and file a report to his supervisor. Traffic direction involves the regulation of drivers and pedestrians, especially during times of congestion and emergencies, directing and expediting the flow of traffic, and the setting up of special rules for unusual or unexpected traffic conditions or special events. Traffic law enforcement requires action: to prevent defects in vehicles, equipment, and roads, from endangering and inconveniencing the users of the streets and highways; to remedy the defects; and to discourage their repetition.¹⁴²

Louisville has a specialized police traffic division, whose personnel are especially trained for this work. Several of the officers are graduates of the Northwestern Traffic Institute. The Lexington Police Department also contains a specialized traffic bureau. Nineteen traffic officers are on duty during the day and ten officers during the night. Several of these men are graduates of the Northwestern Traffic Institute. During 1962, Lexington's traffic bureau issued 48,387 citations to traffic violators, of whom 12,133 appeared in police court, and 24,816 paid their fines at the traffic bureau.¹⁴³ Covington has a traffic division, under the command of a captain, assisted by a lieutenant and a sergeant, who supervise three men on motorcycles, one beat patrolman, nine patrolmen in cruisers, a clerk, nineteen school crossing guards, and three traffic maintenance men. Of 28,901 persons cited for traffic violations in 1962, 4,826 appeared in court and 24,075 paid fines at the traffic bureau.¹⁴⁴

Other cities have men who are permanently assigned to traffic duty, but have no organized traffic division. Middlesboro, a third class city, has one officer permanently assigned to traffic duties; however, during the busy hours for traffic, as many as three additional men are pulled from patrol work to assist him. On the weekends when traffic is heavy, the officers generally work over-

¹⁴²International City Managers' Ass'n, *Municipal Police Administration* 340-344 (4th ed. 1954).

¹⁴³Lexington Police Dep't, 1962 Annual Report 34.

¹⁴⁴Letter from John J. Bornhorn, Chief, Covington Police Dep't, to Ky. Att'y Gen. John B. Breckinridge, Oct. 18, 1963.

time.¹⁴⁵ Paris, Kentucky, a fourth class city, has no organized traffic division, but five officers are assigned traffic work during the day and the night-duty officers combine traffic with patrol. Two men are assigned to the school patrol, which relates to traffic safety, one part-time officer is stationed at a school crossing, one split-shift officer devotes his afternoon duty hours to traffic, and one full-time motorcycle officer checks the city's parking meters. During 1962, Paris had 264 automobile accidents injuring twenty-one persons and killing none.¹⁴⁶ Fourth and fifth class cities report that the bulk of their daylight work concerns traffic, parking meters, and school crossings.¹⁴⁷ In all cities, every police officer is charged, along with other responsibilities, with policing traffic.¹⁴⁸

Some city police agencies maintain a close working relationship to public activities, such as street construction, state highway work, sanitation, and public utilities. Co-operation in these fields may prevent traffic problems from arising and save money in terms of manpower hours expended. Modern developments, such as radar, co-ordinated traffic signals, and central control indicators for parking meters, also save police manpower, aid in the enforcement of traffic laws, and facilitate a smooth flow of traffic. School safety guards and extensive public education programs are a part of many cities' regular duties of traffic control.

OPERATION OF CITY POLICE FORCES

Co-operation with Other Police Units. Some police problems arise from overlapping jurisdiction, which may cause conflicts between police units, duplication of effort, or result in uneven patterns of law enforcement. The Committee on the Administration of Justice's questionnaire asked the city police chiefs whether city and county law enforcement agencies should be consolidated. Eleven chiefs responded "yes," ten of these chiefs being in fourth and fifth class cities. Sixty chiefs responded "no." One chief said that "we would give better law enforcement if all law enforce-

¹⁴⁵Telephone interview with George Ridings, *op. cit. supra* note 123.

¹⁴⁶Telephone interview with Garlon S. Jordan, *op. cit. supra* note 124.

¹⁴⁷Telephone interview with Watson and Hicks, *op. cit. supra* note 125.

¹⁴⁸See Holcomb, *Traffic Police in the Small City*, 11 *Traffic Q.* 332 (July 1957).

ment agencies of a county were under one head." Another felt that consolidation would "provide better coverage and would help reduce expenses on both the county and the city." One chief thought that consolidation would have the advantage of central records and less conflict on investigations, while another said consolidation "would eliminate a lot of red tape and confusion." One chief cited "increased manpower" as his reason for favoring consolidation.

Of the sixty chiefs opposed to consolidation of city and county law enforcement units, eleven stated that they had present cooperation with county officials, so that consolidation was unnecessary. Eleven other chiefs stated that present law enforcement needs in the city and the county are met, thus there is no need for consolidation. Three chiefs cited "conflict of jurisdictions," "confusion," and "lack of efficiency" as reasons for opposing consolidation. One of these three chiefs stated that "the county officials are not trained and experienced as city police officers, so you would have a great difference in law enforcement." One third class city police chief was opposed to consolidation "because I feel that the city or county would be neglected from time to time; and I don't believe the city taxpayers would approve of city police working fifteen miles out in the county."

Co-operation is necessary between city and county agencies so both units can operate effectively and without jealousy or competition. The sheriff, for example, has jurisdiction co-extensive with the county and is legally authorized to act within the city limits.¹⁴⁹ The committee's questionnaires asked the police chiefs if the city police and the sheriff co-operated within the city limits. Of the seventy-eight responses, all but four indicated that there was co-operation between the offices. Twelve chiefs said co-operation existed in all phases of their work, eight chiefs said in warrants and apprehension of criminals, and seven said in law enforcement and investigation. Thirteen chiefs indicated that there was co-operation between the two agencies, but stated that the sheriff operated in the city "on request only." Four police chiefs, one from a third class city and three from a fourth class city, answered that there was no co-operation between the sheriff's office and the department.

¹⁴⁹See Chapter II *supra*.

Co-operation with State Agencies. Another question asked of the chiefs by the committee was whether aid was ever sought from the Kentucky State Police, and, if so, under what circumstances. Of the seventy-six replies, sixty-nine indicated "yes," while only seven stated that they never sought aid from the State Police. Eleven chiefs said they sought aid whenever needed, nine sought aid in the technical aspects of law enforcement, and forty-two sought aid in traffic cases, investigation, felonies, and in numerous other specific crimes and areas of general law enforcement.

When asked if Kentucky State Police officers should have the power to arrest within the city limits, without the city's invitation, the chiefs split sharply. Forty-two answered "yes," while thirty-five chiefs answered "no." Most chiefs did not give reasons for their answers, but the few given merit consideration. The chiefs in the thirty-three responding fourth class cities split thirteen for, and twenty against, giving the State Police the powers to arrest within the city. One fourth class city police chief, in arguing for State Police power to arrest in the cities, said, "in most cases they are better qualified and have more facilities for making investigations." Another fourth class city chief, in agreeing, gave his reason as:

Because some cities are not properly policed and most are short of men and a violation of law is no different in a city than in a rural area. If city officials are interested in strict law enforcement, there should be no objections to state police making arrests in the corporation limits.

The fifth class city chiefs split nineteen to eight in favor of the State Police arresting in cities. One chief said that the State Police "are impartial at times when local people cannot be." Another stated that "most small cities cannot afford the manpower they need."

Of those chiefs opposed to the State Police possessing power to operate in cities without invitation, one third class city police chief stated that such a power "would cause bad relationship" between the two agencies. A chief of a fourth class city said that this power "provides too great an opportunity for Big I and Little U." Another fourth class city police chief said that the State Police already invade the city's province and make raids

without first notifying the local police agency. The chief also stated that the State Police have little or no regard for the city officials, and that "if this practice continues, it will mean a wholesale breakdown of law enforcement in the community."

One chief summarized the problem by stating that "the State Police, sheriff, and city police all have a common interest in protecting citizens and property." He feels that co-operation is possible: "All this would take is unselfish dedication to police work and quit the practice of grandstanding and helping another legal section reap profit at the expense of the city."

Many laws in Kentucky are enforced by both state and local levels of government. For such enforcement to be manifested adequately, co-operation is imperative even if duties overlap or conflict. The chiefs were asked whether they were called upon by administrative state agencies to aid in enforcing the laws of the state. Forty-five chiefs responded that they had been contacted by state agencies to assist in enforcing the laws; twenty-nine answered "no." Forty of the forty-five chiefs answering "yes" stated that they were always ready to assist.

When asked if the city police's duties overlapped or conflicted with the duties of any state agencies, the chiefs overwhelmingly answered "no." Sixty-eight of seventy-six responding chiefs stated that there were no duties that overlapped or conflicted. One third class city police chief stated, however, that he had a conflict with state agencies "on investigations," but he gave no further details. Three fourth class city chiefs and one fifth class city chief said that there was an "overlapping because of state and local duties" in their respective areas. Other chiefs said overlapping occurred in the fields of traffic, raids, and stolen cars.

Suggestions for Revision of Office. The Committee on the Administration of Justice asked police chiefs to make suggestions for the improvement of city police. Since many of the answers were similar, the responses have been classified as follows:

Codification of laws for policemen, with removal of unessential technicalities -----	2
Education, co-ordination, and co-operation of police units-----	14
Revision of the laws on arrest and search and seizure-----	7

Civil service and merit boards, including mandatory retirement	10
Stricter parole and probation laws.....	4
Manual for peace officers.....	1
No changes necessary.....	10

One chief argued for a law enabling the police to hold a subject for forty-eight hours, so that the department could check an out-of-state warrant and the record on the subject held. Another chief suggested that changes need to be made in the area of juvenile delinquency. One chief said he needed "better facilities for handling minors [and] more stringent laws in order to hold parents reasonably responsible for their children's acts." The other chief suggested that "city courts be allowed to handle juveniles as adults."

Most police chiefs offered single suggestions for the revisions of the city police system. One chief, however, submitted a list of suggestions which are as follows:

1. Detailed qualifications, set forth by statute for all police applicants.
2. A detailed merit or civil service system, required by statute to be adopted by all cities regardless of class.
3. A minimum salary set by statute, applicable to all cities regardless of class.
4. A non-political permanent safety board to act as the governing body of the police department and the buffer between elected officials and the department.
5. A state organization, such as the Fire Marshal's Office, to set standards of equipment, buildings, number of police, etc., for all municipalities.

City police departments must cope with administrative and policy problems which are not unique to Kentucky, but are common to most law enforcement agencies. The adequacy of law enforcement depends upon the quality and training of police personnel, the availability of equipment, and the attitude of the public. There is no single solution for problems of law enforcement. Clarification of some technical aspects of the laws might be helpful. A revision of the standards and qualifications for

peace officers and an increase in their compensation might raise their quality of service. More funds for equipment and a campaign to educate the public to support law enforcement efforts probably would be beneficial. The initiation of minimum, state-wide training requirements and expansion of training facilities has upgraded police work in some states. City police constitute the largest law enforcement group in Kentucky and their problems are central to improving the administration of justice.

VII. County Police

HISTORICAL BACKGROUND

Some states have authorized county police forces to supplement the traditional sheriff-constable system. County police forces are independent of the sheriff and are under the control of another officer or agency, such as the county judge or a county legislative board.¹ They have been established most often in metropolitan counties, where the traditional county law enforcement system may not be adequate.

Kentucky is one of the states which authorize county police. Kentucky's statute originated as a fugitive slave law, enacted in 1799.² The original statute authorized the county courts to appoint a five-man county patrol to patrol the county and to "visit negro quarters and other suspected places of unlawful assemblies of slaves. And any slave found at such assembly, or who shall be found strolling about from one plantation to another, without a pass from his or her master, mistress, or overseer, shall receive any number of lashes on his or her bare back, at the discretion of the captain of the patrol, not exceeding ten. . . ."³ The same statute specified the wages and hours of the county patrol. The present county police law developed through subsequent modification and development of this early statute.⁴ Kentucky has four county police forces, all in counties containing a first or second class city.

COUNTY POLICE IN KENTUCKY

Appointment and Qualifications. Any county court may establish and maintain a county police force within its respective county to have jurisdiction co-extensive with the entire county.⁵ The county court consists of the county judge.⁶ He appoints

¹See Smith, *Police Systems in the United States* 105-108 (Rev. ed. 1949).

²See *National Surety Co. v. Hester's Adm'r.* 241 Ky. 623, 44 S.W.2d 563 (1931).

³2 *Littrell's Laws Ky.* 264-265 (1798-1801).

⁴See *National Surety Co. v. Hester's Adm'r.*, *supra* note 2.

⁵Ky. Rev. Stat. § 70.540 (1963) [hereinafter cited as KRS].

⁶Ky. Const. § 140; KRS 25.110, 25.120.

members of the county police force, which may consist of a chief and such members and employees as the county judge deems proper. Members are appointed for one-year terms, unless the judge removes them for neglect of duty or improper conduct.

Members of the county police force are required by statute to be citizens of the United States, at least twenty-one years old, and must have resided in the county at least one year prior to appointment. It is further specified that "none but discreet and sober persons shall be appointed to any position on said county police force."⁷ The county court is empowered to make rules providing for the appointment, promotion, suspension, removal and other action relating to county police and to regulate hours of work and to provide for the organization of the force.⁸ The fiscal courts must fix the salaries of county police force members, subject to certain statutory maximums.⁹

Merit Systems. An alternative county police system is authorized by statute. The fiscal court may, by order, establish a county police force merit system and a merit board, and appropriate money for the reasonable expenses of the board.¹⁰ The county judge, subject to the fiscal court's approval, appoints four persons to the board and serves as an *ex-officio* member. Board members serve four-year, staggered terms, subject to removal for cause by the fiscal court. They serve without pay.¹¹ The duties of the merit board are: ". . . to classify and examine applicants seeking employment as officers or employees of the police force of the said county, and in addition to promulgate rules and regulations governing the classification, qualification, examination, appointment, promotion, demotion, fine, suspension and other disciplinary action within the said county police force."¹² All county police officers and employees must be covered by the merit system, which was extended in 1962 to include chiefs and assistant chiefs.¹³ Political activity is prohibited and members may not contribute to political parties or be concerned "with any

⁷KRS 70.540.

⁸KRS 70.550.

⁹KRS 70.560.

¹⁰KRS 78.405.

¹¹KRS 78.410.

¹²KRS 78.405(1).

¹³KRS 78.425; Ky. Acts ch. 280, § 1(5) (1962).

actions involving political or religious controversies or prejudices."¹⁴ The board is specifically required to promulgate regulations covering the physical, mental, educational, citizenship and age requirements for personnel, and competitive examinations to determine the fitness of candidates.¹⁵

The four county police systems in Kentucky are under the merit system. Jefferson County, for example, adopted the system soon after the law was enacted, although Kenton County did not create a merit board until April 1961. In Kenton County, there are two Republicans and two Democrats on the board; by occupation, the four members are all businessmen.¹⁶

The requirements for appointment to the force vary among the counties. The Chief of the Fayette County Police indicated that his men had to have a high school education or equivalent before they were considered for appointment.¹⁷ The Jefferson County Police require that the patrolmen be twenty-one to thirty-six years of age, live within fifty miles of the Jefferson County Courthouse and in Kentucky, weigh in proportion to his height, a minimum of 5 feet 9 inches tall, take a comprehensive written examination, an intelligence and psychological test, a physical examination, and, finally, be interviewed by the merit board and the chief.¹⁸ Kenton County Police applicants must be between twenty-one to twenty-nine years old, with a high school education or equivalent, and must score 70 per cent on a comprehensive examination. Appointment is based on the merit system.¹⁹ The Campbell County Police Department also hires its recruits on a merit system, using men trained in auxiliary police work. All county police officers, before they assume their duties, must take an oath before the county court judge ". . . to faithfully, impartially and diligently perform the duties of their respective offices."²⁰

¹⁴KRS 78.435.

¹⁵KRS 78.440(2).

¹⁶Telephone interview with James E. Callahan, Chief, Kenton County Police Dep't, in Frankfort, Ky., Aug. 2, 1963.

¹⁷Telephone interview with John Kersey, Chief, Fayette County Police Dep't, in Frankfort, Ky., July 2, 1963.

¹⁸Telephone interview with Thomas R. Holsclaw, Chief, Jefferson County Police Dep't, in Frankfort, Ky., July 2, 1963.

¹⁹Telephone interview with James E. Callahan, Jr., Chief, Kenton County Police Dep't, in Frankfort, Ky., July 3, 1963.

²⁰KRS 70.540.

Compensation. The statutes set maximum salaries for county police, based on the population of the county: in counties with a population of over 70,000, the maximum annual salary ranges from 2,400 dollars for a patrolman to 3,600 dollars for a chief; in counties with a population of 25,000 to 70,000 the maximum is 1,800 dollars, and in other counties the salary is 25 dollars.²¹ This salary schedule was attacked in court as irrational class legislation, but this contention was rejected and the statute's constitutionality upheld. The Court of Appeals said that:

Some men are willing to serve in public office as a contribution to government or for the honor or distinction where the monetary consideration is absent or negligible. Other men serve for power or prestige. We have at least ten boards and commissions appointed by the Governor who receive no compensation for their services, and a number of others who receive a small per diem.

Probably what was in the legislative mind in enacting this statute was that in the less populous counties the police would be needed for exceptional occasions or in emergencies to supplement the sheriff's force. There is nothing in the statute requiring a county patrolman to devote his full time to the duties of the office, and if the rules and regulations do not otherwise provide, it need not interfere to any material extent with his private business or calling.²²

The statute authorizing a county police force merit system was enacted in 1952.²³ The Court of Appeals held that it superseded Ky. Rev. Stat. § 70.540 and that there was no legal prohibition against the compensation of county police being changed by the fiscal court.²⁴ Thus, county police who are under a merit board are not subject to the statutory salary maximum.

The pay scales of Kentucky's four county police forces are shown on page 109.

²¹KRS 70.560.

²²Metcalf v. Howard, 304 Ky. 498, 508, 201 S.W.2d 197, 202 (1947).

²³Ky. Acts ch. 141 (1952).

²⁴Foster v. Buchannan, 253 S.W.2d 377 (Ky. 1952).

TABLE X

SALARY SCALES OF COUNTY POLICE FORCES

Rank of Policemen	Jefferson County	Fayette County	Kenton County	Campbell County
Officer	\$4380-5460	\$3480-3840	\$4720	\$3690
Sgt.	6000	4020	4820	4410
Lt.	6480	4200	-----	4530
Capt.	6900	-----	4990	-----
Asst. Chief	8000	4800	5400	-----
Chief	10000	6120	5920	5050

Size of Force. The size of Kentucky's county police forces varies. Jefferson County, which has a population of 610,947, has a county police force of 227 police officers and 75 school guards, or a total complement, including civilian office help, of 309. This means there is one officer for every 2,691 individuals in Jefferson County. Fayette County has a population of 131,906, and a county police force equalling thirty-six, or one officer for every 3,664 inhabitants. The Kenton County Police has a force of twenty-one men for 120,700 people in the county, or one officer for every 5,748 persons. The population of Campbell County is 86,803 and it has thirteen county police officers, making one officer for every 6,677 persons.

The Jefferson County Police Department seems to be the best equipped. Operating under a 1.3 million dollar budget, the department has a fleet of eighty-eight cars classified as beat cars and traffic cars. The beat cars are ranch wagons, and are equipped with two stretchers, fire extinguishers, riot gun, oxygen, leg and arm splints, and full first-aid supplies. The force has twenty traffic cars equipped the same as the beat cars, except without the riot gun and the stretchers.²⁵

²⁵Telephone interview with Thomas R. Holsclaw, Chief, Jefferson County Police Dept., in Frankfort, Ky., July 2, 1963; Letter from Thomas R. Holsclaw, Chief, Jefferson County Police Dept., to K. Att'y Gen. John B. Breckinridge, Nov. 2, 1963.

POWERS AND DUTIES OF COUNTY POLICE

Jurisdiction. The county police force is a law enforcement agency in addition to the sheriff. Telephone interviews with three of the four Kentucky county police chiefs indicate that most law enforcement functions of those counties are performed by the police, and that the sheriff's activities are concerned primarily with collecting taxes, serving subpoenas, summonses and notices in civil cases, and furnishing bailiffs for the court. It should be noted, however, that the sheriff of one of these counties said in a questionnaire that 45 per cent of his office's work is concerned with criminal matters. This indicates that sheriffs and county police may not be fully informed about each other's work. In the fourth county, the sheriff and the county police chief report that they both perform law enforcement work. In this county, however, the sheriff states that his work would be mostly civil in nature if the county police were doing their job properly. Thus, in two of the four counties, there seems to be inadequate coordination between the sheriff and the county police force.

Since the jurisdiction of the county police forces is co-extensive with the county, there is a possibility of friction between the county department and the city police departments. However, according to the county police chiefs, no friction seems to exist. Two county police forces report that, as a matter of policy, they stay out of the city if possible. These cities, of course, have their own police forces. The county police report that they contact the city police when it is necessary for the county to operate within the city limits; hence, there is no inter-departmental conflict or friction. One county police force is so small that it must rely on the city and state police to aid it in its law enforcement work. In a case involving the removal of a county police chief for neglect of duty, the court held that:

We will assume that the Campbell County Court had authority to issue reasonable orders to obtain the most beneficial result from its patrol. However, such orders cannot relieve appellant of his statutory duty to enforce the law throughout all areas of Campbell County.²⁶

The order had directed the county patrol to regularly patrol

²⁶Stuart v. Combs, 360 S.W.2d 144 (Ky. 1962).

the unincorporated areas, and to assist the police in incorporated areas when called on by the chief of police, if personnel permitted. The statutes and the courts require the county police to operate throughout the county, but, as a practical matter, county police concentrate their operations in unincorporated areas.

Powers and Duties. The county police officers are statutory peace officers and conservators of the peace, and they have the same power and right to arrest, search and seize as does a sheriff.²⁷ As peace officers, they may make an arrest in obedience to a warrant, or without a warrant when a felony or misdemeanor has been committed in their presence, or where they have reasonable grounds to believe the person being arrested committed a felony.²⁸ County police have some specific statutory duties. They must enforce the provisions of the motor carriers chapter of Kentucky's statutes,²⁹ and make arrests for violations of those provisions, with a warrant or summons, or without a warrant if the offense was committed in the officer's presence.³⁰

The provisions authorizing a license for establishments selling liquor-by-the-drink,³¹ and liquor-by-the-package,³² imply that the county police are to patrol these businesses. The sheriff, deputy sheriff, and county policemen of each county are required to visit regularly places of entertainment,³³ and to arrest without warrant upon observing either the owner or the manager violating the statutes relating to such places.³⁴

County Police in Other States. Information on the number of county police forces in other states is not available. A number of states do, however, authorize such forces. Two examples are given here.

In Virginia, the circuit judge of any county may appoint special policemen, upon application, to patrol any part of the county which is not within an incorporated town.³⁵ In counties

²⁷KRS 70.570.

²⁸KRS 431.005(1).

²⁹KRS ch. 281.

³⁰KRS 281.765.

³¹KRS 243.230(1).

³²KRS 243.230(2).

³³KRS ch. 231.

³⁴KRS 231.130.

³⁵Code Va. § 15-562 (1950).

having a population of 35,000 or more and adjoining two cities with a population of not more than 45,000, the sheriff may appoint a special police force.³⁶ These officers are conservators of the peace, having general police authority within the unincorporated portions of the county.

South Carolina has a variety of local legislation providing for county police department appointments. Examples of the different systems are as follows: (1) The county council appoints residents of the county to the county police force;³⁷ (2) The county police force is elected directly by the county legislative delegation;³⁸ (3) The county police force is elected by a seven-member county police commission, which commission is appointed by the Governor upon recommendations from the senator and members of the house of representatives from the county;³⁹ (4) The county rural policemen are appointed by a seven-member police commission, consisting of the sheriff, who is *ex-officio*, and six members selected from the county upon recommendation of the county legislative delegation and appointed by the Governor;⁴⁰ (5) The sheriff appoints the rural police officers;⁴¹ (6) The county rural peace officers are appointed by the sheriff with approval of the county legislative delegation;⁴² (7) The sheriff recommends, and the Governor appoints, the rural county police officers.⁴³ The powers of rural police forces are also specified separately for each South Carolina county.

COUNTY AUXILIARY POLICE FORCE

In 1962, a statute was enacted authorizing the fiscal court of any county to establish or abolish an auxiliary police force

. . . to perform duties within the county upon such terms and conditions as the fiscal court deems proper. The order shall prescribe the number of officers and men of such force, the manner of their appointment, and the rules and regula-

³⁶Code Va. § 15-574 (1950).

³⁷S.C. Code of Law §§ 53-371, 53-372 (1962).

³⁸S.C. Code of Law § 53-631 (1962).

³⁹S.C. Code of Law §§ 53-411, 53-412, 53-416 (1962).

⁴⁰S.C. Code of Law §§ 53-511, 53-512 (1962).

⁴¹S.C. Code of Law §§ 53-391, 53-392, 53-395 (1962).

⁴²S.C. Code of Law § 53-441 (1962).

⁴³S.C. Code of Law § 53-464 (1962).

tions that shall govern the powers and duties of the members of such force, including the power of arrest.⁴⁴

The language of this statute is similar to a 1960 law which authorized auxiliary police in certain cities.⁴⁵

Apparently, auxiliary police have existed even prior to this statute. In Fayette County, there has been an auxiliary police force for a number of years. Its membership is composed of businessmen and other citizens. Its function is to aid the county police in community activities where regular personnel would be unable to provide adequate law enforcement. This system of police forces has worked satisfactorily since its inception.⁴⁶ Kenton County is presently contemplating the creation of an auxiliary police force to aid law enforcement in the county during fires, floods, epidemics, and other emergencies, and to augment the county police when a substantial number of its officers are incapacitated.⁴⁷

Kentucky's four county police systems are all in heavily populated areas. City police generally operate only within incorporated limits of the city, and the sheriff's law enforcement activities may be restricted by his other duties. The county police, while they have county-wide jurisdiction, operate primarily to provide modern police services outside the major cities.

⁴⁴KRS 70.545.

⁴⁵KRS 95.445.

⁴⁶Interview with John Kersey, Chief, Fayette County Police Dep't, in Covington, Ky., July 31, 1963.

⁴⁷Telephone interview with James E. Callahan, Chief, Kenton County Police Dep't, in Frankfort, Ky., Aug. 2, 1963.

VIII. Peace Officers

Preceding chapters have discussed the powers and duties of sheriffs, constables, jailers, coroners and policemen. All of these are designated peace officers and exercise the powers of such officers, in addition to the authority of their particular offices. Kentucky law also names various other state and local officials as peace officers. These specific designations are found throughout the statutes.

PERSONS EMPOWERED TO ACT AS PEACE OFFICERS

Section 446.010(19) of the Ky. Rev. Stat., which concerns the construction of statutes, says: "As used in the statute laws of this state, unless the context requires otherwise: . . . '*peace officer*' includes sheriffs, constables, coroners, jailers, marshals, policemen and other person with similar authority to make arrests; . . ." Statutes which designate other categories of persons as peace officers are summarized below. This summary is limited to persons who are designated peace officers, or who are given the powers of peace officers.¹

State Departments and Agencies. A number of state departments and agencies are given the power to designate employees as peace officers. In most cases, the powers of such employees are limited to specific circumstances. These departments are discussed at greater length in Chapter X.

Department of Agriculture personnel employed to enforce the dog and livestock protection laws have all the powers of peace officers in enforcing these laws, and may enter upon any premises for the purpose of investigation.² Local sealers of grain warehouses, designated by the Kentucky Department of Agriculture,

¹Ky. Const. §§ 113, 140, 142 specify that judges of the Court of Appeals, county judges and justices of the peace shall be "conservators of the peace" by virtue of their offices; for purposes of this study, however, conservators of the peace are not considered as peace officers.

²Ky. Rev. Stat. § 258.105 (1963) [hereinafter cited as KRS].

have the authority of peace officers with respect to enforcement of grain warehouse laws.³

The Commissioner of the Kentucky Department of Aeronautics and employees designated by him are peace officers and are specifically empowered to arrest any person found violating any aviation statute or any civil air regulation promulgated by the Federal Aviation Agency. The commissioner may designate any officer or employee of an airport board or governmental unit as a peace officer in regard to enforcement of aviation laws and regulations promulgated by such boards or units.⁴

Department of Health personnel have peace officer authority in connection with various statutes. The investigators, inspectors, representatives and agents of the State Board of Health and the Department of Health have "the full power and authority of peace officers in this state, and shall have the power and authority to administer oaths, to enter upon premises at all times for the purpose of making inspections, to seize evidence, to interrogate all persons, and to require the production of books, papers, documents or other evidence" for the purpose of enforcing the medical licensure laws,⁵ laws relating to amphetamine drugs,⁶ narcotic drugs,⁷ barbiturates,⁸ and podiatry.⁹

Kentucky Alcoholic Beverage Control Board administrators and field representatives "shall have the full police powers of peace officers. . . . They may inspect any premises where alcoholic beverages are manufactured, sold, stored or otherwise trafficked in, without first obtaining a search warrant. They may confiscate any contraband property."¹⁰

The Department of Finance may designate custodians and night watchmen to have the powers of peace officers in guarding state property.¹¹ If the State Fair Board is unable to arrange with a city, county or state authority for police protection, the board may appoint necessary special police for the state fair grounds,

³KRS 251.120.

⁴KRS 183.110.

⁵KRS 311.605(5).

⁶KRS 217.790(2).

⁷KRS 218.190(2).

⁸KRS 217.531(2).

⁹KRS 311.495(2).

¹⁰KRS 241.090.

¹¹KRS 433.500(2).

who shall have the powers and duties of peace officers.¹² Collectors of tolls on any bridge or ferry owned or operated by the state have powers of peace officers, but such power is expressly limited to public offenses committed on such bridges, ferries and the approaches thereto.¹³

The Department of Parks may commission the chief custodian of each state park and other employees, as necessary, as park patrolmen. Such employees shall have all the powers of peace officers within the boundaries of any state park.¹⁴

A few other departments have peace officers. All Department of Corrections employees have the power of peace officers while maintaining custody over prisoners.¹⁵ The Department of Motor Transportation may commission its employees as peace officers in respect to enforcing all laws relating to motor vehicles.¹⁶ The Division of Boating in the Department of Public Safety may designate officers and employees as peace officers.¹⁷ The Commissioner and officers of the Department of Public Safety are vested with peace officer powers.¹⁸ The Kentucky State Police is discussed in Chapter IX *infra*.

The Commissioner of Fish and Wildlife Resources may designate conservation officers or other persons to have many of the powers of peace officers, although they are not specifically named as such. These persons may arrest without warrant, and may require aid in arresting persons violating fish and wildlife laws, and may seize contraband without process.¹⁹ Forest wardens of the Department of Conservation may arrest without warrant persons who are violating forest protection laws and may also summon any adult male to assist in fighting forest fires.²⁰

Local Officers. In second class cities, the mayor and council members ". . . shall have and exercise such powers as conservators of the peace as are prescribed by statute or ordinance."²¹ In

¹²KRS 247.150.

¹³KRS 180.330(1) and (2).

¹⁴KRS 148.055.

¹⁵KRS 196.037.

¹⁶KRS 281.770.

¹⁷KRS 235.310(1).

¹⁸KRS 16.060.

¹⁹KRS 150.090(1).

²⁰KRS 149.090(1) and (2).

²¹KRS 84.340(5).

third and fourth class cities, the mayor is a conservator of the peace and has statutory power to summon any citizen into service when he considers it necessary for law enforcement. The mayor must be present in such cases and must command in person.²²

In first class cities, alcoholic beverage administrators and their investigators shall have "full police powers of peace officers."²³ Sinking fund employees in first class cities may be designated by the Board of Commissioners as peace officers, with powers co-extensive with the county in the enforcement of ordinances.²⁴ In counties containing a city of the first two classes, the county judge may appoint a chief probation officer and other juvenile court personnel, who shall be peace officers, "with all the powers of the sheriff in making arrests and carrying out the purposes of this chapter [on juvenile courts]."²⁵

Directors of pupil personnel of school districts and their assistants shall have the powers of peace officers, but shall not have the authority to serve warrants. They may "do whatever is necessary to enforce the laws relating to compulsory attendance and employment of children of compulsory school age."²⁶ Humane Society agents have the powers and duties of peace officers in enforcing laws to prevent neglect of children.²⁷ An officer of a house of reform and any peace officer or citizen may arrest, without warrant, and return to the institution, any child who escapes from a house of reform or a home where he has been placed on parole.²⁸ Court-appointed supervisors of parents who are charged with desertion or abandonment of children are given "the same power of arrest and the same power to execute process as a sheriff."²⁹

Certain other officials, while not named peace officers, are given peace officer powers. District detectives, appointed by Commonwealth's attorneys in counties with a population of 40,000, "shall have the same powers of arrest and right to execute process

²²KRS 82.250, 86.200(3).

²³KRS 241.170(1).

²⁴KRS 91.140(4).

²⁵KRS 208.320.

²⁶KRS 159.130.

²⁷KRS 405.050(1).

²⁸KRS 440.060.

²⁹KRS 405.110.

as sheriffs have."³⁰ Election officers may arrest persons who violate election laws, if there is reason to fear that the offender will escape before indictment.³¹

Special Peace Officers. The Governor is empowered to appoint special local peace officers for as long as he deems necessary, "to preserve the peace and protect the property of any person from waste and destruction." The property owner requests that a person be appointed. The Governor may appoint the special officer if he meets the qualifications of a non-elective peace officer. Such officers are used by businesses as gate guards, plant guards or plant patrols. They are usually hired by the several protection services and agencies operating in Louisville, and then the service is contracted out to businesses. A separate statute empowers railroad companies to apply to the Governor to appoint persons named by the company as railroad policemen.³²

The duties of such officers are confined to the premises of the property to be protected.³³ Thus, the local officer has all the peace officer duties and authority within this area. The officer may, however, leave the premises in pursuit of a person who has committed an act of violence or destruction of the property, and arrest him anywhere within the state. He may, as any other citizen, carry a pistol so long as it is not concealed on or about his person.³⁴ The special local peace officer may wear any badge or insignia designating him as such, but he may not impersonate or represent himself as a public police officer, nor may he perform any of the duties of a public peace officer, except on the property he is protecting. A municipality that wants to employ a special policeman, for example, a merchant policeman, must abide by the provisions in the statute requiring appointment by the Governor and payment by the state; otherwise his employment is invalid.³⁵ In order for the officer to exercise his specifically designated duties, he must have been properly employed. A Commonwealth's attorney, a county attorney, the Attorney General or any three

³⁰KRS 69.110.

³¹KRS 124.290.

³²KRS 277.270(1).

³³KRS 61.360(2).

³⁴KRS 435.230; *Smith's Adm'r v. Corder*, 286 S.W.2d 512 (Ky. 1956).

³⁵*Walker v. Rosser*, 305 S.W.2d 755 (Ky. 1958).

citizens may petition in equity for the removal of such an officer who is serving in violation of the statutes.³⁶

If any person unlawfully performs functions of a special local peace officer, he "shall be fined not less than 100 nor more than 500 dollars or imprisoned in the county jail for not more than six months, or both."³⁷ If the special local peace officer performs acts exceeding his authority, or otherwise violates the statute under which he was appointed, he is subject to a fine of 10 to 100 dollars, five to thirty days in jail, or both.³⁸ The Governor may, at the request of the property owner, remove any officers so appointed.³⁹

In summary, a variety of persons are designated as peace officers, or may be named as such by the Governor or other public officer. In most instances, these persons may act as peace officers only in connection with particular statutes or law enforcement activities.

QUALIFICATIONS

The qualifications of elective peace officers are set by constitution. They must be at least twenty-four years old and have lived one year in the county and two years in Kentucky.⁴⁰

Qualifications of non-elective peace officers are set by statute. No person may serve as a deputy sheriff, constable, patrol or other non-elective peace officer: (1) unless he is a United States citizen and at least twenty-one years old; (2) unless he has resided at least two years in the county where appointed; (3) who has been indicted or convicted for a crime involving moral turpitude; (4) who has, within two years, acted in any capacity "as an active participant in any labor dispute"; (5) and until he has filed his photograph and an affidavit of his eligibility with the county clerk.⁴¹

The courts have held, that a peace officer who fails to file a photograph or affidavit is still a *de facto* officer and may make

³⁶KRS 63.180.

³⁷KRS 61.300(3).

³⁸KRS 61.360(5).

³⁹KRS 61.360(1).

⁴⁰Ky. Const. §§ 100, 101.

⁴¹KRS 61.300. Ky. Const. § 234 also requires that all district, city, county or town officers reside within their respective districts, counties, cities or towns.

arrests.⁴² "A mere irregularity in the qualification of an officer, or in the attempt to qualify, where he has entered upon the discharge of his duties, can not be inquired into in a collateral proceeding, for the purpose of invalidating his right or title to the office. . . ."⁴³

The qualifications of special local peace officers are investigated by the Department of Public Safety, after application to the Governor for appointment of such officers.⁴⁴ Whenever a property owner desires such a peace officer, he applies for such service, requesting that a certain man be appointed. The applicant files two forms, one in the county clerk's office, and the other in the office of the Department of Public Safety, along with a required 5 dollar fee.⁴⁵ A comprehensive qualifications and background investigation is then undertaken by the department, involving checks of local police and F.B.I. records. Due to such an extensive investigation, the 5 dollar fee for expenses actually covers very little of the total cost of a full background investigation.

From this investigation, the department recommends to the Governor whether to appoint the applicant. The recommendation is negative in about 10 per cent of the cases, usually involving applicants from the smaller firms and agencies. The Governor generally follows the recommendation of the department. If appointed, the Governor's commission is for four years, and this vests the officer with the duties specified in the statute.

COMPENSATION

Kentucky Revised Statutes § 61.310, the statute governing the compensation of peace officers, does not apply to those appointed under Ky. Rev. Stat. §§ 61.360, 277.270, or those employed by a board of education. This statute prohibits peace officers from: (1) receiving "any compensation or remuneration, directly or in-

⁴²Layne v. Commonwealth, 254 S.W.2d 724 (Ky. 1953).

⁴³Creighton v. Commonwealth, 83 Ky. 142 (1885).

⁴⁴Telephone interview with the Kentucky Bureau of Personnel, Dep't of Public Safety, Frankfort, Kentucky, July 19, 1963. Checking with this bureau and the Governor's office indicates that the qualifications investigation was early delegated by the Governor to other offices. The Kentucky Bureau of Personnel, Dep't of Public Safety, received the investigation job from the Office of the Adjutant General around 1955.

⁴⁵KRS 61.360(1).

directly, from any person for the performance of any service or duty"; or acting as a private guard or watchman.⁴⁶ Principal peace officers are prohibited from appointing any deputy who violates these provisions. Violation of this statute makes a peace officer subject to removal from office and to fine and imprisonment. Peace officers may receive only such compensation as is paid out of public funds in the manner provided by law.

Special local peace officers are paid from funds provided by the firm or agency for which they work. These firms or agencies pay into the Commonwealth's funds an amount equal to the officer's take-home pay and the officer is paid by check of the State Treasurer.⁴⁷ The table below shows the total salaries received and paid out by the Commonwealth for the past three fiscal years.

TABLE XI
SALARIES OF SPECIAL LOCAL PEACE OFFICERS

Fiscal Period	No. of Officers	Total Payrolls Paid By the Commonwealth	Average Salary
July 1, 1960- June 30, 1961	345	\$765,216.80	\$2,218.01
July 1, 1961- June 30, 1962	365	790,400.56	2,165.48
July 1, 1962- June 30, 1963	386	784,998.74	2,033.67

POWERS AND DUTIES

General Powers. A peace officer may make an arrest in obedience to a warrant, or without a warrant when a public offense is committed in his presence, or when he has reasonable grounds to believe that the person being arrested has committed a felony.⁴⁸ A peace officer in actual pursuit may cross corporate or county lines for the purpose of making an arrest.⁴⁹

⁴⁶KRS 61.310 (2) and (4).

⁴⁷KRS 61.360(3).

⁴⁸KRS 431.005(1).

⁴⁹KRS 431.045.

The Kentucky Court of Appeals has noted that there is a "general practice among law enforcing agencies of going beyond the territorial limits of the appointing power to detect and apprehend criminals who have fled from the vicinity in which the crime was committed. . . . even if it is necessary or, at least, appropriate to call in local officers to make the physical arrest, still the duty is upon the foreign officer to locate the accused."⁵⁰ All peace officers must arrest any persons drinking in a public place, and any disorderly persons who are creating a disturbance.⁵¹

Sheriffs, constables, marshals, policemen "and other ministerial officers" may carry concealed deadly weapons when necessary for their protection in discharging their duties.⁵² The courts have held that a peace officer is under the general duty of maintaining the peace in his community, and the need to be armed for his own protection depends on the circumstances in each case.⁵³

Specific Statutory Duties. Certain specific statutory duties devolve upon all peace officers. Any peace officer shall seize any untaxed cigarettes and notify the Commissioner of Revenue of such seizure.⁵⁴ He shall also find out from persons under eighteen where they obtained cigarettes and report such information to the county attorney.⁵⁵ He shall enforce laws relating to narcotic drugs,⁵⁶ and shall arrest any person operating a gambling game or machine.⁵⁷ A peace officer must watch for and disperse vagrants⁵⁸ and arrest and return children who have escaped from a house of reform.⁵⁹

A peace officer must aid the Kentucky Board of Agriculture or its representatives, upon request, in destroying diseased livestock.⁶⁰ He must impound unlicensed dogs which are found run-

⁵⁰Holland v. Commonwealth, 294 S.W. 2d 83, 86 (Ky. 1956).

⁵¹KRS 240.020, 431.005.

⁵²KRS 435.230(2).

⁵³Voils v. Commonwealth, 228 Ky. 149, 150-151, 14 S.W. 2d 381, 382 (1929).

⁵⁴KRS 138.165(2).

⁵⁵KRS 438.040.

⁵⁶KRS 218.190.

⁵⁷KRS 436.350.

⁵⁸KRS 436.530.

⁵⁹KRS 440.060(2).

⁶⁰KRS 246.210(2).

ning at large⁶¹ and must assist in enforcing the dog law.⁶² A peace officer shall require truck operators to unload if he determines that the truck violates size or weight limits.⁶³ He must seize any vehicle transporting alcoholic beverages in dry territory and arrest the person in charge thereof.⁶⁴ Peace officers shall serve subpoenas issued by parole boards.⁶⁵

All peace officers operating identification facilities shall co-operation in providing the Department of Public Safety with fingerprints and descriptions of persons committed to or detained by them.⁶⁶ Any peace officer may destroy an abandoned or suffering animal.⁶⁷ He may apprehend persons for offenses against the Code of Military Justice,⁶⁸ and may arrest without a warrant any person violating the civil defense statutes or regulations made thereunder.

These statutes apply to all peace officers whose authority is not limited by statute to enforcement of particular laws. Duties of sheriffs, constables, coroners and police officers are described in the sections dealing with those offices.

Kentucky Peace Officers' Association. The Kentucky Peace Officers' Association was organized in 1935, which makes it one of the oldest law enforcement associations in the United States in consecutive number of years. Its membership varies throughout the year, ranging from 2,000 to 6,500, depending on how many officers have sent in their dues. All city, county, state, federal, railroad and military police, including shore patrolmen, are eligible for membership. Annual dues are 3 dollars, renewable each July. Membership entitles a law enforcement officer to a membership card and a subscription to the association's monthly publication. This publication includes articles by such authors as J. Edgar Hoover, traffic safety organizations, and various law enforcement officers, and items of interest to police officers.

⁶¹KRS 258.215.

⁶²KRS 258.225.

⁶³KRS 189.223.

⁶⁴KRS 242.360(1).

⁶⁵KRS 439.390.

⁶⁶KRS 17.115(2).

⁶⁷KRS 257.100(1).

⁶⁸KRS 35.035(2), 39.439.

The association's primary purpose is education. This takes the form of a two-pronged program. First, the education of the presently-employed law enforcement officers is raised in regard to basic police techniques and, secondly, the police systems in many individual communities are modernized. The association's efforts in both these endeavors are described in detail in Chapter VI *infra*. Twelve years ago the association also assumed sponsorship of the Boys' Club of America in Kentucky, and now maintains the Boys' Club of Kentucky. Many of association members devote much of their own time to helping promote the Boys' Club in their individual communities.⁶⁹

⁶⁹Telephone interview with Elmer Gutterman, Exec. Secretary, Ky. Peace Officers' Ass'n, in Frankfort, Ky., July 19, 1963.

IX. State Police

INTRODUCTION

State police forces are a relatively recent development in law enforcement. The offices of sheriff, jailer, constable and coroner are of ancient origin, with powers defined by common law as well as statute. City police forces developed during the last century. The first state police forces, however, were not established until after 1900, and Kentucky did not have a state force with general police powers until 1948. Unlike most local officers, state police are entirely creatures of statute.

Development of State Police. State police forces came into being partly in response to the need for traffic control, and partly to strengthen the executive's ability to enforce laws.

Local law-enforcement agencies, principally county sheriffs and local constables, at times were reluctant, or refused, to enforce state laws they considered unpopular in their communities. Governors were virtually powerless to compel them to perform their duties. Faced with the obligation under state constitutions of enforcing state laws, yet lacking effective means with which to discharge the responsibility, Governors turned to the legislatures, which responded with enabling legislation authorizing the organization of state police services.¹

Various quasi-state police agencies had existed for many years. The Texas Rangers was authorized in 1835 as a border patrol, and the Arizona Rangers was formed in 1901. In 1865, Massachusetts created a few "state constables" with general police powers. The Connecticut State Police was formed specifically to enforce state laws, especially those regulating liquor and gambling.² The first state police force was established in Connecticut in 1903.³

The Pennsylvania State Police was organized in 1905, with 228 officers, and became the forerunner of uniformed state police

¹ Day, *State Law Enforcement*, 1962-1963 Book of the States 496-497.

² Smith, *Police Systems in the United States* 167-171 (Rev. ed. 1949).

³ Conn. Public Acts ch. 141, §§ 1-18 (1903).

forces in America.⁴ The superintendent of state police was given extensive powers and was responsible solely to the Governor. His force was uniformed and continuously patrolled the entire state, operating out of decentralized troop headquarters. In 1917, New York created a police force which closely followed the Pennsylvania pattern. Michigan followed suit in 1919. Most other states established either state police forces or highway patrols in the following decades. Today, twenty-six states have state police and twenty-three have state highway patrols.⁵

History in Kentucky. Kentucky's four constitutions have required the Governor to "take care that the laws be faithfully executed."⁶ Not until recently, however, has the state had an agency established for the specific purpose of law enforcement.

The Kentucky State Police originated as a highway patrol. In 1926, it was made the duty of all city marshals, policemen, constables, sheriffs and other peace officers to apprehend and arrest persons who violated the motor vehicle laws of the Commonwealth.⁷ In 1932, these peace officers were given power to pursue persons violating motor vehicle laws and to effect an arrest beyond the limits of the officer's jurisdiction. In addition, this statute authorized the State Highway Commission and the State Tax Commission "to issue commissions to their employees, or any of them, as highway patrols, and such employees, when so commissioned, shall have all the powers of peace officers in respect of the enforcement of this act, and of all the laws relating to motor vehicles."⁸

In 1936, the office of "county highway patrol and investigation" was established in each county, to be filled *ex-officio* by the sheriff and his deputies. This office was "to direct, regulate and control the traffic on said roads and highways [in his county] so as to maintain a maximum degree of safety to the general public in the use thereof."⁹ The sheriff was to investigate all

⁴ Pa. Dep't of Internal Affairs, *Pennsylvania's State Police Set Pattern for Other States*, 7 Internal Affairs 7 (Feb., 1955).

⁵ Day, *supra* note 1, at 437.

⁶ Ky. Const. § 81.

⁷ Ky. Acts ch. 109 (1926).

⁸ Ky. Acts ch. 106, § 18 (1932).

⁹ Ky. Acts ch. 13, § 2 (Ex. sess., Dec. 1936).

wrecks and return his findings to the county attorney and the circuit court clerks. It was specified that nothing in the act would "be construed to affect or impair the duties or obligations of county patrols in counties having a city of the first or second class, state highway patrols, field representatives of the division of motor transportation or any other officers of the state, city or town. . . ." ¹⁰

The first state highway patrol was established the same year, as part of the 1936 Governmental Reorganization Act. A Department of Highways was created, with a division of highway patrol, "which division shall be responsible for the enforcement of the highway laws of the Commonwealth and for such other functions as the Governor may direct in writing." ¹¹ The same act established a laboratory of criminal identification and statistics in the state Department of Welfare, "for the purpose of receiving and filing fingerprints, photographs, and other records pertaining to the investigation of crime and the apprehension of criminals." ¹²

The Department of State Police was established in 1948 and the highway patrol was transferred to the new department. ¹³ The powers of the department were substantially the same as at present. The only major change occurred in 1956, when the Department of Public Safety was created and the Department of State Police was made a division thereof. ¹⁴

Other States. Kentucky is one of twenty-six states which have state police forces, exercising broad powers, rather than highway patrols which are usually restricted to enforcing traffic laws. These state police forces have many similarities as well as significant differences:

State police, as well as state highway patrols, differ as to powers, territorial jurisdiction and numerical strength. No two forces, therefore, distribute manpower in exactly the same way. They do exercise statewide jurisdiction, in common, subject to prescribed restrictions like limitations

¹⁰ Ky. Acts ch. 13, § 6 (Ex. sess., Dec. 1936).

¹¹ Ky. Acts ch. 1, art. XII, § 2 (Ex. sess., Feb., 1936).

¹² Ky. Acts ch. 1, art. XIII, § 7 (Ex. sess., Feb. 1936).

¹³ Ky. Acts ch. 80 (1948).

¹⁴ Ky. Acts ch. 7, art. X, § 1 (Ex. sess., March 1956).

on policing urban and semi-urban areas. States are divided, accordingly, into geographical areas. Stations, designated, for example, for districts and troops, are established in the areas.¹⁵

The functions of a state police agency are not always apparent from its title. Illinois, for example, has a department of public safety which is actually a highway patrol.¹⁶ The Oregon State Police Department is responsible for so many matters that it is actually a public safety department.¹⁷ The Texas Department of Public Safety actually has two police forces, the Highway Patrol and the Texas Rangers.¹⁸

State Police are usually responsible for enforcing motor vehicle laws, criminal laws and, often, fire prevention laws. There appears to be a trend toward assigning additional duties. The Massachusetts Department of Public Safety, for example, regulates boilers, boxing, subversive activities, and enforces elevator, building and real estate regulations.¹⁹ In Michigan state police may be required to execute civil process in actions where the state is a party; in New York, they must act as court officers for justices of the peace on Indian reservations.²⁰

Still other activities are delegated to, or assumed by, the state police as a natural consequence of the fact that they are part and parcel of a state government which exercises a broad territorial jurisdiction. Being widely distributed throughout the entire state, with their patrols in intimate daily contact with local conditions, it is perhaps inevitable that other administrative departments should turn to them for assistance.²¹

A few states consolidate law enforcement and legal functions in a department of justice, as does the federal government. The New Jersey Department of Law and Public Safety, headed by the attorney general, includes the division of law, state police, alcoholic beverage control, motor vehicles, weights and measures

¹⁵ Day, *op. cit. supra* note 1, at 437.

¹⁶ Ill. Ann. Stat. ch. 127, § 55a (Smith-Hurd, 1953), ch. 121, § 307.1 (Smith-Hurd, 1960).

¹⁷ Ore. Rev. Stat. §§ 181.030, 476.110, 506.510 (1961).

¹⁸ Tex. Rev. Civ. Stat. arts. 4413(4); 4413(11)(1), (4) and (5); 4413(12) (4) (Vernon, 1960).

¹⁹ Mass. Ann. Laws ch. 22, §§ 3, 10-13, ch. 147, §§ 32-51 (1950).

²⁰ Smith, *op. cit. supra* note 2, at 177.

²¹ *Ibid.*

and professional boards.²² California's Department of Justice, also headed by the attorney general, has a division of criminal law and enforcement as well as a division of civil law. It includes bureaus of criminal identification and investigation, narcotic enforcement and a state teletype system.²³ In Hawaii, the department of the attorney general includes the sheriff's office, a crime statistics and identification division, and an investigation office.²⁴

Several states, including New York and Louisiana, allow cities to contract with the state police to furnish permanent police protection.²⁵ This may afford some cities better trained, equipped and supervised police than they would have otherwise, although it results in a loss of local control.

POWERS AND DUTIES

General. The statutes make it the duty of every officer of the Kentucky State Police to:

. . . detect and prevent crime, apprehend criminals, maintain law and order throughout the state, to collect, classify and maintain information useful for the detection of crime and the identification, apprehension and conviction of criminals and to enforce the criminal, as well as the motor vehicle and traffic laws of the Commonwealth. To this end the commissioner and each officer of the department is individually vested with the powers of a peace officer and shall have in all parts of the state the same powers with respect to criminal matters and enforcement of the laws relating thereto as sheriffs, constables and police officers in their respective jurisdictions. . . .²⁶

This gives the State Police broad powers to enforce all criminal laws, not merely those relating to traffic. In actual practice, the Kentucky State Police's primary function remains that of a highway patrol, but its statutory powers provide a basis for most aspects of law enforcement.

Cooperation with Other Jurisdictions. The State Police is required by law to cooperate and exchange information with

²² N. J. Stat. Ann. §§ 52:17 B-2, 52:17 B-35 (1952).

²³ State of Cal., Dep't of Justice, Crime in California 5 (1961).

²⁴ Rev. Laws of Hawaii ch. 30, § 13 (1955).

²⁵ N. Y. Exec. Law § 226 (1962); La. Rev. Stat. § 40:1388 (1951).

²⁶ Ky. Rev. Stat. § 16.060 (1963) [hereinafter cited as KRS].

other agencies of the Commonwealth, or with other police forces both within and without Kentucky and with the federal government. The Director of State Police, with the Governor's approval, may negotiate with other states to prepare interstate compacts for police protection; any such contracts must be approved by the Governor and the General Assembly.²⁷ The Department of Public Safety is also directed to cooperate with local and state law enforcing agencies of other states and with the federal government "in order to develop and carry on an interstate and national system of criminal identification."²⁸ This corresponds closely to suggested state legislation authorizing interstate cooperation in criminal identification and investigation.²⁹

Another statutory function of the State Police is to organize and maintain training schools for officers. The Commissioner of the Department of Public Safety may, by regulation, make such facilities available to local government units in Kentucky.³⁰ These training facilities are discussed in detail in Chapter XI *infra*. It will be noted that the State Police offers extensive aid in training local law enforcement officers.

The law requires "all peace officers of the various political subdivisions of this Commonwealth" to co-operate with the State Police in enforcing Kentucky laws.³¹ All local law enforcement agencies are also required to advise the State Police of the disposition of all cases where a person has been charged with a felony, to furnish fingerprints, a photograph and a general description of such persons; and "to furnish any other information in their possession relative to law enforcement upon request by the Department of Public Safety."³²

A number of states not only require that other officials co-operate with the State Police, but provide penalties for failure to do so. Massachusetts makes local officers liable to fine or imprisonment if they refuse to cooperate.³³ Oregon makes local

²⁷ KRS 16.130(1).

²⁸ KRS 17.115(b).

²⁹ Council of State Governments Comm. on Suggested State Legislation, 1963 Program 180.

³⁰ KRS 16.090.

³¹ KRS 16.130(2).

³² KRS 17.110.

³³ Mass. Ann. Laws ch. 147, § 7 (1952).

officers temporary members of the State Police and, as such, subject to disciplinary action.³⁴ West Virginia, Texas and California authorize the State Police to form a posse in which not only local peace officers, but any able-bodied citizen must serve.³⁵

Authority in Cities. These broad grants of power to Kentucky's State Police are restricted by a statute which limits their power in cities. The State Police may exercise authority in cities of the first to fifth class only under the following circumstances:

- (a) When in hot pursuit of an offender or supposed offender, or
- (b) when in search of an offender or supposed offender wanted for a crime committed outside the corporate limits of a city, or
- (c) when interviewing or seeking to interview a witness to any such crime, or
- (d) when requested to act by the chief executive officer of the city or its chief police officer, or
- (e) when on the grounds of any real property owned or leased by the Commonwealth or department or agency thereof, or
- (f) when on any street maintained by the Department of Highways for the sole purpose of enforcing traffic regulations issued by the Commissioner of Highways . . . or
- (g) when ordered by the Governor, in case of emergency, to act within any specified city or cities.³⁶

The same statute provides, however, that the chief executive officer of a city may request that any State Police officer or officers be given full police authority in the city for a term of months or years, or until revoked. The Attorney General's office has held that only the mayor, who is the chief executive officer of a city, has power to invite the State Police to exercise their powers within the city limits for a given period. Furthermore, the mayor may veto any motion of the city council to extend such invitation, as the council lacks power initially to invite the State Police.³⁷

As of September 26, 1963, all but sixteen of the 179 cities of the first five classes had such standing requests on file with

³⁴ Ore Rev Stat § 181.190 (1961).

³⁵ W. Va. Code § 1247(f) (Vernon, 1961); Tex. Rev. Civ. Stat. arts. 6876, 6886 (1960); Cal. Penal Code Ann. § 150 (Deering, 1960).

³⁶ KRS 16.120. House Bill 540 of the 1962 legislative session would have allowed the mayor, the police chief, the majority of the city council, or the sheriff of the county, to invite the State Police to enter a city. The bill did not pass either house.

³⁷ Ops. Att'y Gen. #61-142 (Ky. 1961).

the State Police. Six of those who had not filed requests were cities of the first two classes: Louisville, Ashland, Covington, Lexington, Newport and Owensboro. The others were fourth and fifth class cities: Bellevue, Dawson Springs, Dayton, Fort Wright, Ludlow, South Fort Mitchell, Clay, Linview, Park Hills and Southgate. Nine of these sixteen cities are in two of Kentucky's 120 counties. In some of the larger cities, the State Police have never been invited in, except that they have limited authority in Louisville in connection with driver licensing. In two fourth class cities, the State Police had jurisdiction until recently, when the cities withdrew their invitations following a series of gambling raids and citations for violating alcoholic beverage control laws. The other fourth class cities listed withdrew permission after a series of gambling raids during the early 1950's.³⁸

The statute does not prevent the State Police from operating in most cities, but the city's power to withdraw its invitation remains a potential threat to the state's authority and hinders effective law enforcement. The fact that a city bars the State Police after the latter has conducted a vigorous law enforcement campaign in that city indicates that local law enforcement is inadequate. This creates an impasse, if the local officials have not enforced state laws but refused to allow the state to enforce them.

These limitations were probably enacted to allay any local fears of state control and to prevent opposition to the State Police. The statute recognizes that there may be instances where the State Police should intervene without an invitation, by providing that the Governor may order them to act within a city in case of emergency. This power has never been used, but could allow the state to intervene if there were a critical situation in any city, even if the mayor refused to request State Police aid. In normal circumstances, the State Police probably operate more successfully in a city because they are there by invitation, which presupposes a co-operative situation.

³⁸ Telephone interview with Col. James Hughes, Deputy Director, Ky. State Police, in Frankfort, Ky., Sept. 26, 1963; telephone interview with Maj. Charles B. Crutchfield, Exec. Officer, Ky. State Police, in Frankfort, Ky., Oct. 3, 1963.

Limitations on the State Police's power are fairly common among the states.³⁹ Louisiana's statute is strikingly similar to Kentucky's, with the same "hot pursuit," "search," and "request" provisions, and authorizing the Governor to order the state police into a city. In a test case, the Louisiana Supreme Court held that the Governor's action in ordering the state police into a city did not contravene a constitutional home rule provision and that police power could never be totally surrendered to a municipality.⁴⁰ New York prohibits state police from entering a city to suppress riot and disorder, except by request of the mayor and approval of the Governor.⁴¹ As a matter of policy, the New York state police do not enter a city to enforce any law except by request of the local authority or direction of the Governor. The New York State Crime Commission concluded that this policy was sound, as it would be unwise to duplicate local police services.⁴²

Some states, like West Virginia, give the state police unrestricted authority to act anywhere in the state.⁴³ Oregon allows state police to operate in cities unless they are "used as a posse," in which case they must be ordered in by the Governor.⁴⁴

Motor Vehicle Laws. The State Police have specific duties regarding motor vehicles, in addition to the general mandate to enforce motor vehicle and traffic laws. Motor vehicle operators' licenses are issued by the Department of Public Safety,⁴⁵ and the statutes provide that the State Police may examine applicants for such licenses.⁴⁶ It is specified that an operator's license shall not be granted to any person who: has been adjudged legally incompetent, unless the State Police determine, by examination, that the person can safely operate a motor vehicle; or who, "in the opinion of the State Police, after examination, is afflicted with such physical or mental disability as prevents him from exer-

³⁹ La. Rev. Stat. § 40:1387 (1951).

⁴⁰ *Fernandez v. Alford*, 203 La. 111, 13 So.2d 483 (1943).

⁴¹ N. Y. Exec. Law § 223 (1962).

⁴² N. Y. State Crime Comm'n, Third Report 9 (1953).

⁴³ W. Va. Code § 1246 (Vernon, 1961).

⁴⁴ Ore. Rev. Stat. § 181.030(4) (1961).

⁴⁵ KRS 186.410.

⁴⁶ KRS 186.480.

cising reasonable and ordinary control over a motor vehicle upon the highways."⁴⁷

The operator of any vehicle involved in an accident resulting in injury or death to a person, or in property damage of one hundred dollars or more, must report to the Department of Public Safety within ten days.⁴⁸ The State Police is required to prepare accident report forms and supply them on request to police departments, coroners, sheriffs, garages and other agencies. Every required accident report must be made on State Police forms.⁴⁹ The State Police "shall tabulate and may analyze all accident reports" and publish statistics based on such reports.⁵⁰

ORGANIZATION AND OPERATION

The Kentucky Department of Public Safety is divided by statute into the divisions of State Police, Driver Licensing, Administrative Services, Accident Control, Fire Prevention, and Boating, and the commissioner may establish other divisions.⁵¹ The department is also responsible for regulation of boilers,⁵² hydraulic brake fluids,⁵³ and cleaning and dyeing fluids.⁵⁴ The State Police is by far the largest division and received 2,397,270 dollars of the department's 4,026,535 dollar general fund appropriation for the 1962-64 biennium.⁵⁵ The divisions of Boating and Fire Prevention are described in Chapter X *infra*.

Organization. The Commissioner of Public Safety, who is appointed by the Governor, is executive head of the department.⁵⁶ The department is given general authority to make rules and direct proceedings and actions for "all laws and functions, the administration of which is vested in the department."⁵⁷

⁴⁷ KRS 186.440(5) and (6).

⁴⁸ KRS 189.580(2).

⁴⁹ KRS 189.600.

⁵⁰ KRS 189.620.

⁵¹ KRS 17.010 (3).

⁵² KRS 236.100-236.130.

⁵³ KRS 17.320-17.340.

⁵⁴ KRS 228.030, 228.060, 228.200, 228.300.

⁵⁵ KRS ch. 47, 1962 Budget Bill V, 46.

⁵⁶ The Commissioner is appointed by the Governor in most states rather than by an independent board, to ensure that the police will be responsible to the chief executive. See Puttkammer, *The Organization of the State Police*, 26 J. Crim. L., C. & P.S. 727, 731 (1935-1936).

⁵⁷ KRS 17.080.

The Director of Kentucky State Police is appointed by the Commissioner of Public Safety, with the Governor's prior approval.⁵⁸ The director must be over twenty-eight years old, a citizen of the United States, and "shall be selected on the basis of training, experience and qualifications for this position and preferably shall have had at least five years' experience in public or police administration."⁵⁹ The two directors who have been appointed since 1956 have both been taken from the State Police ranks. The 1956 law which made the State Police part of the Department of Public Safety provided that the director should exercise the functions formerly performed by the Commissioner of State Police, to the extent that such functions were delegated to the director by the Commissioner of Public Safety.⁶⁰

The organization of the State Police is shown in Figure 3. A deputy director is appointed by the director, with the commissioner's approval, and is second in command. He also has direct supervision over all bureaus, which comprise those functions that are not part of the Field Command. An executive assistant is appointed from the ten highest ranking officers of the State Police.⁶¹ The executive assistant also serves as field commander.

The deputy director also supervises the Bureau of Investigation, the Capitol Detail, Safety Education, and Civil Defense. The Capitol Detail is under the command of a lieutenant and is responsible for protecting the Governor, his family, and the grounds of his residence. The Bureau of Safety Education prepares and distributes automotive and other safety education material, and informs the public through radio, television and personal appearances. It consists of one officer, who spends much of his time working with schools. The Civil Defense unit consists of a lieutenant who co-ordinates civil defense activity by local police forces, in co-ordination with the State Director of Civil Defense in the Department of Military Affairs.

The Bureau of Investigation, which is under the command of a captain, is divided into the following sections: auto theft,

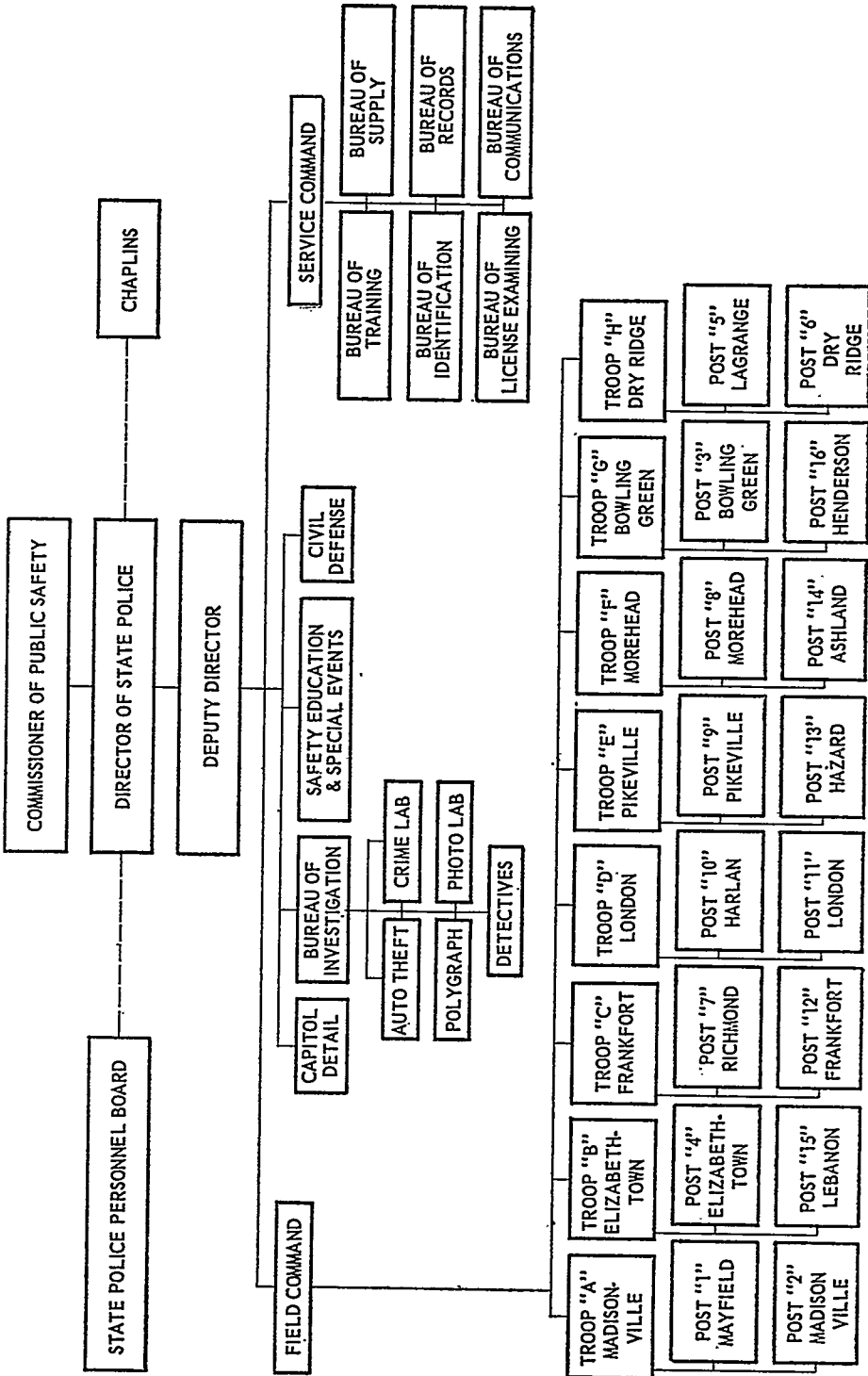
⁵⁸ KRS 17.010.

⁵⁹ KRS 16.030.

⁶⁰ KRS 17.040.

⁶¹ KRS 16.030(2).

ORGANIZATION OF THE KENTUCKY STATE POLICE



which maintains records on stolen motor vehicles; polygraph, with two trained operators; crime laboratory, with two chemists who examine evidence and the photographic laboratory, with two officers who take, develop and analyze pictures. This bureau has thirty-two officers.

The field commander is third in command of the State Police, and acts as director when the director and his deputy are both absent. The Field Command is divided into eight troop commands, each serving a part of the state. The headquarters and boundaries of each troop area are set by the commissioner, and each area is under the command of a captain or lieutenant. While every county is included in some troop area, the headquarters of each area is located to place the greatest number of troopers in areas where needed, and outside the major population areas where local police strength is more adequate. Each troop area is divided into two posts, under command of a non-commissioned officer. The Field Command includes 331 uniformed officers.

The Service Command, which is under the direction of the deputy director, includes the following bureaus: The Bureau of Training conducts training programs for recruits, veteran officers, supervisory personnel, and assists in providing training for other divisions of the Department of Public Safety. The Bureau of Identification collects, classifies and maintains files of fingerprints, and constantly exchanges fingerprint information with the F.B.I. The Bureau of License Examiners administers written and performance tests to applicants and conducts tests periodically at every county seat.

The Bureau of Supply purchases, stores and distributes new equipment, and maintains and repairs existing equipment. The Bureau of Records maintains an active file of records relating to arrests and their disposition, and to motor vehicles. It includes an analysis unit which supplies the director with information to evaluate division programs. The Bureau of Communications maintains both fixed radio stations and mobile units. It serves as a clearing point for out-of-state messages originating in Kentucky.

The number of officers assigned to each bureau in Septem-

ber, 1961 was as follows: five officers to training; two officers to identification; fifty-five officers to driver licensing; three officers to supply; two officers to records; five to communications; and thirty-two to investigation. Four State Police officers were on detached service with the Division of Administrative Services, and one was serving as an assistant to the Commissioner of Public Safety. In addition, there were 331 field personnel, making a total of 442 uniformed personnel with the State Police.⁶²

Personnel. The statutes give the Commissioner of Public Safety or the Director of State Police considerable latitude in staffing the division. The director determines the number of officers and civilians needed,⁶³ appoints or promotes them and sets their compensation, which must "reasonably conform" to the standards of the Department of Personnel.⁶⁴ He prescribes minimum physical requirements and conducts such tests as may be necessary to determine the qualifications of each applicant.⁶⁵ Present physical requirements are a minimum weight of 150 pounds and a height of 5 feet 9½ inches.

Certain qualifications for State Police officers are set by statute. At the time of appointment, an officer must be: (a) at least twenty-one years of age, and within a maximum age limit to be fixed by the director; (b) of good health and moral character; (c) a United States citizen and a resident of Kentucky; (d) a high school graduate, or the equivalent. The statute specifies that credit toward educational requirements shall be given for experience in police administration or law enforcement.⁶⁶

Peace officers in the Department of Public Safety are exempted from the state merit system, provided that the department maintains a system of its own.⁶⁷ Actually, the State Police has operated under its own merit system since it was established in 1948. There is a five-member State Police Personnel Board, consisting of the director, who serves in place of com-

⁶² Telephone interview with Col. James Hughes, Deputy Director, Kentucky State Police, in Frankfort, Ky., Sept. 26, 1963.

⁶³ KRS 16.040(1).

⁶⁴ KRS 16.050(1).

⁶⁵ KRS 16.040(2).

⁶⁶ *Ibid.*

⁶⁷ KRS 18.140 (1) (q).

missioner, and four other members appointed by the Governor. Two members must be appointed from each major political party and all serve for four-year staggered terms. This board is required to provide for open competitive examinations for employment of State Police.⁶⁸

The statutes provide in detail for disciplinary procedures.⁶⁹ An officer may be removed, or reduced in rank or pay, only for inefficiency, misconduct, insubordination or violation of law or regulation. Provision is made for hearing by a trial board and for appeals to the courts.⁷⁰ Political activity by any officer is expressly prohibited.⁷¹ The State Police was among the first agencies in Kentucky to have a merit system and antedated the state merit system by twelve years. Present provisions give the director adequate disciplinary powers, but provide safeguards against arbitrary treatment.

Communications One function of the State Police is the maintenance of a communications system. The Bureau of Communications erects, maintains and operates all division communications. Each State Police post has a communications office. In addition to these sixteen fixed stations, the bureau maintains the State Police's approximately 500 mobile radio units. It also has a C.W. radio station at the capital, which maintains constant contact with thirty-six states.

This communications system has helped co-ordinate law enforcement effort. All troop posts and all patrol cars have transmitting and receiving sets. The State Police send all their traffic on the monitoring frequency for local police departments and sheriffs, as well as on their own frequency. Most sheriffs and city police departments in Kentucky have radio systems, and may contact a State Police post by radio or telephone to ask, for example, for a check on an automobile license; the post then radios the inquiry to Frankfort.⁷² The State Police also has radio-telegraph facilities to assure prompt interchange of information

⁶⁸ KRS 16.050.

⁶⁹ KRS 16.140.

⁷⁰ KRS 16.150.

⁷¹ KRS 16.170.

⁷² Telephone interview with Major Charles B. Crutchfield, Exec. Officer, Ky. State Police, in Frankfort, Ky., Oct. 8, 1963.

with other states. The statutes provide that no person except a peace officer holding a license issued by the Federal Communications Commission, or a member of a police force which maintains a radio system authorized by the F.C.C., may have or use a radio capable of receiving or sending police messages.⁷³

Records and Reports There is an increasing recognition of the importance of police records:

Today more than ever complete records, properly maintained and readily accessible, are indispensable to effective and efficient law enforcement. . . . Perhaps the best indicator of the professional level of a police department is the quality of records maintained, and, more important, the use made of them.⁷⁴

Kentucky law establishes the State Police as the central agency for criminal records. A 1958 statute requires that:

- (1) All city and county law enforcement agencies shall cause a photograph, a set of fingerprints and a general description report of all persons arrested on a felony charge to be made and two copies of each item forwarded within thirty days after the arrest to the Division of State Police Such agencies shall furnish any other information in their possession relative to law enforcement upon request by the Department of Public Safety.
- (2) Each city and county law enforcement agency shall advise the Division of State Police of the disposition made of all cases wherein a person has been charged with a felony.⁷⁵

The State Police furnish local units with stamps, envelopes and cards for fingerprints, but only 10 per cent of sheriffs and city police mail the required reports.⁷⁶ Apparently, few local units take fingerprints, although the necessary equipment only costs about 10 dollars. There is no penalty clause attached to this statute.

The State Police maintains special files on various kinds of criminal activities and criminal records, as well as traffic. It also

⁷³ KRS 432.570(1).

⁷⁴ Daunt, *Police Records*, The Police Yearbook 33 (1963).

⁷⁵ KRS 17.110.

⁷⁶ Telephone interview with Capt. Joe Hall, Bureau of Identification, Ky. State Police, in Frankfort, Ky., Oct. 8, 1963.

publishes a weekly bulletin covering stolen vehicles, missing and wanted persons, and other information of value to law enforcement officers. The bulletin is sent to sheriffs, city police, and other states, as well as to State Police officers.

Identification. One important function of Kentucky's State Police is providing investigation and identification facilities. A major advance in law enforcement has been the increased use of scientific techniques: fingerprints, photography, polygraph (lie detection) tests, ballistics, solids and liquids analysis, microscopic comparisons, and other laboratory analyses. Such tests provide scientifically-determined evidence for use in prosecutions and to help identify suspects.

As early as 1917, fingerprints were recognized as a valid means of identification, admissible in court as evidence against the accused.⁷⁷ Fingerprint impressions have been held, by the states, not to violate the privilege against giving information against oneself.⁷⁸ The use of fingerprints as means of identification became indispensable in the administration of criminal law.⁷⁹ All city and county law enforcement agencies, all persons in charge of any penal or correctional institution within the state, and any law enforcement officers operating identification facilities are required to send in duplicate fingerprints and descriptions, and a report of the disposition of the cases, to the Department of Public Safety, which is required to receive and file these photographs, fingerprints "and other records pertaining to the investigation of crime and the apprehension of criminals."⁸⁰ The department must forward one copy of the duplicates, including photograph, fingerprints, and general description, to the Federal Bureau of Investigation⁸¹ and must "co-operate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an interstate and national system of criminal identification."⁸² The State Police

⁷⁷ *People v. Sallow*, 100 Misc. 447, 165 N.Y.S. 915 (1917).

⁷⁸ *Moon v. State*, 22 Ariz. 418, 198 Pac. 288 (1921); *McGarry v. State*, 82 Tex. Crim. 597, 200 S.W. 527 (1918).

⁷⁹ See, e.g., *Hornsby v. Commonwealth*, 263 Ky. 613, 92 S.W.2d 773 (1936).

⁸⁰ KRS 17.115.

⁸¹ KRS 17.120.

⁸² KRS 17.115(1) (a).

forward fingerprints to the Federal Bureau of Investigation the day they are received.

Investigation. The Kentucky State Police Bureau of Investigation includes a crime laboratory, polygraph section, photo laboratory, auto theft section, and detectives. One lieutenant and one civilian, who has a degree in chemistry, make up the staff of the crime laboratory. These men are qualified to do solids and fluids analysis, microscopic comparisons, ballistics examinations and analyses for any law enforcement agency in Kentucky, free of cost. The majority of the work done involves analyses of blood alcohol. Approximately 600-700 such cases are analyzed yearly, with more than 40 per cent originating from non-State Police sources, such as sheriffs, constables or local police departments.⁸³

Since no law enforcement agency in Kentucky has its own crime lab, the State Police laboratory is used often by Kentucky agencies. The only other crime laboratory available to Kentucky officers is the F.B.I. lab in Washington, which can perform a greater variety of analyses. The Kentucky lab cannot perform blood groupings, spectrographic analysis, or document examination. The Kentucky crime laboratory has no specific procedure for receiving cases to analyze. Often, the local authorities have asked State Police aid, and, since the agencies would be working together, the samples needing analysis are taken directly to a State Police post and then forwarded to Frankfort. Other times, the local authority either brings the sample to Frankfort, or mails it in and attaches a letter of explanation, or telephones in the necessary information.

Two state-licensed experts, highly-trained in the use of the lie detector, make up the polygraph section. These men perform tests whenever requested by State Police officers, or any other Kentucky law enforcement agency. Chapter 329 of the Ky. Rev. Stat. provides for licensing of polygraph operators, or "detection of deception examiners," by the Department of Public Safety; Kentucky was the first state to license such persons. In 1962, this section examined 405 persons, of whom 219 were State Police

⁸³ Interview with Capt. Charles Young, Chief, Bureau of Investigation, Ky. State Police, in Frankfort, Ky., June, 1963.

subjects, and 186 were referred by other law enforcement agencies.⁸⁴

Three employees, including one civilian, make up the photo laboratory. This lab is concerned with several tasks, such as the preparation of photographs taken at the scene of an accident or of a crime, the enlargement of such photographs, and any other special treatment that is necessary. The photo lab is also responsible for the preparation and development of training films for the State Police. All State Police troopers have a camera in their patrol car and are instructed in its use during their recruit training.

One man makes up the auto theft section. His job involves the receiving, classifying, and filing of information as to stolen automobiles. The reports of such thefts are received by this section directly from the peace officers' original reports from throughout the Commonwealth. This section also co-operates with other states in locating stolen autos.

The remaining thirty-three State Police officers who are a part of the Bureau of Investigation are detectives who are distributed throughout the state. They are attached to the different post and troop areas and their job is to investigate accidents and crimes. With special training as detectives, refreshed by special in-service training programs, they are able to reconstruct accidents and crimes in a more exact manner than the local authorities.

The services of the Bureau of Investigation are available to all Kentucky law enforcement officers. Sheriffs and police chiefs, however, who were surveyed by the Committee on the Administration of Justice believed generally that both the variety and quantity of services offered should be expanded. Two-thirds of the sheriffs surveyed believed that a state bureau of investigation should be established to aid local officers. Forty-seven of the seventy-four police chiefs answering the question favored a state bureau of investigation to provide advisory, expert and scientific assistance. Most of the others thought that present local and state facilities were adequate.

⁸⁴ Interview with Detective Harry L. Robertson, Polygraph Examiner, Ky. State Police, in Frankfort, Ky., Oct. 8, 1963.

Most states provide some identification and investigation services, some of which are designed expressly to aid local officials. The Tennessee Bureau of Criminal Identification:

was created [in 1952] by state statute to render assistance to local law enforcement officers in the investigation of criminal cases and also to the state's district attorneys general in the preparation of same for trial. In addition, [it has] original jurisdiction in narcotic matters.⁸⁵

The bureau, as a part of the Tennessee Department of Public Safety, provides its services free to the local law enforcement agencies.⁸⁶

Georgia, Illinois, Iowa, Texas, and Utah are among the states which have similar bureaus located in their departments of public safety. The investigation-identification division in Maryland is found within the state police, as is the division of investigation and records in Virginia. The same is true for Arkansas, Connecticut, Indiana, Michigan, Missouri, Nebraska, New Jersey, and Oregon. Kansas has its bureau of investigation in a division within the Attorney General's office, as is the bureau of criminal apprehension of Minnesota. Wisconsin has a state crime laboratory providing these functions, and the Oklahoma State Bureau of Investigation is a part of the executive branch of the state government. Arizona, Idaho, New York, and Washington have their bureaus placed in their respective bureaus of prisons, corrections, or institutions.⁸⁷

The California Department of Justice Bureau of Criminal Identification and Investigation, has as its primary purpose: "to assist local California law enforcement agencies in the identification of unknown persons; the investigation of crimes; the interrogation of suspects and the apprehension of criminals, the location of missing persons; the examination and identification of physical evidence by scientific laboratory methods and techniques . . . the identification and location of stolen property; the processing of fingerprint cards, crime reports, lost, stolen and

⁸⁵ See Hopton, *Scientific Crime Detection and Law Enforcement*, 26 Tenn. L. Rev. 129-130 (1958-1959).

⁸⁶ See Nev. Legislative Council Bureau, *A Study of the Feasibility of Establishing a Nevada Bureau of Criminal Identification and Investigation* 17-18 (Bull. No. 40, 1959).

⁸⁷ *Id.* at 6-20.

pawned property reports;”⁸⁸ The bureau has numerous other duties, including making co-operative surveys of local agencies, and conducting surveys of vice, gambling and other illegal operations. The California Bureau of Criminal Statistics collects and analyzes data from local units on crimes and the disposition of cases. A third bureau enforces narcotic laws, and conducts educational campaigns.

A number of states also have investigators assigned to the attorney general to aid in gathering information for prosecutions. In Kansas,

. . . these men are used extensively by the Attorney General to aid local law enforcement officers throughout the state in investigative work where the local officers have inadequate facilities or no facilities at all. . . . While these men occasionally work with agents of the Kansas Bureau of Investigation, they more frequently conduct individual investigations of complaints relating to violation of the gambling and liquor laws, or of consumer fraud problems. Such investigations often require these men to supervise other law enforcement officers. . . . The special investigator is frequently called on to testify in court.⁸⁹

In Rhode Island, investigators;

Are used primarily to look into complaints received by the Attorney General from various sources. They are also used frequently by members of the staff in the preparation of matters for trial.⁹⁰

In Ohio, the Attorney General employs eleven investigators to collect claims due the state.⁹¹ In Florida, investigators were hired to staff an enforcement division of the attorney general's office which was created in 1949. They are used primarily to investigate illegal use of communications facilities.⁹²

Traffic Supervision. While the State Police is responsible for enforcing all state criminal and motor vehicle laws, the latter

⁸⁸ Cal. Dep't of Justice, 1958-1960 Report 36.

⁸⁹ Letter from Kan. Att'y Gen. William M. Ferguson to Charles H. Hobart, Kan. Dep't of Administration, April 18, 1963.

⁹⁰ Letter from R. I. Ass't Att'y Gen. Francis J. Fazzano to Ky. Att'y Gen. John B. Breckinridge, May 13, 1963.

⁹¹ Letter from Ohio Att'y Gen. William B. Saxbe to Ky. Att'y Gen. John B. Breckinridge, May 20, 1963.

⁹² Letter from Fla. Ass't Att'y Gen. J. Robert McClure to Ky. Att'y Gen. John B. Breckinridge, May 15, 1963.

function commands about 75 per cent of its time. This may be because the division originated as a highway patrol, or because it is the only force capable of handling highway traffic effectively. In any case, traffic supervision is the State Police's main activity. Most State Police traffic supervision is carried on in rural areas, rather than in cities which have their own police.

The National Safety Council, in cooperation with the International Association of Chiefs of Police, collects and analyzes traffic data, and evaluates the performance of each state.⁹³ The council does not rank the states, but tries to construct a score in various traffic activities. Kentucky's overall performance was evaluated at seventy-four out of a possible one hundred points. This included nineteen out of a possible twenty points for training, seven out of a possible fifteen points for accident investigation, and forty-eight out of a possible sixty-five points for enforcement operation.

Kentucky met or exceeded training standards in every area except the per cent of supervisory officers having two weeks command training. In the hours per man of recruit performance Kentucky exceeded the standard by 45 per cent. It met standards for organization and administration in all areas except maximum monthly salary; while Kentucky's salary rating was below the national average, it was the second highest of the twelve southeastern states.

In the operations category, Kentucky's performance was mixed. It was rated ninety-five out of a possible one hundred score in "selective enforcement"; this category evaluates the extent to which a state uses pertinent past data to forecast future accident patterns, and to assign patrol manpower accordingly. It was above the standard in the average officer performance per week, which is based on arrests. In the accident investigation rate per one hundred accidents "probably occurring," Kentucky dropped from eighty-five to fifty points.

Kentucky's major traffic problem appears to be its traffic conviction rate:

⁹³ National Safety Council, *Annual Traffic Inventory, Analysis for 1963*, Police Traffic Supervision Section Five.

Kentucky continues to report one of the lowest conviction rates for hazardous traffic violations among all states. In 1961 this rate was reported at 60 per cent, increasing slightly to 63 per cent this past year. IACP currently defines any conviction rate of less than 80 per cent as ineffective. This situation would appear to offer ample opportunity for serious study by the enforcement and judicial representatives of the state to determine reasons why almost 40 per cent of all hazardous traffic violations do not result in convictions.⁹⁴

Kentucky also has one of the nation's lowest ratings on the per cent of originally-charged intoxicated driving offenders who were tried on this charge in court.

These ratings indicate that Kentucky's State Police is doing a generally effective job in traffic supervision. The primary problem is that the local prosecutors and the courts apparently fail to follow-up by convicting traffic violators.

Law Enforcement. Seventy-five per cent of the State Police's time is spent on traffic supervision; of the remainder, 20 per cent is devoted to enforcing criminal laws in rural areas, and 5 per cent in assisting state agencies in enforcing their particular laws. Investigation facilities are, of course, available to any state or local law enforcement agency.

In the general field of enforcing criminal laws in rural areas, the State Police often operates independently of local authority by mutual agreement. There is co-operation between sheriffs and State Police when requested by the sheriffs. As noted in Chapter II, a survey of Kentucky sheriffs indicated that almost all of those responding ask the State Police for help, and only two indicated any jurisdictional disputes with the State Police. But the average complaint, if first made to the State Police, is handled by them from investigation through arrest and conviction. The amount of aid given to other state agencies depends on what is requested, and how capable that agency is of handling the violation itself. The usual policy of the State Police is to step in where the violation or violator has gone beyond the bounds regulated by the other agency and involves a broader area of law enforcement.

⁹⁴ *Id.* at 3.

X. State Agencies

INTRODUCTION

Every state agency is created by law, operates under law, and administers a body of law. Some agencies also enforce law. The Constitution of Kentucky vests "the supreme executive power" in the Governor and requires him to "take care that the laws be faithfully executed."¹ The numerous departments, agencies, boards and commissions which constitute the executive branch have law enforcement responsibilities of considerable scope. Some have personnel vested with peace officer powers, and some have special law enforcement personnel.

Kentucky has nine executive departments and agencies which are headed by elective officials: the Governor, Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Commissioner of Agriculture, Labor and Statistics, Superintendent of Public Instruction, Auditor of Public Accounts, and Railroad Commission. Kentucky Revised Statutes § 12.020 lists twenty-six other departments, most of which are headed by commissioners appointed by the Governor, and notes that this enumeration is not intended to be all-inclusive. The same section lists a total of fifty-six boards, committees, or councils which are attached to these departments. In addition, there are numerous independent boards and commissions, many of which have power to enforce law.

It is obviously impossible to analyze all law enforcement functions of all agencies in a report of this scope. A detailed description, including a summary of pertinent laws and regulations, would be many volumes in length. This Chapter describes briefly the law enforcement activities of twenty-four state agencies and various licensing and regulatory boards and commissions. Many important agencies, such as the Department of Commerce and the Department of Public Information, have been excluded because they are not assigned law enforcement duties.

¹ Ky. Const. §68, 81. Ky. Rev. Stat. §12.080 [hereinafter cited as KRS] authorizes the Governor, with the approval of his cabinet, to prescribe such general rules for the conduct of administrative departments as he deems necessary or expedient.

In the case of agencies which are included, such as the Department of Agriculture and the Department of Finance, many of their major functions are not mentioned, as they do not involve law enforcement.

The laws usually specify the powers, duties and organization of each agency; most of the *Kentucky Revised Statutes* consists of such laws. Each agency is also subject to the Governor's authority to "establish, abolish or alter the organization of any agency or statutory administrative department . . . [and to] supplement or limit, or both, the general powers and duties of agency administrators."² Therefore, the statutes relating to an agency may not reflect reality, if it has been reorganized by administrative action. In addition to statutory authority, most agencies are empowered to promulgate rules and regulations, which have the force of law. The statutes confer a general rule-making authority on agencies,³ in addition to specific assignments of such authority. Thus, agencies enforce both statutory and administrative law.

A description of the major law enforcement activities of state agencies follows, arranged alphabetically by department. No attempt has been made to be exhaustive or all-inclusive. Much of the information contained herein is based on questionnaires sent to all agencies by the Committee on the Administration of Justice in the summer of 1962, and on interviews conducted in 1963. Particular attention is given to personnel who have the power of peace officers in law enforcement.

AERONAUTICS

The Department of Aeronautics was created to develop Kentucky's facilities for air travel, and to set and maintain standards of safety for flying.⁴ The department also regulates the construction, maintenance, and use of airports.⁵ Periodic inspections are made by department employees and, if the department finds that its specifications have not been met, it

² KRS 12.025.

³ KRS 12.080, 13.081. At least one agency, the Commission on Human Rights, is specifically prohibited by statute from promulgating rules and regulations, except those necessary for its own internal operation. KRS 19.050.

⁴ KRS 183.021.

⁵ KRS 183.120-183.139.

initiates action to enjoin the airport's use until it has complied with the required standards.⁶ The department does license minor commercial operations in the state, such as pilot training schools, but not pilots and aircraft licensed by the Federal Aviation Agency. The department can have the federal license suspended by recommending such action to the F.A.A.

Both the federal and state aviation agencies enforce air traffic rules. To enforce these rules, the state agency may employ investigators who are designated as peace officers and can arrest offenders when necessary.⁷ The Department of Aeronautics has two inspectors, who are stationed at headquarters and who follow up any complaint of an aviator's conduct, whether it is received from a private citizen or a public official. These complaints have totaled about fifty for the past four years.⁸ While the investigator may arrest an offender, this has never been done; a warning from the commissioner has proved sufficient in every case. The investigators also conduct investigations of accidents involving private aircraft. In this connection, the department has a working agreement with the State Police who get to the scene of the accident as soon as possible to preserve all important data and to record and photograph it where feasible.

AGRICULTURE

The Department of Agriculture consists of the commissioner, the State Board of Agriculture, the State Fair Board, the Board of Veterinary Examiners and the divisions of markets, weights and measures, pest and noxious weed control.⁹ The commissioner is responsible for enforcing the dog law,¹⁰ and is chairman of the Milk Marketing and Antimonopoly Commission.¹¹ The commissioner is an elective constitutional officer¹² and is head of the Department of Agriculture.¹³ The department, its em-

⁶ KRS 183.121.

⁷ KRS 183.110.

⁸ Telephone interview with Philip L. Swift, Comm'r, Dep't of Aeronautics, in Frankfort, Ky., Nov. 1, 1963.

⁹ KRS 246.030.

¹⁰ KRS 258.105.

¹¹ KRS 260.685.

¹² Ky. Const. § 91.

¹³ KRS 246.040(1).

ployees, and its various advisory boards have numerous law enforcement functions, which are discussed below. No attempt has been made to discuss the department's duties which do not involve peace officer powers or direct law enforcement.

State Board of Agriculture. The State Board of Agriculture consists of the commissioner, who is *ex-officio* chairman, the director of the Agricultural Experiment Station, and seven citizens appointed by the Governor for four-year terms.¹⁴ The state board is required to enforce the statutes relating to livestock and poultry disease control, prevent and control such disease, and regulate the importation, sale and use of products used in its diagnosis, prevention, or treatment.¹⁵ The board may establish and enforce quarantines on the movement of livestock into, through, or within the state, order the cleaning and disinfection of premises to eradicate a communicable disease, and adopt and enforce regulations for these purposes.¹⁶ The board appoints the state veterinarian, who must be a licensed veterinarian with five years' practice, and who executes the board's regulations and supervises its inspectors, agents, and specialists employed by the board.¹⁷

The fiscal court of each county is required to appoint a county livestock inspector, who must be a citizen of the county and a licensed veterinarian, or, if no veterinarian is in the county, a reputable citizen familiar with livestock diseases. The appointment must be approved by the state board. The inspector's salary is set by the court and paid by the county.¹⁸ The state board may appoint a state livestock inspector¹⁹

The county livestock inspector reports any outbreak of communicable livestock diseases to the state veterinarian. The members of the state board or its representatives, such as the veterinarian and the county livestock inspector, may, after reasonable notice to the owner, enter upon any premises to inspect or test livestock for communicable diseases. Whenever an animal is

¹⁴ KRS 246.120(1) and (3).

¹⁵ KRS 257.020.

¹⁶ KRS 257.030(2), (3), and (4).

¹⁷ KRS 257.210, 257.230.

¹⁸ KRS 257.280.

¹⁹ KRS 257.260.

infected with or has been exposed to a communicable disease and the inspector deems it necessary to destroy the animal to prevent the spread of the disease, the animal is appraised, and destroyed, and the owner is indemnified.²⁰ Penalties are provided for obstructing inspection or otherwise violating any ruling of the board.²¹ The statutes also empower any peace officer or humane society officer to destroy any abandoned and suffering animal, after obtaining a judgment to that effect by a veterinarian, or two reputable citizens called by him to view the animal.²²

The Kentucky Constitution provides that the legislature controls all elevators or storehouses where grain is stored for compensation, and must enact laws for the inspection of the grain.²³ The state board administers the statutes relating to grain warehouses and may promulgate regulations thereunder.²⁴ There are detailed provisions for appointment of local sealers of grain warehouses, who have the same authority with regard to the grain warehouse laws and regulations, and their enforcement, as does a peace officer.²⁵ There are actually no state warehouse sealers, because Kentucky has, under applicable federal law, an adequate sealing program which renders these state statutes unnecessary.²⁶

State Fair Board. The State Fair Board is composed of the Governor, the Commissioner of Agriculture, the Dean of the University of Kentucky College of Agriculture, and six members appointed by the Governor.²⁷ The board may arrange with the county judge or local police force where the state fair is held to police the grounds. If it is unable to make such arrangements, it may appoint necessary special police, who "are vested with the powers and charged with the duties of peace officers."²⁸

Markets. The egg marketing law is administered by the Division of Markets. All persons buying or selling eggs must

²⁰ KRS 257.110, 246.210(2), 257.120.

²¹ KRS 257.990(10).

²² KRS 257.100.

²³ Ky. Const. § 206.

²⁴ KRS 251.020(1), (2), and (3).

²⁵ KRS ch. 251.

²⁶ Interview with Mancil J. Vinson, Ass't Comm'r, Dep't of Agriculture, in Frankfort, Ky., Oct. 12, 1963.

²⁷ KRS 247.090.

²⁸ KRS 247.160.

obtain a license, except for certain groups, such as individual consumers, who are exempted by statute.²⁹ The department is directed to prescribe reasonable regulations governing licenses; the statutes prescribe a scale of license fees.³⁰ Eggs bought or sold by or to any egg handler must bear an inspection fee stamp and must be properly graded and labeled.³¹

There is an advisory Egg Marketing Board, composed of the Commissioner of Agriculture and six members appointed by the Governor from lists of names submitted by egg marketing and producing groups.³² Inspectors are employed to enforce the law, and may examine any eggs offered for sale for human consumption, and the records of licensees; 58,240 inspections were made during the 1960-1962 biennium.³³ The department may conduct hearings, make examinations, administer oaths, and subpoena witnesses.³⁴

The Division of Markets also enforces the statutes relating to apples and strawberries and the regulations promulgated thereunder. The sale of improperly marked, adulterated, or misbranded apples is prohibited, apples are required to be graded, and the packages containing apples must be marked with specific information.³⁵ The statutes also set standard grades for strawberries and for their package markings, and the commissioner must investigate and certify to shippers and other interested parties the quality, grade, and condition of strawberries.³⁶ Creamery licensing laws are enforced by the agricultural experiment station.

Weights and Measures. The Division of Weights and Measures has the power to test, inspect, and ascertain if all weights, measures, and weighing or measuring devices used or sold in the Commonwealth meet the specifications of the statutes and the division's regulations.³⁷ It may also inspect all packaged commodities purchased or offered for sale.³⁸ Weights, measures, or

²⁹ KRS 260.550.

³⁰ KRS 260.560, 260.580.

³¹ KRS 260.600(3), 260.610, 260.640.

³² KRS 260.570.

³³ KRS 260.560; Dep't of Agriculture, Forty-Second Biennial Report 140-141.

³⁴ KRS 260.640.

³⁵ KRS 260.050-260.120.

³⁶ KRS 260.160.

³⁷ KRS 363.240(1)(a), 363.220.

³⁸ KRS 363.240(1)(b).

devices which correspond with the standards are marked or sealed by the inspectors; those which do not are condemned for repair or for destruction. The owner must dispose of or repair the weights, measures, or devices or they will be confiscated by the division, and the owner will be subject to statutory penalties.³⁹

Division employees have the powers of peace officers in the enforcement of the weights and measures standards, may arrest any persons violating them, "and may seize for use as evidence, without warrant, any false or incorrect weight, measure, or weighing or measuring device found to be used, retained, or offered or exposed for sale, or sold, in violation of . . . [the statutes]."⁴⁰ They may enter any premises, or stop any vendor, peddler, itinerant buyer, or delivery vehicle and require him, if necessary, to proceed to a place where a test or inspection can be made.⁴¹ During the 1959-1961 biennium, the division inspected 43,188 gasoline pumps, condemning 8 per cent; 26,990 small capacity scales, condemning 5 per cent; 3, 806 large capacity scales, condemning 16 per cent; 3,214,289 packages, condemning 7 per cent; and 200 large capacity meters.⁴²

The division administers the tobacco marketing law, licenses warehouses and has general supervision over the sale of tobacco in warehouses throughout the Commonwealth.⁴³ Inspectors are employed to carry out a general inspection service of all warehouses in the state, and to "strictly enforce" the provisions relating to those warehouses.⁴⁴ They are not, however, given peace officer powers.

Pest and Noxious Weed Control. Pest and Noxious Weed Control is responsible for the control of rodents, mosquitoes, and Johnson grass, and for the administration of the apiary program and pest control licensing and law enforcement program. The division is required to conduct a Johnson grass control and eradication program,⁴⁵ using the services of an advisory committee, composed of farmers, agronomists, and public officials appointed

³⁹ KRS 363.250, 363.990(6).

⁴⁰ KRS 363.260.

⁴¹ KRS 363.240(2).

⁴² Dep't of Agriculture, *supra* note 33, at 162.

⁴³ KRS 248.290, 248.300(1).

⁴⁴ KRS 248.310(1).

⁴⁵ KRS 249.420.

by the Commissioner of Agriculture.⁴⁶ The division issues and enforces regulations for the eradication and control of noxious weeds, such as Johnson grass, and pests.⁴⁷ It also aids local mosquito control districts.⁴⁸

The department is responsible for licensing the termite and pest control industry. Before any person, firm, or corporation can conduct the business of using insecticides, fungicides, or rodenticides, they must be examined and licensed by the Commonwealth.⁴⁹ The examining board is composed of five members appointed by the Commissioner of Agriculture, one of whom must be from the Department of Agriculture, two from the University of Kentucky Department of Entomology, and two from the pest control industry.⁵⁰ The board may promulgate rules concerning standards of workmanship, health and safety precautions, proof of financial responsibility, and reports and can suspend or revoke a license for misrepresentation to the public, violations of the departments regulations, failure to pay annual fees, and other specialized causes.⁵¹ The authorized representatives of the Department of Agriculture have the power of peace officers in the enforcement of the termite and pest control industry law. They may enter upon any public or private premises for the purpose of inspection, and they may "examine during reasonable hours the records, materials and equipment of any operator."⁵² The statutes provide procedures for hearings by the board and for appeal to the courts.⁵³ At the end of the 1960-1962 biennium, there were 132 licensed pest control operators in Kentucky. The division has three investigators who investigate the numerous complaints received on pest control operations, most of which concern unlicensed operators. Ten persons were arrested in 1960-1961 fiscal year on this charge.⁵⁴

Apiary Law. The division is also enforcing the apiary law. The commissioner may make and enforce such rules as are neces-

⁴⁶ KRS 249.430(1).

⁴⁷ KRS 249.430(2).

⁴⁸ KRS 249.510-249.630.

⁴⁹ KRS 249.260.

⁵⁰ KRS 249.255.

⁵¹ KRS 249.270, 249.300, 249.305.

⁵² KRS 249.290.

⁵³ KRS 249.317-249.323.

⁵⁴ Dep't of Agriculture, *supra* note 33, at 152.

sary to control, eradicate, and prevent bee diseases. He may order destruction of any infected bees, hives, honey, or appliances without remuneration to the owner,⁵⁵ and may impose quarantines to prevent the spread of infectious disease.⁵⁶ The commissioner has appointed a State Apiarist, and may appoint any number of deputy state apiarists. The apiarists are vested with the powers of peace officers in enforcing the apiary law. These representatives of the department have access to any apiary or any premises, buildings, or other place where they have reason to believe that bees, hives, honey, wax, or appliances are kept. They may not, however, enter an occupied dwelling without a search warrant. Penalties are provided for hindering the representative.⁵⁷ The division also issues apiary certificates, which can be revoked by the commissioner at any time for cause or for nonconformity with any rule promulgated under the apiary law.⁵⁸ Kentucky has over 3,000 registered beekeepers with over 100,000 colonies.⁵⁹

Dog Law. The licensing and enforcement provisions of the dog and livestock protection law are administered by the Department of Agriculture. The commissioner is authorized to make agreements with local agencies and organizations to enforce the law, and to promulgate regulations concerning licensing provisions.⁶⁰ He is assisted by an advisory Kentucky Dog Licensing Board, composed of the commissioner and four members appointed by the Governor from lists of persons nominated by the state sheep association, the purebred livestock association, the kennel clubs, and the veterinary medical association.⁶¹ The dog law contains provisions for the issuance of dog's licenses, the impounding and eventual destruction of untagged dogs,⁶² and the confinement or destruction of a dog found to have caused damage to persons or livestock.⁶³ License fees are paid into a livestock fund, which is used to indemnify owners for losses caused

⁵⁵ KRS 252.190.

⁵⁶ KRS 252.200.

⁵⁷ KRS 252.240, 252.990.

⁵⁸ KRS 252.220, 252.230.

⁵⁹ Dep't of Agriculture, *supra* note 42, at 156-158.

⁶⁰ KRS 258.105(1).

⁶¹ KRS 258.115.

⁶² KRS 258.215.

⁶³ KRS 258.325(1).

by dogs, and to recompense owners of licensed dogs which are killed by peace officers without justification.⁶⁴ The fiscal court of each county is required to employ a dog warden and establish a pound, failure to do this renders the court members liable if livestock is destroyed by dogs.⁶⁵

Ninety-one counties have a duly appointed dog warden.⁶⁶ The dog wardens do not have peace officer power and cannot make arrests.⁶⁷ The department may, however, employ personnel who have the power of peace officers regarding the enforcement of the dog law, who may, upon displaying an identification badge, enter upon any premises for purposes of investigation.⁶⁸ In addition, all Kentucky peace officers are required to enforce or aid in the enforcement of the dog law provisions.⁶⁹ Peace officers are authorized to destroy dogs which are running unaccompanied between sunrise and sunset;⁷⁰ running at large in a quarantined area;⁷¹ found by the Department of Agriculture to have caused damage to persons, livestock, or poultry;⁷² and impounded dogs which are unclaimed after seven days.⁷³

Seeds, Feeds and Fertilizers. The Director of the University of Kentucky Agricultural Experiment Station, who is a member of the State Board of Agriculture, enforces the statutes regulating seeds, feeding stuffs, fertilizers and agricultural seeds.⁷⁴ The statutes set labeling requirements for seeds⁷⁵ and authorize the director and his agents to seize any improperly labeled seed, and to take samples of any seeds offered for sale.⁷⁶ They have free access at all reasonable hours to any premises or vehicle to obtain the sample.⁷⁷

⁶⁴ KRS 285.285-285.315.

⁶⁵ KRS 258.195; *Upchurch v. Clinton County*, 330 S.W.2d 428 (Ky. 1959); see *Ops. Att'y Gen. #38,847* (Ky. 1956).

⁶⁶ Interview with Mancil J. Vinson, Ass't Comm'r, Dep't of Agriculture, in Frankfort, Ky., Nov. 14, 1963.

⁶⁷ *Ops. Att'y Gen. #37,560* (Ky. 1955.)

⁶⁸ KRS 258.105(2).

⁶⁹ KRS 258.225.

⁷⁰ KRS 258.265(2).

⁷¹ KRS 258.345(4).

⁷² KRS 258.325(1).

⁷³ KRS 258.215(1).

⁷⁴ KRS 250.100.

⁷⁵ KRS 250.040(1).

⁷⁶ KRS 250.120, 250.130.

⁷⁷ KRS 246.210(5).

The entomologist and botanist of the experiment station is the state entomologist.⁷⁸ He, with the advice of the director of the station and the Commissioner of Agriculture, may promulgate and enforce regulations relating to trees, plants, weeds, and pests.⁷⁹ Whenever the entomologist determines any trees or plants to be infected with dangerous insect pests or plant diseases, he may establish a quarantine against their importation or transportation.⁸⁰ Upon credible information as to infected trees or plants within the state, the entomologist may require that they be disinfected or destroyed.⁸¹ All residents and non-resident nurseries or agencies selling nursery stock in the state must be licensed by the state entomologist.⁸² The entomologist or his assistants inspect the nursery's stock once a year for dangerous pests or fungus. If a dangerous condition is found to exist, the owner cannot ship or deliver any such nursery stock before treatment.⁸³ An inspection certificate is issued when the stock is found to be free of insect or fungus enemies and must accompany any shipments.⁸⁴

The state entomologist is also authorized to adopt and carry out such measures as he deems advisable to protect crops from the Japanese beetle. The entomologist or his authorized agent has free access to any premises or containers for investigating and treating the premises for the control of the beetle,⁸⁵ and penalties are set for hindering him.

The statutes require a license for cream stations, creameries, milk shipping stations, cheese factories, testers, samplers, weighers, and others,⁸⁶ and enumerate certain prohibited practices relating to milk and cream producers.⁸⁷ The director of the experiment station is charged with the enforcement of the statutory provisions and may employ all proper means, such as revocation

⁷⁸ KRS 249.020(1) and (2).

⁷⁹ KRS 249.030(1).

⁸⁰ KRS 249.040.

⁸¹ KRS 249.050.

⁸² KRS 249.060.

⁸³ KRS 249.070.

⁸⁴ KRS 249.080, 249.090.

⁸⁵ KRS 246.210(4).

⁸⁶ KRS 260.815.

⁸⁷ *E.g.*, KRS 260.780, 260.785, 260.790.

of licenses and inspection of licensed places, to assist in the enforcement.⁸⁸

Milk and Marketing Commission. The Milk Marketing and Anti-monopoly Commission is composed of five members appointed by the Governor, three of them from lists submitted by the Agriculture Experiment Station, Kentucky Farm Bureau Federation, and the Dairy Products Association of Kentucky. The sixth member and chairman is the Commissioner of Agriculture.⁸⁹ The commission licenses milk handlers and dealers and issues regulations designed to prevent practices such as selling and advertising below cost, give-away programs, and others that may tend to be monopolistic.⁹⁰ To enforce these provisions three full-time representatives, who are not peace officers, visit milk processors and retailers. Most cases are corrected by the field representatives on the spot; however, the commission can revoke a violator's license, if necessary,⁹¹ after a formal complaint and a hearing.⁹² Orders issued pursuant to the commission's hearings are subject to court review.⁹³ During the 1961-1962 fiscal year, two actions resulted from the field representatives' investigations. With 7,000 licensees, the commission holds approximately twelve formal hearings per year over milk marketing violations.⁹⁴

ALCOHOLIC BEVERAGE CONTROL

The Department of Alcoholic Beverage Control consists of the commissioner and a board composed of the commissioner and the administrators of the distilled spirits and malt beverage units.⁹⁵ The department is responsible for the administration of all state laws and regulations relating to the manufacture, sale, transportation, storage, and advertising of alcoholic beverages, except those involving taxation.⁹⁶

⁸⁸ KRS 260.825, 268.830.

⁸⁹ KRS 260.685.

⁹⁰ 1 Ky. Administrative Reg., Dep't of Agriculture, MMC-1 (1960).

⁹¹ KRS 260.740.

⁹² KRS 260.715(1)(a) and (2).

⁹³ KRS 260.745.

⁹⁴ Interview with Mancil J. Vinson, Ass't Comm'r, Dep't of Agriculture, in Frankfort, Ky., Oct. 12, 1963.

⁹⁵ KRS 241.030.

⁹⁶ KRS 241.020.

The board is required to: supervise and control the manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages; regulate the granting, suspension, and revocation of licenses; and hold hearings, render decisions, and make rules pertaining to alcoholic beverages.⁹⁷ A person must be licensed to manufacture, store, sell or commercially transport alcoholic beverages.⁹⁸

The department has twenty-eight field representatives, who are located throughout the state, with twelve of them in dry counties. A field representative must be a high school graduate and have one year's experience in police work.⁹⁹ Field representatives periodically inspect all bars, and investigate complaints as circumstances demand. Violations are reported to the state administrator, who may institute proceedings to revoke a license; before revocation, however, the licensee must be given an opportunity to be heard before the board.¹⁰⁰ Field representatives have the power of peace officers and may inspect any premises where alcoholic beverages are manufactured, sold, stored, or otherwise trafficked in, without first obtaining a search warrant.¹⁰¹ In reply to a questionnaire of the Committee on the Administration of Justice, the Department of Alcoholic Beverage Control reported that there had been 3,081 investigations in the last five years, and that 2,682 of these resulted in prosecutions or disciplinary actions. During the 1960-1961 fiscal year, the department's field representatives investigated 150 cases involving bootlegging, ninety-seven cases involving other violations, and destroyed seventy-three stills, in co-operation with federal authorities.

AUDITOR

The Auditor of Public Accounts is an elected state officer.¹⁰² His functions, in summary are to audit the accounts of all agencies that receive or handle state funds, all state revenue collections,

⁹⁷ KRS 241.060.

⁹⁸ KRS 241.090.

⁹⁹ Letter from Harold Moberly, Comm'r, Dep't of Alcoholic Beverage Control, to Ky. Att'y Gen. John B. Breckinridge, Oct. 8, 1963.

¹⁰⁰ KRS 243.050.

¹⁰¹ KRS 241.090.

¹⁰² Ky. Const. §§ 91, 93, 95.

county officers who handle funds, and to report any illegal or irregular handling of state funds.¹⁰³ He and his agents have access to books, records and accounts of agencies, and may subpoena witnesses.¹⁰⁴ In the 1958-1962 period, several hundred violations were investigated, some with the co-operation of the Department of Law and the State Police.¹⁰⁵

When misuse or mismanagement of funds is found, the auditor turns the information over to a prosecuting attorney.¹⁰⁶ Generally speaking, the Attorney General prosecutes cases involving state agencies and private agencies which use state funds.¹⁰⁷ The Department of Finance is notified of money due the state at the time the audit is made. The Attorney General is also informed and if the money is not collected within a reasonable time, he institutes action. The Attorney General collected 3,749.83 dollars of delinquent accounts in the 1962-1964 fiscal biennium, with five cases pending. The Commonwealth's attorneys handle prosecutions involving county funds.¹⁰⁸ In reply to the Committee on the Administration of Justice's questionnaire, the auditor noted that prosecutions have been rare, despite frequent violations, because local prosecutors may be reluctant to act against local officials.

CHILD WELFARE

The Department of Child Welfare was created in 1960 to assume responsibility for most state functions relating to child welfare,¹⁰⁹ some of which involve law enforcement. The department is responsible for licensing day-care centers for children¹¹⁰ and child-caring or child-placing institutions.¹¹¹ To ensure compliance with these licensing laws and regulations, the department is empowered to make investigations and may refuse, suspend or revoke a license.¹¹² The department must also approve all adop-

¹⁰³ KRS 43.050.

¹⁰⁴ KRS 43.080.

¹⁰⁵ Interview with Joe Schneider, Auditor of Public Accounts, in Frankfort, Ky., Dec. 9, 1963.

¹⁰⁶ KRS 43.050(4).

¹⁰⁷ KRS 325.990.

¹⁰⁸ KRS 69.030.

¹⁰⁹ KRS 199.810, 199.850(2).

¹¹⁰ KRS 199.892-199.896.

¹¹¹ KRS 199.640-199.670.

¹¹² KRS 199.670, 199.896.

tions of children by non-relatives, except when the child has been placed for adoption by a licensed agency.¹¹³ Penalties are provided for violation of licensing and adoption laws.¹¹⁴ No prosecutions have been carried out since the department was established, as all violations have been corrected by voluntary compliance.

The department is responsible for maintaining state institutions for children who have been committed as delinquents,¹¹⁵ and may supervise similar local institutions.¹¹⁶ Responsibility for juvenile delinquents falls primarily upon the county courts, although the department estimates that fewer than a dozen courts throughout the state have a sufficient staff to make proper investigation and recommendations. The field workers of the Department of Child Welfare, therefore, must act as the investigating arm of the court. In many cases, the same worker will serve as the court's probation officer and as the state's placement officer in regard to children who have been released from the institutions under supervision. In areas where delinquency rates are high, the department has special placement officers who supervise delinquents released from institutions on home placement. The Governor, upon recommendation of the commissioner, may appoint child welfare workers as peace officers with authority to enforce child welfare statutes;¹¹⁷ nine officers are currently so empowered.¹¹⁸

A child who violates parole may be returned to custody of the department by any of its probation officers, or by any peace officer on direction of the department.¹¹⁹ In circumstances which require arrest or pursuit, the department usually calls upon the local law enforcement agency. Any peace officer or citizen may arrest, without warrant, and return to the institution, a child who has escaped from a house of reform or a home in which he has been placed on parole.¹²⁰

¹¹³ KRS 199.470.

¹¹⁴ KRS 199.990.

¹¹⁵ KRS 208.400.

¹¹⁶ KRS 208.130.

¹¹⁷ KRS 208.320(3).

¹¹⁸ Telephone interview with Joseph M. Gray, Exec. Ass't Comm'r, Dep't of Child Welfare, in Frankfort, Ky., Nov. 26, 1963.

¹¹⁹ KRS 208.510.

¹²⁰ KRS 440.060.

CONSERVATION

The Department of Conservation, headed by the commissioner, exercises most administrative functions relating to the conservation and protection of natural resources, flood control, strip mining and reclamation, and water usage for municipal and industrial purposes. The statutes establish four divisions: forestry; soil and water resources; strip mining and reclamation; and flood control and water usage.¹²¹

Forestry. The Division of Forestry has supervision over all the state's forestry property and advance forest interests.¹²² It has complete control over all property acquired or leased by it, may post all forest reserves, and may keep all trespassers from the property under the division's control.¹²³ The department has 490 forest wardens, hired to prevent and extinguish forest fires, who may arrest without a warrant any person they catch violating the laws protecting the Commonwealth's forests.¹²⁴ Any person who trespasses on, injures, or interferes with the management of property under the division's control is subject to statutory penalties.¹²⁵ In addition to fire wardens, the department has recently begun using principal forestry aides who have peace officer powers. These officers are to "help the fire wardens untangle the hard problems in each district." These men are to make investigations, arrests, collect evidence and present the evidence in court as does any peace officer. The three aides, who travel throughout the nine conservation districts, received peace officer training at the Florida Forestry Service law enforcement unit, a five-day police training course from the F.B.I., a two-day meeting with department officials to discuss various problems concerning their jobs, and each visit each district prior to entering upon their duties.¹²⁶

Strip Mining. The Director of the Division of Strip Mining and Reclamation, the Commissioner of Conservation and the

¹²¹ KRS 146.010, 146.020(1) and (2).

¹²² KRS 149.010.

¹²³ KRS 149.040(1).

¹²⁴ KRS 149.080, 149.090(1); Telephone interview with J. O. Matlick, Comm'r, Dep't of Conservation, in Frankfort, Ky., Nov. 7, 1963.

¹²⁵ KRS 149.990(1).

¹²⁶ Telephone interview with Henry W. Berckman, Assoc. Director, Forest Fire Control, Dep't of Conservation, in Frankfort, Ky., Nov. 7, 1963.

Commissioner of Mines and Minerals compose the strip mining commission.¹²⁷ The division issues permits for strip mine operators upon payment of a fee and submission of a map and other data.¹²⁸ The operator is required to prepare and execute a reclamation plan under regulations adopted by the commission and forfeits his bond if he fails to comply with the statutes or regulations.¹²⁹ Penalties are set for violation of the statutes, and civil penalties are recoverable by the Attorney General.¹³⁰ During the past four years, there have been thirty-nine strip mine bond forfeitures, resulting in the collection of 12,300 dollars; 7,200 dollars remains to be collected. Thirteen suits for civil penalties were filed against non-complying operators, and eight of these have resulted in judgments for the Commonwealth which total 4,200 dollars.

CORRECTIONS

The responsibility for the management of the penal, reform, and correctional institutions in Kentucky is vested in the Department of Corrections. The department is headed by a commissioner who is authorized to appoint, fix the compensation of and prescribe the duties of the department's employees.¹³¹ He may also "delegate to any such person appointed such power and authority as he deems reasonable and proper for the effective administration of the department"; all personnel of the department, however, have the authority and powers of peace officers while acting "in any capacity entailing the maintenance of custody over any prisoners. . . ."¹³² The personnel who usually are charged with custody of prisoners are the prison guards. In the Kentucky State Penitentiary at Eddyville, there are 111 guards; in the Kentucky State Reformatory at LaGrange, there are approximately 170 officers; and in the Women's Prison at Pewee Valley, there are five guards.¹³³

¹²⁷ KRS 350.024.

¹²⁸ KRS 350.050, 350.060.

¹²⁹ KRS 350.090.

¹³⁰ KRS 350.990.

¹³¹ KRS 96.020, 196.030(1)(a).

¹³² KRS 196.035, 196.037.

¹³³ National Council on Crime & Delinquency, Adult Correctional Program, Commonwealth of Kentucky, A Study and Recommendations for the Kentucky Committee for Correctional Research 4.11, 5.17, 6.2 (1963).

The department is also required to:

Study the sources and causes of crime, delinquency and dependency and suggest and put into effect remedial measures in the prevention and ultimate eradication of anti-social acts and conditions.¹³⁴

This gives it responsibility in crime prevention research which, if fully discharged, could be of continuing value to law enforcement efforts.

ECONOMIC SECURITY

The Department of Economic Security administers functions relating to state unemployment insurance, state employment offices, public assistance, and certain services to children.¹³⁵ The commissioner has sole charge of the Division of Public Assistance, and may adopt such rules as he deems necessary for its proper administration.¹³⁶

Public Assistance. The statutes establish the categories of public assistance and the requirements for eligibility.¹³⁷ If a person has received payments in error or due to a false statement, misrepresentation, or failure to disclose a material fact, the commissioner may withhold payment pending administrative appeal, institute civil action to recover payments, or report the facts to the county attorney.¹³⁸ The appeal is heard before a board composed of the commissioner and two of his appointees. The petitioner has a right to appeal to his county circuit court. The court must limit its decision to the sufficiency of the probative evidence supporting the board's decision, the reasonableness of the commissioner's regulations, and the arbitrariness, unlawfulness, or abuse of the board's discretion.¹³⁹

A case review section examines cases reported by field offices which may involve fraud, erroneous payment and similar matters.

¹³⁴ KRS 196.110.

¹³⁵ KRS 195.010(1), 295.020(1)(a), (b), (c), and (d).

¹³⁶ KRS 205.160(1) and (2).

¹³⁷ KRS 250.200.

¹³⁸ KRS 205.255.

¹³⁹ KRS 204.170(1), 205.230; *Ferguson v. Garland*, 352 S.W.2d 70 (Ky. 1961); *Powell v. Bingham*, 350 S.W.2d 150 (Ky. 1961); *Barnes v. Hembree*, 339 S.W.2d 162 (Ky. 1960).

There are usually five persons in this section. No court action is taken until they have made a fact-finding check.¹⁴⁰

Homes for the Aged. The department licenses persons to conduct homes for the aged or infirm; failure to obtain a license is a misdemeanor.¹⁴¹ There are approximately 22 licensed homes in the state. Inspections of these homes must be made in accordance with the commissioner's rules and written reports must be filed with him. The department has three inspectors who have free access to any licensed facilities, facilities that have applied for a license, and "facilities where there are reasonable grounds for believing that they may be subject to the provisions of . . ." the statutes relating to homes for the aged or infirm.¹⁴²

Unemployment Insurance. The Unemployment Insurance Commission is composed of the Commissioner of Economic Security and two associate commissioners appointed by the Governor.¹⁴³ The commissioner must appoint a State Advisory Council and may appoint local advisory councils to aid the commissioner in formulating policies and discussing problems relating to unemployment compensation.¹⁴⁴ The commission may promulgate rules for administering unemployment compensation and serves as an appeal board to hear and decide cases.¹⁴⁴ The commission or any member may administer oaths, take depositions, certify official acts, and issue subpoenas.¹⁴⁵ Any person who obtains benefits by a false statement or through a misrepresentation of a material fact or fails to disclose a material fact is subject to penalties.¹⁴⁶ Many actions before the commission involve questions of fraud, misrepresentation, and such over-payments by employers. In the 1962 calendar year, the commission recovered

¹⁴⁰ Telephone interview with Aaron Paul, Dep't of Economic Security, in Frankfort, Dec. 9, 1963.

¹⁴¹ KRS 216.660, 216.990(3).

¹⁴² KRS 216.650; Telephone interview with Haines Bruce, Sup'r Community Relations and Licensing, Dep't of Economic Security, in Frankfort, Ky., Nov. 12, 1963.

¹⁴³ KRS 341.110(1).

¹⁴⁴ KRS 341.115(1) and (3).

¹⁴⁵ KRS 341.200(1).

¹⁴⁶ KRS 341.990(5).

73,190 dollars paid out to claimants by employers because of misrepresentation.¹⁴⁷

EDUCATION

The Department of Education is headed by an elective superintendent,¹⁴⁸ and a State Board of Education which is appointed by the Governor.¹⁴⁹ The department is responsible for the common school system, vocational education and rehabilitation, special education, and numerous other functions, a few of which directly involve law enforcement.

Compulsory Attendance. Children between the ages of seven and sixteen are required to attend school regularly, except for a few categories exempted by statute.¹⁵⁰ Each school district has an attendance officer, entitled a director of pupil personnel, who enforces the attendance law. Directors of pupil personnel and their assistants have the powers of peace officers, except that they do not have authority to serve warrants. They may enter all places where children are employed "and do whatever is necessary to enforce the laws relating to compulsory attendance and employment of children. . . ."¹⁵¹ Statutory penalties are provided for parents and other persons who violate attendance laws, and the attendance officer, under the direction of the local superintendent or the local or state board of education, may institute proceedings against violators.¹⁵²

Child Care Centers. The Department of Education issues permits to approved pre-school child care centers.¹⁵³ An application for a permit must include, among other information, certificates from the local health officer, fire marshal, and building inspector, showing that the facility complies with their requirements.¹⁵⁴ Detailed requirements for staff, curriculum and safety

¹⁴⁷ Telephone interview with O. B. Hannah, Director, Unemployment Insurance, Dep't of Economic Security, in Frankfort, Ky., Nov. 12, 1963.

¹⁴⁸ Ky. Const. §§ 91, 95; KRS 156.010.

¹⁴⁹ KRS 156.030.

¹⁵⁰ KRS 159.010, 159.030.

¹⁵¹ KRS 159.030.

¹⁵² KRS 159.990.

¹⁵³ KRS 158.330.

¹⁵⁴ KRS 158.310.

are set by regulation.¹⁵⁵ Centers must be open to inspection at all times.¹⁵⁶

Teacher Certification. No person may serve as a teacher, superintendent, or other public school position for which certificates are issued without a certificate from the State Board of Education.¹⁵⁷ Certificates are issued under regulations of the state board to persons who have completed a prescribed curricula, which varies according to the type of position. Teachers are employed by local boards of education, subject to the statutes governing tenure, and their contracts may be terminated only for causes specified by statute.¹⁵⁸

Business Schools. The 1962 legislature established a State Board of Business Schools in the Department of Education, consisting of the Superintendent of Public Instruction and six persons appointed by the Governor.¹⁵⁹ Every independent business school must make a verified application to the board for a license, including information about courses, staff and equipment.¹⁶⁰ The board may revoke or suspend a license for reasons stated in the statutes, after holding hearings.¹⁶¹ It is made the duty of the Attorney General and Commonwealth's and county attorneys to assist the board in enforcing the law.¹⁶²

FINANCE

Duties of the Department of Finance include numerous functions relating to budget, accounts, services, and purchases for state government.¹⁶³ It employs custodians and night watchmen for the capitol and its grounds, who have the powers of peace officers.¹⁶⁴ The department must investigate any alleged mismanagement of the affairs of state officers, employees, or governing bodies responsible for the management of state funds. If

¹⁵⁵ 1 Ky. Administrative Reg., Dep't of Education, SBE-50.010-5.110 (1958).

¹⁵⁶ KRS 158.320.

¹⁵⁷ KRS 161.020-161.030.

¹⁵⁸ KRS 161.790.

¹⁵⁹ KRS 331.040.

¹⁶⁰ KRS 331.050.

¹⁶¹ KRS 331.080, 331.090.

¹⁶² KRS 331.100.

¹⁶³ KRS 42.020(1) and (2).

¹⁶⁴ KRS 433.500(2).

any officer or employee is unnecessary or is guilty of mismanagement of state affairs, he shall be recommended for removal, and is subject to fine if convicted of gross mismanagement.¹⁶⁵

FISH AND WILDLIFE RESOURCES

The Department of Fish and Wildlife Resources is the administrative body responsible for "protecting and conserving the wild life resources of this Commonwealth so as to ensure a permanent and continued supply. . . ."¹⁶⁶ The department is governed by a commission, composed of one man appointed by the Governor from each of the nine wild life districts,¹⁶⁷ which appoints a commissioner.¹⁶⁸ The department enforces the state's fish and wildlife laws and may promulgate and enforce any regulations which it deems necessary to prevent the depletion of Kentucky fish and game.¹⁶⁹ These regulations may, for example, fix, close, or divide the hunting and fishing seasons, regulate bag or creel limits, or regulate the places where taking is permitted.¹⁷⁰ They may be made to apply to a limited area or to the entire state.¹⁷¹

Conservation officers, appointed by the commissioner, and all peace officers and their deputies are charged with enforcement of the laws and regulations relating to fish and wildlife. These officers have the right to go upon the land of any person to investigate fish or game conditions or to enforce these laws and regulations.¹⁷² "They may arrest on sight, without warrant, any person detected by them in the act of violating any of the provisions of [fish and wildlife codes]," and may inspect the license of any person engaged in an activity where a license is required by these codes.¹⁷³ Conservation officers are authorized

¹⁶⁵ KRS 42.160, 42.990(1).

¹⁶⁶ KRS 150.015.

¹⁶⁷ KRS 150.022(1) and (2).

¹⁶⁸ KRS 150.061(1).

¹⁶⁹ KRS 150.025(1).

¹⁷⁰ KRS 150.025(2)(a), (b) and (e).

¹⁷¹ KRS 150.025(1); see *Commonwealth v. Moyers*, 272 S.W.2d 670 (Ky. 1954).

¹⁷² KRS 150.090(1); see *Holland v. City of Flora*, 284 S.W.2d 824 (Ky. 1955); *Ops. Att'y Gen. #62-568* (Ky. 1962).

¹⁷³ KRS 150.090; see *Draffen v. Black*, 302 Ky. 775, 196 S.W.2d 362 (1946).

to bear arms and to use them when necessary in the discharge of their duties.¹⁷⁴

Conservation officers must be high school graduates, no shorter than 5 feet, 9 inches, with proportionate weight, and between twenty-three and thirty-three years of age. A physical examination and the civil service examination is also necessary for qualification. During 1962, the 115 full-time conservation officers made a total of 3,426 arrests which resulted in 2,960 convictions. The county or Commonwealth's attorney is required by law to prosecute the fish and wildlife law violator.¹⁷⁵ In this period, conservation officers checked 177,787 licenses throughout The Commonwealth. A total of 232,528 hunting and 319,121 fish-inf licenses was issued in 1962.¹⁷⁶

HEALTH

The Department of Health is empowered to establish, maintain, promote, and conduct appropriate facilities and services for the purpose of protecting the public health.¹⁷⁷ Many of its important functions and sections do not directly involve law enforcement activities and are not mentioned here.

Commissioner and State Board. The Commissioner of Health is the chief executive of the department. He is elected by the State Board of Health and must have a license to practice medicine in Kentucky, and four years' experience in public health administration. The State Board of Health consists of nine members appointed by the Governor, and the commissioner, who serves as its secretary.¹⁷⁸ The functions of the board include power to: appoint the medical and dental members of county boards of health; hear and decide appeals from actions of the department; adopt regulations; issue or deny hospital licenses; approve or disapprove the establishment of hospital service corporations and contracts for such; approve or disapprove the establishment of medical service plan corporations and contracts for

¹⁷⁴ KRS 150.095.

¹⁷⁵ KRS 150.130, 150.160.

¹⁷⁶ Telephone interview with J. T. Cox, Ass't Comm'r, Dep't of Fish and Wildlife Resources, in Frankfort, Ky., Nov. 26, 1963.

¹⁷⁷ KRS 211.005.

¹⁷⁸ KRS 211.040, 211.080.

such; act in an advisory capacity to the commissioner; enforce the laws relating to the practice of medicine by physicians and osteopaths; and administer other statutes relating to health.¹⁷⁹

Office of Commissioner. The office of the commissioner contains four sections: local health, medical licensure, legal services, and investigation and narcotic control. Local health coordinates services to county health departments, and supervises their operations. Legal services provides appropriate legal aid to the commissioner, the board, the department, and to local boards and departments. Medical licensure assists the state board in administering the medical and osteopathic practice act and in licensing and regulating practitioners.¹⁸⁰ Although legal action can be brought against persons violating these statutes, administrative procedures are the more usual procedure.¹⁸¹

Investigation and narcotic control is actually a law enforcement section. It enforces the narcotic law,¹⁸² the amphetamine drugs law,¹⁸³ the barbituates law,¹⁸⁴ the medical licensure law,¹⁸⁵ the unauthorized treatment of cancer law,¹⁸⁶ and the medical titles law.¹⁸⁷ This section has a director and four investigators, some of whom are graduates of the United States Narcotic School.¹⁸⁸ A number of statutes give the investigators, inspectors, representatives and agents of the department and State Board of Health the "full powers and authority of peace officers," and authorize them to administer oaths, enter upon premises to make inspections, seize evidence, interrogate persons, require the production of papers and other evidence, for the purpose of enforcing these laws.¹⁸⁹ During the 1960-61 fiscal year, the section, working in close co-operation with other law enforcement agencies, made

¹⁷⁹ KRS 211.090.

¹⁸⁰ KRS 311.550-311.620.

¹⁸¹ Interview with John Godfrey, Director, Legal Services, Dep't of Health, in Frankfort, Ky., Sept. 23, 1963.

¹⁸² KRS ch. 218.

¹⁸³ KRS 217.720-217.790.

¹⁸⁴ KRS 217.461-217.535.

¹⁸⁵ KRS 311.550-311.620.

¹⁸⁶ KRS 211.182-211.190.

¹⁸⁷ KRS 311.375-311.376.

¹⁸⁸ Interview with John Godfrey, *op. cit. supra* note 181.

¹⁸⁹ KRS 217.531(2), 217.790(2), 218.190(2), 311.495(2), 311.605(5).

1,879 contacts, which resulted in forty-five arrests and thirty-two convictions.¹⁹⁰

Medical Services. The Division of Medical Services was established to aid in the prevention of communicable and chronic diseases and exercises a number of law enforcement functions. The department is required by statute to regulate the detection, prevention and control of communicable, chronic, degenerative and other diseases.¹⁹¹

Tuberculosis Control works in co-operation with the State Tuberculosis Hospital Commission,¹⁹² and is engaged in case-finding and follow-up of tubercular patients. Kentucky has a compulsory tuberculosis control law, which requires persons with communicable tuberculosis to observe certain precautions prescribed by statute and by regulation. If a person is suspected of having tuberculosis and does not take such precautions, any court, upon affidavit of a health officer, may order him to be examined.¹⁹³ Penalties, including imprisonment or confinement to suitable facilities, are provided.¹⁹⁴

Children are required to be immunized against diphtheria, tetanus, poliomyelitis and pertussis, in accordance with regulations of the State Board of Health.¹⁹⁵ Children are exempted if the immunization would be injurious to the child's health, or contrary to their parents' religious principles.¹⁹⁶ Both minors and adults are required to be vaccinated against smallpox.¹⁹⁷ Persons obtaining a marriage license and pregnant women must be tested for venereal disease.¹⁹⁸ Other law enforcement duties include administration of the statutes requiring the vaccination of dogs against rabies.¹⁹⁹ Personnel of the veterinary public health section also cooperate with local health departments, other sections of

¹⁹⁰ Bull. of the Ky. Dep't of Health, Nov.-Dec 1962, p. 10 [hereinafter cited as Bull.].

¹⁹¹ KRS 211.180(1).

¹⁹² KRS 215.006.

¹⁹³ KRS 214.350-214.360.

¹⁹⁴ KRS 214.990.

¹⁹⁵ KRS 214.034.

¹⁹⁶ KRS 214.036.

¹⁹⁷ KRS 214.040-214.120.

¹⁹⁸ KRS 214.160-214.180, 402.120-402.200.

¹⁹⁹ KRS 258.015.

the department, and veterinarians, and assist in epidemiological investigations involving such diseases as rabies and brucellosis.²⁰⁰

The Kentucky Commission on Alcoholism was made a part of the Department of Health in 1962.²⁰¹ The Department provides a program for the rehabilitation of alcoholics. A close relative of an alcoholic, or the county health officer, may petition the circuit court for trial and commitment of the alcoholic, or such a person may apply to the court himself.²⁰² The Department of Health is authorized to establish or contract for treatment facilities for alcoholics.²⁰³ Procedures for commitment, however, specify that an alcoholic shall be ordered confined in the proper state hospital, to be designated by the Commissioner of Mental Health.²⁰⁴ The Department of Health presently pays one-third of the expenses of the Louisville-Jefferson County Council on Alcoholism, which must admit any Kentucky alcoholic patient for treatment.²⁰⁵

Environmental Health. The department is assigned statutory responsibilities regarding the safe handling of food, water purification, waste disposal, the sanitation of public facilities, "and the control of such other factors as may be necessary to insure a safe and sanitary environment."²⁰⁶ It is empowered to examine into all nuisances, sources of filth and causes of sickness, and may order the owner to abate any which may be injurious to the public health.²⁰⁷ Many of these responsibilities are performed by the Division of Environmental Health, which is composed of the following sections: occupational health, plumbing, sanitary engineering, food and drug control, water pollution, radiological health and sanitation.

The occupational health section makes field inspections to evaluate health hazards, including lighting, heat ventilation, radiation, noise and safety practices.²⁰⁸ The plumbing section enforces the state plumbing laws, supervises examinations for mas-

²⁰⁰ 1960-1961 Division of Veterinary Health Annual Report 4.

²⁰¹ Ky. Acts ch. 106, art. XII, § 2 (1962).

²⁰² KRS 222.110-222.190.

²⁰³ KRS 222.035.

²⁰⁴ See KRS 222.150.

²⁰⁵ Interview with John Godfrey, *op. cit. supra* note 181.

²⁰⁶ KRS 211.180.

²⁰⁷ KRS 211.210.

²⁰⁸ Bull., *supra* note 190, at p. 17.

ter and journeyman plumbers, and inspects plumbing.²⁰⁹ Sanitary engineering plans of public water purification plants and distribution systems, public swimming pools, sanitary landfills, programs relating to rodent and insect control. The food and drug section enforces Kentucky's food, drug and cosmetic law,²¹⁰ the hazardous substances labeling law,²¹¹ and regulations promulgated thereunder by the State Board of Health. These laws prohibit the sale and distribution of adulterated, misbranded, and falsely advertised foods, drugs, cosmetics, and of misbranded hazardous substances intended for household use. Criminal proceedings can be brought to enforce these laws, which are administered in close cooperation with other state and federal agencies.²¹²

The Water Pollution Control Commission is a separate agency, but is administratively attached to the Department of Health. It is composed of the Commissioners of Health, Conservation, Mines and Minerals, Fish and Wildlife Resources, the Attorney General, the Director of Strip Mining and Reclamation, and three citizens appointed by the Governor.²¹³ Its major responsibilities include the approval of sewage treatment plants for Kentucky industries and municipalities and control of the methods of waste disposal. The commission maintains two field offices for coal-associated waste and one field office for oil and brine problems.²¹⁴

In 1962, Kentucky became the first state to assume the jurisdiction over certain regulatory responsibility for nuclear materials, under agreement with the Federal Atomic Energy Commission. The Commissioner of Health is a member of Kentucky Advisory Committee on Nuclear Energy and Space and the Kentucky Atomic Energy and Space Authority, and is designated as the latter's health and safety officer.²¹⁵ The radiological health section enforces policies for the licensing and regulation of by-product, source and special nuclear materials. It also administers a comprehensive set of regulations relating to other forms of ioniz-

²⁰⁹ KRS ch. 318.

²¹⁰ KRS 217.005-217.215.

²¹¹ 217.650-217.710.

²¹² Division of Food and Drugs, 1960-1961 Annual Report 1.

²¹³ KRS 220.600.

²¹⁴ Bull., *supra* note 190, at p. 22.

²¹⁵ KRS 152.540, 152.570.

ing radiation.²¹⁶ At the end of the 1961-1962 fiscal year, there were 107 licenses within the state for academic, industrial, civil defense, medical, source and special nuclear use.²¹⁷

Public Health sanitation works to eliminate unsanitary conditions. It enforces laws relating to: the content and labeling of mattresses;²¹⁸ safety and sanitation requirements for hotels and restaurants;²¹⁹ permits for operation of a trailer park;²²⁰ licensing of frozen locker plants;²²¹ prohibition of common drinking cups;²²² and other measures designed to protect the public health.

HIGHWAYS

The Department of Highways has major responsibility for the construction and maintenance of the state's roads.²²³ Certificates of eligibility to bid on a highway project are issued by the department after an investigation has shown that the prospective bidder's current assets and working capital will allow him to execute his contracts satisfactorily and meet his obligations.²²⁴ A denial of a certificate gives the bidder right to rehearing and eventually an appeal to the Franklin Circuit Court.²²⁵

The department enforces a 1962 law which prohibits junkyards from being situated within a fixed distance from a highway unless a permit is obtained from the department.²²⁶ The department may: adopt after hearings regulations pertaining to the operation of junkyards; adopt without hearings regulations pertaining to their screening by fences and plants; adopt without hearing rules respecting the procedure of the hearings; issue after hearing orders abating the operation of junkyards; make investigations or inspections deemed necessary by the commissioner; institute proceedings for compliance with the law and regulations; enter at any reasonable time upon any public or private premises

²¹⁶ Interview with John P. Godfrey, *op. cit. supra*, note 181.

²¹⁶ Interview with John P. Godfrey, *op. cit. supra* note 181.

²¹⁸ KRS 214.280-214.310.

²¹⁹ KRS ch. 219.

²²⁰ KRS 219.120-219.250.

²²¹ KRS ch. 221.

²²² KRS 438.090.

²²³ KRS 176.020(1), 176.050(1).

²²⁴ KRS 176.130, 176.150.

²²⁵ KRS 176.160, 176.170.

²²⁶ KRS 177.910, 177.915.

for investigating the conditions relating to the operation of junkyards; and "perform such other and further acts as may be necessary, proper or desirable in order to carry out effectively the duties and responsibilities of the department. . . ." ²²⁷ The commissioner, or his designated official may, at any administrative hearing, administer oaths, issue subpoenas and examine witnesses. ²²⁸ A violation of the law is a misdemeanor. ²²⁹ To date, a total of 169 licenses have been issued. ²³⁰

INSURANCE

The Department of Insurance enforces the Kentucky Insurance Code and regulations promulgated thereunder. ²³¹ The commissioner is authorized to conduct "examinations and investigations to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision." ²³² The code is a comprehensive set of administrative, licensing, and penal provisions. If the commissioner has reason to believe someone has violated a penal provision, he may certify the facts to the Attorney General and the public prosecutor of the jurisdiction where the offense was committed. The commissioner may also enjoin or bring an action against any person violating any order made by him pursuant to the code. The Attorney General, the Commonwealth's attorneys, and the county attorneys may be required to prosecute and defend proceedings brought under the code. ²³³ The department has two full-time employees who handle these provisions of the code. Approximately 150 to 200 violations a year are investigated. Most of these are worked out by the violator's correcting the situation or voluntarily relinquishing his license. ²³⁵ Usually, only five to ten formal hearings per year are held concerning violations.

²²⁷ KRS 177.935.

²²⁸ KRS 177.945.

²²⁹ KRS 177.990.

²³⁰ Telephone interview with George Akin, Ass't Att'y Gen., Dep't of Highways, in Frankfort, Ky., Dec. 6, 1963.

²³¹ KRS 304.018(3)(a).

²³² KRS 304.018(3)(b).

²³³ KRS 304.023.

²³⁵ Letter from J. Elliott Flanery, Comm'r, Dep't of Insurance, to Ky. Att'y Gen. John B. Breckinridge, Nov. 4, 1963.

In order to ascertain the condition and compliance with the provisions of the code, the commissioner may examine the affairs, transactions, accounts, records, documents, and assets of insurers, managers, agents, and promoters. A domestic insurer must be examined at least every four years.²³⁶ The persons being examined must make accessible all papers and otherwise "facilitate the examination."²³⁷ When an examination or hearing is necessary, the commissioner may take depositions, subpoena witnesses or documentary evidence, and examine the witnesses under oath.²³⁸

The commissioner is required to refuse to renew, or revoke or suspend, an insurer's authority to transact business if it is a foreign insurer and fails to meet the code's requirements, if it is insolvent, or if it has exceeded its charter's powers or certificate of authority.²³⁹ He may suspend, revoke, or refuse to renew such authority if the insurer fails to comply with the code's provisions, fails to maintain sound condition, refuses to be examined, fails to satisfy a final judgment, and for other reasons.²⁴⁰

LABOR

The Department of Labor administers laws concerning employer-employee relationships, including workmen's compensation, public employment offices and employee health and safety.²⁴¹ The commissioner or his representative is required by law to investigate wages of women and minors, to inspect the payrolls and books of any employer of women and minors, and, upon complaint, to "prosecute any violations of any of the provisions of any law which it is his duty to administer or enforce."²⁴² He may conduct hearings, take depositions, issue subpoenas, and enforce the subpoenas in the circuit court.²⁴³

²³⁶ KRS 304.030, 304.033.

²³⁷ KRS 304.034.

²³⁸ KRS 304.037.

²³⁹ KRS 304.085.

²⁴⁰ KRS 304.087.

²⁴¹ KRS 336.040. The 1962 General Assembly, by H.R. Res. 103 and 104, directed the Legislative Research Comm'n to study workmen's compensation and prevailing wages, indicating possible interest in revision.

²⁴² KRS 336.050(4).

²⁴³ KRS 336.050, 336.060.

Wages and Hours. The Kentucky laws relating to wages and hours of employees are enforced by the department's Wage and Hour Division.²⁴⁴ Fifteen full-time wage and hour inspectors are placed throughout the state. They may enter any premises which they are required to inspect, at any reasonable hour or during the employees' working hours to make their investigations, and any interference, refusal, or attempt to prevent their admission is subject to statutory penalties.²⁴⁵ These investigators made 13,105 inspections during the 1961-1962 fiscal year, and found that 763 persons in 307 businesses were being paid wages lower than the mandatory minimum wage.²⁴⁶

The minimum wage board for women and minors, composed of nine members appointed by the Governor, is empowered to hear questions involving fair wages. The board can subpoena persons and evidence, administer oaths, take depositions, and govern the hearings' mode of procedure. The commissioner or his representative may make an investigation for oppressive or unreasonable wages and may question any employee at the place of employment during working hours. The commissioner's report is turned over to the board for consideration. The board's report can be accepted or rejected by the commissioner.²⁴⁷ During the 1961-1962 fiscal year, the department recovered over 24,000 dollars in back wages for employees whose wages were lower than the mandatory minimum wage.²⁴⁸

In 1962, the General Assembly vested the responsibility for determining prevailing wages, for public works projects in the Commissioner of Labor, subject to review by prevailing wage review boards and by the courts.²⁴⁹ To enforce the commissioner's decisions, several prevailing wage inspectors check the violations reported and determine the back wages owed to the employees. During the 1961-1962 fiscal year, these inspectors made 1,496 inspections and determined that back wages of 14,065 dollars were owed to 177 persons.²⁵⁰

²⁴⁴ KRS 337.410; Dep't of Labor, 1961-1962 Annual Report 2.

²⁴⁵ KRS 336.110, 336.990(2).

²⁴⁶ Interview with Robert Chenault, Att'y, Dep't of Labor, in Frankfort, Ky., Oct. 28, 1963.

²⁴⁷ KRS 337.220, 337.240, 337.250, 337.340.

²⁴⁸ Dep't of Labor, *op. cit. supra* note 244.

²⁴⁹ KRS 337.520; 337.525; Ky. Acts ch. 173, § 2 (1962).

²⁵⁰ Dep't of Labor, *op. cit. supra* note 244, at 10.

Child Labor. The child labor law limits the employment of minors in certain occupations and requires an employment certificate for any person under eighteen years of age before he may work.²⁵¹ Certificates are issued by the Department of Education, but the Department of Labor's inspectors and agents, "with the assistance of the school attendance officers, police officers and juvenile court probation officers," are required to make complaints against and prosecute violators of this law. The inspectors and school attendance officers are empowered to enter any establishment covered by the child labor law and to examine the employment certificates and other records kept by the employer.²⁵² Any person who obstructs an authorized inspector can be fined.²⁵³ During the 1961-1962 fiscal year, the department conducted 17,512 inspections, revealing 753 violations of the child labor law in 430 establishments employing 733 minors.²⁵⁴ The Department of Labor may also revoke a minor's certificate if it was improperly issued or he is illegally employed.²⁵⁵

Workmen's Compensation. The Workmen's Compensation Board consists of five members appointed by the Governor.²⁵⁶ The board employs thirty-five referees who are located in various cities throughout the Commonwealth to investigate injured employee claims. During the 1961-1962 fiscal period, 14,274 industrial accidents and occupational diseases were reported to the board, including eighty-one fatalities. Agreements numbering 2,890 were made, representing over 2,500,000 dollars in compensation.²⁵⁷ Disputed claims relating to compensation benefits are heard and decided by the referees, whose decisions are reviewable by the full board if application is made within a specific time.²⁵⁸ In the 1961-1962 year, 2,019 claims were filed with the board and 1,092 of these were assigned to and handled by referees. The board and the referees disposed of 561 claims,

²⁵¹ KRS 339.220, 339.230, 339.240, 339.280.

²⁵² KRS 339.450.

²⁵³ KRS 339.990.

²⁵⁴ Dep't of Labor, *op. cit. supra*, note 244, at 15.

²⁵⁵ KRS 339.330.

²⁵⁶ KRS 342.215(1) and (2).

²⁵⁷ Dep't of Labor, *op. cit. supra* note 244, at 23.

²⁵⁸ KRS 342.280(1).

motions, final opinions, orders, and awards. Also entered were 159 interlocutory orders and 10,697 miscellaneous orders.²⁵⁹

Safety and Health. The Department of Labor includes a Kentucky Industrial Safety Board, consisting of the commissioner and twelve members appointed by the Governor from lists submitted by labor and industry associations.²⁶⁰ The board fixes standards for the adoption, use and repair of safety devices and investigates complaints of unsafe working conditions.²⁶¹ The commissioner may also, on his own motion, file a complaint with the board regarding any unsafe condition that has come to his attention. The board, after notice, hearing, and inspection, may post notice to that effect and, the commissioner may apply to the circuit court for an injunction until the dangerous condition is corrected.²⁶² Chapter 338 of Kentucky Revised Statutes contains some specific safety and health requirements which are enforced by the Department of Labor.

LAW

The Attorney General, who is an elected constitutional officer,²⁶³ is head of the Department of law and "is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal advisor of all state officers, departments, commissions, and agencies."²⁶⁴ The Attorney General's powers and duties as a law enforcement officer, however, have been limited by statute and he does not possess the power that attaches to the office in most states. A comprehensive analysis of the office of Attorney General in Kentucky was published as a special issue of the *Kentucky Law Journal* in 1963,²⁶⁵ and, therefore, a description of the office is omitted from this study. The report concluded generally that the Attorney General lacked sufficient statutory authority to discharge his duties as chief law officer,

²⁵⁹ Dep't of Labor, *op. cit. supra* note 244, at 24.

²⁶⁰ KRS 338.020.

²⁶¹ KRS 338.040, 338.050.

²⁶² KRS 338.050.

²⁶³ Ky. Const. § 91.

²⁶⁴ KRS 15.020.

²⁶⁵ 51 Ky. L.J. (1963).

because he lacked control over departmental counsel and over local prosecutors.

MENTAL HEALTH

The Department of Mental Health operates state institutions for the mentally retarded and mentally ill and supervises private mental hospitals receiving patients committed by court order.²⁶⁶ Any person may be admitted to a state mental hospital upon application of a relative or friend and upon certification of two examining physicians that the patient is mentally ill and in need of restraint. Procedures for arrest and commitment of mental incompetents are specified in detail by the statutes.²⁶⁷

MILITARY AFFAIRS

The Department of Military Affairs has charge of the militia, the Kentucky National Guard and "all other military or naval matters of the state."²⁶⁸ It is also responsible for civil defense and for veterans' activities. The Governor is required by constitution to appoint an Adjutant General who is executive head of the department.²⁶⁹ These military forces serve, on occasion, as a law enforcement arm of the Commonwealth.

Militia. Kentucky's Constitution specifies that the militia shall consist of all able-bodied male residents between the ages of eighteen and forty-five years, except those exempted by law²⁷⁰ and directs the General Assembly to provide for maintaining an organized militia.²⁷¹ Kentucky's constitutions have always provided for some type of militia, the first constitution providing that "The free men of this Commonwealth shall be armed and disciplined for its defense," and provided for selection of officers.²⁷² Chapter 37 of the Kentucky Revised Statutes provides for a Kentucky Active Militia, and names the Governor as Commander in Chief.²⁷³ The Governor is given statutory

²⁶⁶ KRS 210.040, 210.045.

²⁶⁷ KRS 203.030, 210.280.

²⁶⁸ KRS 36.010.

²⁶⁹ Ky. Const. § 222; KRS 36.040.

²⁷⁰ Ky. Const. § 219; KRS 37.170; KRS 37.170, however, defines the active militia as males between eighteen and sixty-four years.

²⁷¹ Ky. Const. § 220.

²⁷² Ky. Const. art. VI, §§ 2, 3, 4 (1792).

²⁷³ Ky. Const. § 75; KRS 37.180.

authority for administration and organization of the militia, which shall be the same as that of the National Guard, insofar as is applicable.²⁷⁴ Whenever the President of the United States calls any part of the Kentucky National Guard into active federal service, the Governor is empowered to organize the Active Militia "under such regulations as the Secretary of Defense may prescribe for discipline and training."²⁷⁵ Thus, the militia is a constitutional force, but is unorganized except when the National Guard is called into service.

The Governor is authorized to assign any part of the Active Militia to active service in the event of invasion, rebellion, riots, or threats thereof, or in the event of treason or sabotage, or to protect life or property in the event of any emergency or disaster. In such event, the Governor may direct the commanding officers of such forces to report to a circuit judge, sheriff, county judge or mayor, who may direct the specific object to be accomplished. The "tactical direction" of the troops is left to the militia officers.²⁷⁶ An active militia has been organized only once since 1920, when Congress provided for the organization of a peacetime National Guard. During World War II, when all of Kentucky's guard units were called to federal service, the Governor organized, equipped and trained an active state militia of 2,000 men.

National Guard. The Kentucky National Guard is largely controlled by the federal government. The United States Constitution authorizes Congress "to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of officers, and the training of the militia according to the discipline prescribed by Congress."²⁷⁷ The federal government: fixes the size of the state's military force,²⁷⁸ which is currently set at 4,886 for the Army National Guard and 775 of the Air National Guard; specifies the amount and kind of training;²⁷⁹ prescribes the units to be

²⁷⁴ KRS 37.180.

²⁷⁵ KRS 37.170(2).

²⁷⁶ KRS 37.240.

²⁷⁷ U.S. Const. art. I, § 8.

²⁷⁸ 32 U.S.C. §§ 102, 104 (1962).

²⁷⁹ 32 U.S.C. § 501 (1962).

maintained;²⁸⁰ provides instructors;²⁸¹ passes upon the qualifications of officers;²⁸² determines whether federal standards have been met;²⁸³ and contributes funds, supplies, and other assistance.²⁸⁴ The Governor retains power to specify the location of guard units,²⁸⁵ and to call the guard into active state service when it is not federalized.²⁸⁶

Chapter 38 of the Kentucky Revised Statutes provides for the National Guard. "Active state service" is defined in part as:

The ordering by the Governor of any units of Kentucky National Guard to enforce the laws of the Commonwealth; resist an actual or threatened invasion or insurrection; quell a riot or other domestic disturbances; or preserve and protect the rights, lives or property of citizens of the Commonwealth.²⁸⁷

Like the militia, the guard may be directed to report to a civil officer.²⁸⁸ The Governor may, in his order calling out the guard, prescribe the duty to be performed, within the limits of the statute.²⁸⁹

Governors have called out the guard on a number of occasions which involved disasters, such as during a major flood in 1937; to search for bodies following a school bus accident in 1958; and, to assist in property protection and traffic control following a tornado in 1961. The guard has also been called out a number of times to enforce law. Examples are a school integration incident in 1956, a prison riot in 1936, and coal strikes in 1931 and 1935.²⁹⁰ The guard provides the Governor with a trained, disciplined force that can be put on duty immediately during a critical situation.

²⁸⁰ 32 U.S.C. § 104 (1962).

²⁸¹ 32 U.S.C. § 506 (1962).

²⁸² 32 U.S.C. § 305 (1962).

²⁸³ U.S.C. § 105 (1962).

²⁸⁴ 32 U.S.C. § 106 (1962).

²⁸⁵ 32 U.S.C. § 104 (1962).

²⁸⁶ 32 U.S.C. § 109 (1962).

²⁸⁷ KRS 38.010(4)(a).

²⁸⁸ KRS 38.030(2).

²⁸⁹ KRS 38.030(1).

²⁹⁰ For complete list of occasions when the Guard has been called into state service, see Adjutant Gen., *Military History of Kentucky* (1939), and biennial and triennial reports of the Dep't of Military Affairs since that date.

The extent of the National Guard's power is not clearly defined by statute. The Governor has power to "direct the commanding officer of the troops ordered into active state service for the purpose of . . . investigating any acts of treason, sabotage or attempted sabotage and to cause the arrest of such persons engaged therein or aiding and abetting";²⁹¹ this may imply that the guardsmen have power to arrest when ordered into state service. Another statute gives officers and enlisted men on active state service "the same right to carry arms, and in the same manner as sheriffs and other peace officers."²⁹² Guardsmen are not explicitly given peace officer authority. The Court of Appeals, however, has said that: "The militia of the state are in truth peace officers. The purpose of their existence is to preserve the peace and quiet of the state in its broadest sense. . . ."²⁹³

Certain powers of military law are specified in the Code of Military Justice,²⁹⁴ to which all persons belonging to the National Guard or Active Militia are subject. This defines crimes and provides for arrest, court-martial and punishment of troops by military authorities.

Martial Law. Another type of law enforcement power is the imposition of martial law, which applies to all persons and property within the district subject to it, but can not arise unless civil law is suspended. Martial law is not mentioned in the statutes, but has been declared in Kentucky and referred to by the courts. During the 1937 Louisville flood, martial law was declared, and a provost martial named. National Guard troops took control of the flooded areas to restore order and prevent looting; however, the civil courts continued to function, so martial law did not actually exist.²⁹⁵

The Kentucky courts, during the Civil War period, ruled that the military could not arrest, confine, and punish civilian offenders of state laws when the state courts were functioning.²⁹⁶ In a more recent case, the Court of Appeals considered the

²⁹¹ KRS 30.030(1).

²⁹² KRS 38.420.

²⁹³ *Franks v. Smith*, 142 Ky. 244, 134 S.W. 492, 493 (1911).

²⁹⁴ KRS ch. 35.

²⁹⁵ See Adjutant Gen., *op. cit. supra* note 290.

²⁹⁶ *Eginton v. Brian*, 7 Ky. Opin. 516 (1874); see *Ex parte Milligan*, 71 U.S. 2 (1866).

question of whether a domestic insurrection would authorize martial law, and commented that: "We are not willing to concede that in any exigency that may arise the military is superior to the civil authorities. We do not apprehend that any conditions could come up that would justify us in so holding." It added that "The military cannot . . . assume to do anything independent of civil authorities."²⁹⁷ Section 22 of the Kentucky Constitution states that "the military shall, in all cases and at all times, be in strict subordination to the civil power."

Civil Defense. Kentucky's civil defense statutes confer law enforcement powers of great potential importance. In the event of enemy attack against the United States, the Governor may declare an emergency, and may exercise additional powers, including that of enforcing all laws, rules and regulations relating to civil defense, and to seize, take and condemn property.²⁹⁸ The Department of Military Affairs is Kentucky's Civil Defense Agency.²⁹⁹ Each county and city is directed to appoint a director of civil defense to be responsible for local organization in accordance with the state plan.³⁰⁰ By June 30, 1961, all counties and eighty-one cities had appointed such directors.³⁰¹

In regard to the civil defense statutes, the Governor is given extensive powers, including authority

"to take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with [the civil defense statutes] . . . and with the orders, rules, and regulations made pursuant thereto; . . ."³⁰²

Subject to the state plans, counties and cities are authorized to "confer or authorize the conferring upon members of the auxiliary police the powers of peace officers, subject to such restrictions as shall be imposed."³⁰³ The political subdivisions and other agencies designated by the Governor are empowered to make rules necessary for civil defense purposes, subject to certain

²⁹⁷ *Franks v. Smith*, 142 Ky. 232, 243, 134 S.W. 484, 489 (1911).

²⁹⁸ KRS 39.409.

²⁹⁹ KRS 39.401(2).

³⁰⁰ KRS 39.415.

³⁰¹ Dep't of Military Affairs, Annual Report of the Adjutant General 77 (1961).

³⁰² KRS 39.408(5).

³⁰³ KRS 39.414(2).

limitations, and a peace officer "when in full and distinctive uniform or displaying a badge or other insignia" may arrest without warrant any person violating or attempting to violate any order, rule or regulation made pursuant to the civil defense statutes.³⁰⁴

The Department of Military Affairs, as the civil defense agency, co-ordinates local and state plans, conducts public information and education programs, and exercises a number of planning and preparedness functions.³⁰⁵ It also supervises a fallout shelter program and has located 1,556 shelters with a capacity of at least fifty persons each.³⁰⁶ To ensure continuity of government, emergency operating centers have been set up in the Capitol, a line of succession to major offices has been determined, and provisions have been made for the safe-keeping of essential records. Plans are being developed in detail for the use and control of means of transportation, communication, fuel, and other essential materials and facilities.

MINES AND MINERALS

The Department of Mines and Minerals is responsible for administering the state's mining laws, except those regulating strip mining.³⁰⁷ It also administers the oil and gas law.³⁰⁸ Its duties include enforcement of statutory regulations for mine safety,³⁰⁹ certification of mine inspectors,³¹⁰ licensing mine operators,³¹¹ inspecting mine weights,³¹² and supervising the drilling, casing and plugging of oil, gas and salt water wells.³¹³

Mine inspectors are appointed by the Governor after examination by a board of examiners, headed by the Commissioner of Mines and Minerals.³¹⁴ In 1961, 308 applications for certificates for mine inspector, foreman, or fire boss were examined. In-

³¹⁴ KRS 351.090, 351.100.

³⁰⁴ KRS 39.427, 39.429.

³⁰⁵ See Dep't of Military Affairs, *op. cit. supra* note 301 at 76-87.

³⁰⁶ Letter from Ky. Adjutant Gen. Arthur Y. Lloyd to Ky. Att'y Gen. John B. Breckinridge, Oct. 4, 1963.

³⁰⁷ KRS 350.024, 351.020.

³⁰⁸ KRS 353.200.

³⁰⁹ KRS ch. 352.

³¹⁰ KRS ch. 351.

³¹¹ KRS 351.175.

³¹² KRS 351.180.

³¹³ KRS 353.200.

spectors must have ten years' mining experience and a thorough knowledge of mine rescue and first aid procedures.³¹⁵ The department employs thirty-three full-time mine inspectors. It also employs eleven oil and gas inspectors, who must have a thorough knowledge of drilling, completion and production practices used in oil fields. The department co-operates with the United States Bureau of Mines in investigating fatal accidents.

The department makes about 11,000 inspections a year, about 800 of which result in disciplinary action.³¹⁶ Inspectors have the authority to close a mine if it does not conform to statutory safety provisions, but the owner or operator may petition the circuit court for an order to re-open the mine.³¹⁷ Penalties are provided for violation of mining regulations.³¹⁸

In response to a questionnaire of the Committee on the Administration of Justice, the commissioner indicated that the department needed more power to prosecute violators of mine and oil-gas well laws. He cited one instance where a Commonwealth's attorney refused to prosecute a case involving an unplugged gas well that was on fire, and another where a county attorney refused to prosecute a case concerning a leaking oil and gas well. The Attorney General has filed six suits on behalf of the division to secure compliance with the oil and gas law.

MOTOR TRANSPORTATION

The Department of Motor Transportation's main function is enforcing the laws relating to motor vehicles other than private passenger cars. These laws generally concern commercial vehicles such as trucks, busses and taxicabs; vehicles such as school busses, highway construction trucks and farm trucks are excluded from regulation by the department,³¹⁹ except for enforcement of safety requirements. The covered vehicles are regulated by the department, principally by having each "for-hire carrier" obtain a permit from the department before operating within the state.³²⁰ If the

³¹⁵ KRS 351.090.

³¹⁶ Telephone interview with A. H. Mandt, Comm'r, Dep't of Mines and Minerals, in Frankfort, Ky., Nov. 1, 1963.

³¹⁷ KRS 352.430.

³¹⁸ KRS 352.990.

³¹⁹ KRS 281.605(1), (2)(a), (3), (4), and (7).

³²⁰ KRS 281.615.

carrier meets certain standards, it is granted a license, which can be revoked, suspended, or altered by the department for good cause.³²¹ The standards are set by the statutes and by departmental regulations,³²² and concern such matters as insurance,³²³ equipment for emergencies and brake and lighting systems.³²⁴ Some regulations promulgated by other agencies, such as the Department of Highways, are also enforced by the Department of Motor Transportation. Interstate commerce is regulated by the Interstate Commerce Commission,³²⁵ but vehicles travelling in interstate commerce are subject to certain of the state department's requirements and it has undertaken regulation of carriers exempted by I.C.C. regulations.³²⁶

The department's Division of Law Enforcement has divided the state into four geographical sections with a supervisor in each. Forty-six uniformed officers, who must have a high school education and three years investigation experience, are assigned to these sections. The officers, who often work in pairs, are assigned from one to four counties. The officers patrol the more heavily-travelled sections of highways in the state. Their contacts with motor carriers are generally made at weighing stations. When commercial vehicles are stopped at these stations, not only are their weights checked, but also their safety equipment and the authority under which they operate. The officers have authority to check any part of the vehicle, including the cargo.³²⁷

If violations are found, the officer has the power to arrest the offender,³²⁸ and, if its operation would endanger life, he may order the vehicle parked at the company's expense until the unsatisfactory condition is corrected.³²⁹ Any peace officer "shall be authorized and it is hereby made the duty of each of them to enforce [motor transportation laws] . . . and to make arrests for any

³²¹ KRS 281.670.

³²² KRS 281.600.

³²³ KRS 281.655.

³²⁴ 3 Ky. Administrative Reg., Dep't of Motor Transportation, DMT-15 1963. The Department of Motor Transportation has adopted essentially the same safety regulations as the Interstate Commerce Commission.

³²⁵ KRS 281.610.

³²⁶ KRS 281.625(4).

³²⁷ KRS 281.755.

³²⁸ KRS 281.765-281.770.

³²⁹ KRS 189.780.

violation . . ." and to immediately take the offender before the nearest court with jurisdiction.³³⁰ The Attorney General, any Commonwealth's attorney, or any county attorney may be called on to prosecute.³³¹ "Occasionally, these violations are of such a technical nature that we send out departmental attorneys to assist the Commonwealth's attorney—when they request it," reported one Department of Motor Transportation official.³³² During the 1961-1962 fiscal year, there were 3,325 violations handled by the Division of Law Enforcement, resulting in 2,614 convictions.³³³ The division's officers receive instructions in arrest procedures and briefings on laws and regulations. Periodic training schools are conducted by the department for new employees, or to advise the entire division on recent policy or statute changes.

PARKS

The Department of Parks was created in 1960, prior to which it was a division of the Department of Conservation.³³⁴ It exercises all administrative functions relating to the operation of parks, shrines, monuments, and museums, except those assigned to the historical society.³³⁵ The Commissioner of Parks may, in his discretion, commission the chief custodian of each park, and such other park personnel as he deems necessary, as park patrolmen. Such patrolmen "shall have all of the powers of peace officers within the boundaries of any state park."³³⁶ The department has six full-time watchmen who have peace officer powers and several part-time watchmen who do not. The watchmen, in the performance of their duties, work closely with sheriffs. There is no training program for the watchmen.³³⁷

³³⁰ KRS 271.765.

³³¹ KRS 281.800.

³³² Interview with George L. Willis, III, Ass't Comm'r, Dep't of Motor Transportation, in Frankfort, Ky., Sept. 26, 1963.

³³³ Law Enforcement Activity Rep.—June, 1963, on file in Dep't of Motor Transportation, Frankfort, Ky.

³³⁴ Ky. Acts ch. 68, art. 10 (1960).

³³⁵ KRS 148.540(1) and (2).

³³⁶ KRS 148.055.

³³⁷ Telephone interview with James O. King, Exec. Ass't, Dep't of Parks, in Frankfort, Ky., Oct. 29, 1963.

PROFESSIONAL AND OCCUPATIONAL LICENSING

A variety of occupations and professions are regulated by state boards. Such regulation has generally been held constitutional as a reasonable and proper exercise of the state's police power.³³⁸ Most of these boards are independent agencies of state government, but a few are attached to an administrative department.

Boards Attached to Departments. Some professions are regulated directly by an existing department, and are described under that department. For example, the State Board of Health licenses physicians and osteopaths, and the Department of Education certifies teachers. Some other professions are licensed by a special regulatory board, which is made part of a department for administrative purposes.

The Department of Agriculture includes the Kentucky Board of Veterinary Examiners, which consists of the Commissioner of Agriculture and four veterinarians appointed by the Governor.³³⁹ The board conducts examinations, adopts rules and regulations, promulgates a professional code of conduct, and issues licenses.³⁴⁰ Contents of the examination and grounds for revocation and suspension of licenses are specified by statute.³⁴¹ The board may seek an injunction against unauthorized practice and the statutes provide penalties for violation of the law.³⁴²

The Department of Libraries includes a State Board for the Certification of Librarians, composed of the commissioner and five members appointed by the Governor from a list submitted by the Kentucky Library Association.³⁴³ The board grants certificates after examining applicants, or without examination to graduates of approved library schools.³⁴⁴ The statutes provide procedures for revocation of certificates by the board.³⁴⁵

³³⁸ See *Economy Optical Co. v. Ky. Board of Optometric Examiners*, 310 S.W.2d 783 (1958); *Kennoy v. Graves*, 300 S.W.2d 568 (1957); *Shelton v. McCarroll*, 308 Ky. 288, 214 S.W.2d 396 (1948).

³³⁹ KRS 321.230.

³⁴⁰ KRS 321.240(5) and (6), 321.260.

³⁴¹ KRS 321.270, 321.350.

³⁴² KRS 321.430, 321.990.

³⁴³ KRS 171.240.

³⁴⁴ KRS 171.250.

³⁴⁵ KRS 171.290.

The State Board of Podiatry is part of the Department of Health, and consists of five practicing podiatrists appointed by the Governor.³⁴⁶ It conducts examinations embracing subjects specified by statute and licenses graduates of approved schools who pass such examinations.³⁴⁷ Grounds for denial, suspension, or revocation of licenses are set by law, as are procedures for hearings.³⁴⁸ The Attorney General and Commonwealth's and county attorneys are required to assist the board upon request, and employees of the Department of Health have peace officer powers in enforcing the law.³⁴⁹

Independent Licensing Boards. There are seventeen licensing boards which are independent agencies and usually have their own funds and staff. These boards are:

The State Board of Accountancy;
 the Board of Auctioneers;
 the Board of Examiners and Registration of Architects;
 the Kentucky Board of Barbering;
 the Board of Chiropractic Examiners;
 the Kentucky Board of Hairdressers and Cosmetologists;
 the Board of Dental Examiners;
 the Board of Embalmers and Funeral Directors;
 the Board of Registration for Professional Engineers;
 the Board of Nursing Education and Nurse Registration;
 the Board of Ophthalmic Dispensers;
 the Board of Optometric Examiners;
 the Kentucky Board of Pharmacy;
 the State Board of Physical Therapy;
 the Board of Examiners of Psychologists;
 the State Real Estate Commission; and
 the Kentucky Board of Examiners in Watchmaking.

The 1962 General Assembly established a Division of Occupations and Professions in the Department of Finance, but made its activation conditional on the Governor's "finding that the interests of economy and efficiency in state government require

³⁴⁶ KRS 311.410.

³⁴⁷ KRS 311.420.

³⁴⁸ KRS 311.480, 311.490.

³⁴⁹ KRS 311.495.

it," and on his issuing an executive order accordingly.³⁵⁰ If the division is activated, it will provide administrative services for these boards, at their request. The boards, however, would retain full responsibility for making policy decisions.³⁵¹

Independent boards are appointed by the Governor, usually from a list of nominees submitted by the private organization of the particular profession. The boards are not designed to replace the professional organizations, but to ensure a higher degree of control by establishing statutory standards for licensing and practice, and setting penalties for violation of these standards. The statutes generally provide that board members be actively engaged in the practice of the profession regulated and usually require a minimum period of prior practice. Each board consists of from three to seven members.

Table XII shows the statutory basis of each board's power to promulgate rules and regulations, to examine applicants for a license, and to suspend or revoke a license. It also shows whether the statutes include specific grounds for revocation, whether penalties are provided for violating the law, and whether the board is empowered to enjoin violators. Most statutes include a "grandfather clause" exempting from examination persons who practiced prior to a certain date, and a reciprocity provision for persons licensed by another state.

Every board has authority to examine applicants for a license. One survey of selected boards found that the number of licenses issued and renewed in 1959 was as follows: accountancy—27 issued, 833 renewed; architects—30 issued, 455 renewed; chiropractors—128 issued, 1,567 renewed; dentists—59 issued, 1,568 renewed; engineers—259 issued, 2,796 renewed; nurses—616 issued, 11,023 renewed; ophthalmic dispensers—5 issued, 181 renewed; optometrists—4 issued, 312 renewed; pharmacists—78 issued, 1,893 renewed; physical therapists—14 issued, 54 renewed; psychologists—1 issued, 30 renewed.³⁵² According to these figures, the number of licensees ranged from thirty-one licensed clinical psychologists to 11,639 registered and practical nurses.

³⁵⁰ Ky. Acts ch. 106, art. V, §§ 7-8 (1962).

³⁵¹ KRS 42.066.

³⁵² Schten, *Professional Licensing in Kentucky* 38 (1960).

TABLE XII
LAW ENFORCEMENT POWERS OF LICENSING BOARDS

BOARD	BOARD MAY PROMULGATE RULES	EXAMINATION REQUIRED	BOARD MAY SUSPEND OR REVOKE LICENSE	GROUNDS FOR REVOCATION SET BY LAW	BOARD MAY INITIATE CRIMINAL OR INJUNCTIVE PROCEEDINGS
Accountants	Yes--KRS 325.240	Yes--KRS 325.270	Yes--KRS 325.340	Yes--KRS 325.340	I--KRS 325.400 C--KRS 325.990
Auctioneers	No.	Yes--KRS 330.060	Yes--KRS 330.110	Yes--KRS 330.110	
Architects	Yes--KRS 323.210	Yes--KRS 323.050	Yes--KRS 323.120	Yes--KRS 323.120	I--KRS 323.250 C--KRS 323.990
Barbers	Yes--KRS 317.440	Yes--KRS 317.450	Yes--KRS 317.460	Yes--KRS 317.590	C--KRS 317.990
Chiropractors	Yes--KRS 312.100	Yes--KRS 312.115	Yes--KRS 312.150	Yes--KRS 312.150	C--KRS 312.990
Hairdressers	Yes--KRS 317.510	Yes--KRS 317.500	Yes--KRS 317.590	Yes--KRS 317.590	C--KRS 317.990
Dentists	Yes--KRS 313.220	Yes--KRS 313.300	Yes--KRS 313.130	Yes--KRS 313.330	I--KRS 313.360(1) C--KRS 313.990
Embalmers	Yes--KRS 316.210(4)	Yes--KRS 316.050	Yes--KRS 316.150	Yes--KRS 316.150	C--KRS 316.990
Engineers	Yes--KRS 322.290	Yes--KRS 322.040	Yes--KRS 322.180	Yes--KRS 322.180	C--KRS 322.990
Nurses	Yes--KRS 314.210(1)	Yes--KRS 314.220(2), 314.320	Yes--KRS 314.250, 314.390	Yes--KRS 314.250, 314.390	C--KRS 314.990
Ophthalmic Dispensers	Yes--KRS 326.020(3)	Yes--KRS 326.040	Yes--KRS 326.090	Yes--KRS 326.090	C--KRS 326.090
Optometrists	Yes--KRS 320.240(4)	Yes--KRS 320.250	Yes--KRS 320.310	Yes--KRS 320.310	I--KRS 320.370 C--KRS 320.990
Pharmacists	No	Yes--KRS 315.050	?--KRS 315.140	Yes--KRS 315.140	C--KRS 315.990
Physical Therapists	Yes--KRS 327.040(5)	Yes--KRS 327.050	Yes--KRS 327.070	Yes--KRS 327.070	C--KRS 327.990
Psychologists	No	Yes--KRS 319.050	Yes--KRS 319.080	Yes--KRS 319.080	C--KRS 327.990
Real Estate Agents	Yes--KRS 324.282	Yes--KRS 324.045	Yes--KRS 324.150	Yes--KRS 324.150	C--KRS 324.990
Watchmakers	Yes--KRS 328.050	Yes--KRS 328.050	Yes--KRS 328.080	Yes--KRS 328.080	C--KRS 328.990, 328.991

Boards all have authority to revoke or suspend licenses. Only the Board of Pharmacy is not explicitly given this authority; the statutes specify that pharmacists who violate the statute shall forfeit their right to a license, and that the board shall investigate all complaints of violations and bring them to the attention of the proper authorities.³⁵³ In most cases, the procedures for a hearing are outlined by law and the licensee is given the right to counsel, and to appeal to the courts.³⁵⁴ There is great variation among these statutes as to the provisions for hearings.

Most boards are given authority to employ staff, although only a few employ full-time investigators. A Committee on the Administration of Justice questionnaire, distributed in 1962, asked each board how many personnel they had assigned specifically to investigation, how many violations were investigated and what action was taken. The responses are summarized here.

The Board of Accountancy investigated eighty-two violations in the last five years, conducted eleven field investigations, and held nine hearings. Five licenses were suspended and one was revoked. The Board of Architects has no investigation staff, but the board itself investigates an average of ten violations per year. The State Board of Barbering employs seven inspectors; of fifty-two violations investigated, nineteen resulted in suspension of licenses, eight in revocation and one in a fine. The Board of Chiropractic Examiners averaged four field investigations a year, during a five-year period, resulting in two licenses revoked and eight fines. The Board of Dental Examiners imposed twelve fines and obtained thirteen injunctions. The Board of Registration for Professional Engineers reported about fifteen to twenty investigations per year, resulting in five or six disciplinary actions. The Board of Nursing Registration investigated about eight violations a year, all of which resulted in disciplinary action. The optometrists reported ten to twenty violations a year, resulting in one or two disciplinary actions a year. The Real Estate Commission had investigated 102 violations the preceding year, held sixteen formal hearings; two licenses were suspended and three were revoked.

³⁵³ KRS 315.140, 315.190(3).

³⁵⁴ For a complete tabulation of the hearing procedures authorized, see Legislative Research Comm'n, *Administrative Procedures Law in Kentucky* 7-51 (1962).

Boxing. The Governor appoints a Boxing Commissioner, who licenses all boxing and wrestling matches and exhibitions.³⁵⁵ No person may engage or assist in, be present at, or allow the use of his land for an unlicensed fight.³⁵⁶ The statutes regulate the length of matches, where they are held, and other matters, and require the licensee to post bond.³⁵⁷ The law also requires that all peace officers and all conservators of the peace, on having reason to believe that an unauthorized fight is being planned within their jurisdiction, shall suppress the fight and shall have the offending persons arrested.³⁵⁸ Penalties are provided for violation of boxing laws.

Racing and Trotting. Persons engaged in horse racing are also regulated by law. The Kentucky State Racing Commission is an independent agency appointed by the Governor.³⁵⁹ It has broad statutory "jurisdiction and supervision over all thoroughbred racing meetings in this state and over all persons and associations having to do with the conduct of such meetings," and may promulgate regulations covering all aspects of horse racing.³⁶⁰ It issues licenses to hold races,³⁶¹ and licenses everyone who "participates in or has anything to do with thoroughbred racing. . . ."³⁶² It may deny, revoke or suspend a license, and penalties are prescribed by statute for violating racing or trotting laws.³⁶³

The Kentucky Trotting Commission is also appointed by the Governor.³⁶⁴ Its powers, however, are more restricted, as it licenses only associations which conduct trotting races, and not individual participants.³⁶⁵ The commission is authorized to obtain an injunction against any unlicensed trotting race.³⁶⁶

³⁵⁵ KRS 229.015, 229.040.

³⁵⁶ KRS 229.020.

³⁵⁷ KRS 229.090, 229.120-229.170.

³⁵⁸ KRS 229.030.

³⁵⁹ KRS 230.220.

³⁶⁰ KRS 230.260.

³⁶¹ KRS 230.300.

³⁶² KRS 230.310.

³⁶³ KRS 230.320, 230.990.

³⁶⁴ KRS 230.100.

³⁶⁵ KRS 230.120.

³⁶⁶ KRS 230.130.

PUBLIC SAFETY

Three divisions of the Department of Public Safety are concerned primarily with law enforcement: the Division of Boating, the Division of Fire Prevention, and the State Police. The State Police was described in the preceding chapter.

Boating. Motorboats were registered under federal numbers until July 1, 1960, when the federal government gave up its numbers in favor of state systems. In the same year, the Kentucky General Assembly enacted provisions for licensing motorboats and created the Division of Boating in the Department of Public Safety,³⁶⁷ to control the use of boats on the state's waterways. Its primary work is patrolling Kentucky's waterways, the use of which has increased significantly in recent years. Until 1960, the existing boating regulations were enforced by local peace officers and the United States Coast Guard. State control of boats was limited to the few laws dealing with obstructions to free navigation,³⁶⁸ licensing of houseboats,³⁶⁹ and similar matters. Since 1960, all motorboats must be licensed.³⁷⁰ The statutes specify some safety regulations³⁷¹ and, under authority of Ky. Rev. Stat. § 235.280, the director of the boating division has promulgated additional regulations. These prohibit any vessel from being equipped with a motor beyond its safe power capacity,³⁷² establish requirements for safety, lighting and sound devices,³⁷³ and set other requirements.

The Division of Boating has established a boat patrol, comprised of twelve full-time employees who must have a high school education and at least three years of experience or training in the operation and maintenance of boats.³⁷⁴ They are designated as patrol officers and have the powers of peace officers in enforcing

³⁶⁷ Ky. Acts ch. 68, art. VIII (1960).

³⁶⁸ KRS 182.010, 182.020.

³⁶⁹ KRS 182.140.

³⁷⁰ KRS 235.010(2).

³⁷¹ KRS 235.200.

³⁷² 3 Ky. Administrative Reg., Dep't of Public Safety, PSfty-BR-7 (1960).

³⁷³ 3 Ky. Administrative Reg., Dep't of Public Safety, PSfty-BR-8, 9, 10, 11 (1960). The division has also promulgated regulations consisting of a simplified version of the Coast Guard's Rules of the Road for Inland Waters.

³⁷⁴ KRS 235.310(1); Job description sheet for boating law enforcement officers, on file in Dep't of Public Safety, Division of Boating, Frankfort, Ky.

all boating laws and regulations.³⁷⁵ Each spring, these officers are given a three-day training course at the Kentucky State Police Training Academy. The academy's staff and members of the boating division's staff teach boating laws and regulations, firearms training, report writing, division duties, and other subjects. The officers are assigned to permanent stations throughout the state, but are rotated to wherever needed. The division attempts to patrol all the state's waterways, but due to the manpower of the patrol, law enforcement on some of the minor waterways must be left to local authorities.

The major duties of the division's boat patrol are to: inspect for proper registration, inspect for safety equipment, ensure compliance with the rules of the road, and assist those in need. The patrol officers have authority to board any vessel on Kentucky waters.³⁷⁶ Although documented vessels must meet the same requirements as other Kentucky vessels, these vessels are generally handled by the United States Coast Guard and the United States Customs Bureau. The boat patrol officers do not handle felonies committed on waters, such as boat theft or arson. These cases are turned over to the State Police or to local police officials.

The division believes that the boating patrol's power of arrest should be expanded to cover all violations of the law on Kentucky waterways and the adjacent shores. As the law stands now, the uniformed boat patrolman has no authority to intervene in a fight on the shore and arrest the participants. Enabling him to do so would increase police protection around Kentucky waterways.³⁷⁷

Fire Prevention. The State Fire Marshal is head of the Division of Fire Prevention and is responsible for commanding a force of inspectors to ensure compliance and for co-ordinating the efforts of deputy fire marshals in every county and city in the state.³⁷⁸ The division includes six bureaus: general inspec-

³⁷⁵ KRS 235.310(1).

³⁷⁶ *Ibid.*

³⁷⁷ Interview with William King, Director, Division of Boating, Dep't of Public Safety, in Frankfort, Ky., Aug. 21, 1963.

³⁷⁸ KRS 227.230. By virtue of KRS 227.210, all the powers and duties of the Comm'r of Public Safety granted under KRS 227.220 are delegated to the State Fire Marshal.

tion, arson investigation, liquified petroleum gas, boiler inspection, engineering, and civil defense. The Bureau of General Inspection sees that the fire safety measures are carried out. The commissioner promulgates "Standards of Safety," which must include subjects listed by statute, and which may include others.³⁷⁹ These standards range from structural requirements for various types of construction to lightning protection. The department has promulgated over 160 regulations establishing specific standards which must be met by all property owners. These include, for example, detailed standards for electrical wiring and equipment,³⁸⁰ ventilating systems,³⁸¹ and many others.³⁸² These regulations apply to all public buildings or buildings used by the public and to private dwellings where a fire hazard is thought to exist.³⁸³

To enforce these regulations, the Bureau of General Inspection conducts a continuous inspection program. Twenty-two general inspectors are assigned throughout the state.³⁸⁴ They must be high school graduates with at least three years' experience in organized fire prevention. They inspect schools, flammable liquid trucks, mercantile buildings, service stations, and other facilities. During 1962, 4,622 inspections were made, resulting in 8,222 recommendations for improvements in safety measures.³⁸⁵ The bulk of this work, however, is done by sheriffs and the chiefs of all city and county fire departments,³⁸⁶ who are sworn in as deputy fire marshals. Most fire chiefs are active

³⁷⁹ KRS 227.300.

³⁸⁰ 3 Ky. Administrative Reg., Dep't of Public Safety, KSftyS-1100-1101 (1963).

³⁸¹ 3 Ky. Administrative Reg., Dep't of Public Safety, KSftyS-1200-1202 (1963).

³⁸² Every item mentioned in KRS 227.300 is covered by division regulations. Some not mentioned in the statute, such as firearms, are also covered in the regulations.

³⁸³ KRS 227.220(2)(b), 227.270(1).

³⁸⁴ Interview with H. L. Foster, State Fire Marshal, in Frankfort, Ky., Aug. 21, 1963.

³⁸⁵ Dep't of Public Safety, Division of Fire Prevention, 1962 Annual Report 18-19.

³⁸⁶ KRS 227.230. There are two ways a fire department may be established in an unincorporated section of a county. Fifty-one per cent of the voters of that section may establish such a department by their vote. KRS 75.010. This majority vote also carries with it the power to levy taxes to finance the fire department. Or, the county fiscal court may establish the fire department without a vote. KRS 67.320. Or, the city may have a volunteer fire department.

as deputy fire marshals, but the sheriffs seldom serve except in suspected cases of arson.³⁸⁷ Inspectors are authorized to enter upon any premises, and may even enter a private dwelling where an unsafe condition is thought to exist.³⁸⁸ They have subpoena power.³⁸⁹ The officer may order fire hazards remedied or necessary changes made to render the property safe; such an order may be appealed to the Commissioner of Public Safety.³⁹⁰

The Bureau of Arson Investigation investigates all fires or explosions where arson is suspected.³⁹¹ It has fifteen investigators who must be high school graduates with at least two years of law enforcement experience. Since only two city fire departments have arson squads, the bureau must conduct the bulk of such investigations. The local departments and deputy fire marshals do, however, initiate the investigation, by reporting all suspicious fires to division headquarters.³⁹² Insurance companies are required to report losses from fire, lightning, or explosion.³⁹³ The bureau's investigators receive annual in-service training at the Kentucky State Police Training Academy in current techniques of arson detection. They have the power of arrest, which is conferred upon them by the Commissioner of Public Safety and is confined to activities involved in his arson investigation.³⁹⁴ Laboratory work for the investigators is done by the State Police or the F.B.I., and the information they gather is turned over to the Commonwealth's attorney for possible prosecution.³⁹⁵ In 1962, 525 cases of arson were reported and investigated; 157 were determined to be of an incendiary nature and resulted in 119 arrests, fifty-five indictments, and forty-three convictions.³⁹⁶

The Bureau of Liquified Petroleum Gas licenses, regulates,

³⁸⁷ Interview with H. L. Foster, *op. cit. supra* note 384.

³⁸⁸ KRS 227.270(2).

³⁸⁹ KRS 227.280.

³⁹⁰ KRS 227.330-227.390.

³⁹¹ KRS 227.220(2)(a).

³⁹² KRS 227.240.

³⁹³ KRS 227.250.

³⁹⁴ The authority by which the Commissioner of Public Safety vests such power in arson investigators is a little obscure. As far as can be determined, it comes from the provisions of KRS 17.080, granting the commissioner all the necessary powers he has not been granted some place else. In any case, no arson investigator is vested with the powers of a peace officer permanently. These powers are granted only under special circumstances.

³⁹⁵ KRS 227.290.

³⁹⁶ Dep't of Public Safety, *op. cit. supra* note 385, at 4-7.

and inspects the equipment in which such gas is transported, and the places where it is stored, sold, and used.³⁹⁷ Some standards of safety are set by statute³⁹⁸ and the rest have been set by regulation. To ensure compliance with such standards, the bureau has one chief and six field inspectors, the maximum allowed by law.³⁹⁹ These inspectors, trained in the liquid petroleum gas field, periodically cover designated areas in the state. This bureau made 6,372 inspections in 1962 and 3,139 recommendations for safety improvements. During the past three years, the bureau has also "conducted or participated in more than 100 organized programs of safety and service training in the fundamentals of gas engineering." It also has "a large vehicle with the necessary tools to serve as a mobile training unit."⁴⁰⁰

The Bureau of Boiler Inspection was created in 1962.⁴⁰¹ It assures that all boilers installed for use in the state are constructed, inspected, and stamped in accordance with the American Society of Mechanical Engineers Construction Code. Boilers are used in various industries throughout the state, and unless regular repairs and replacements are made, serious explosions can result. The bureau plans to have five field inspectors to provide a periodic inspection service, teach the proper maintenance procedures, and suggest safety precautions.⁴⁰²

The Bureau of Engineering is responsible for reviewing the plans and specifications for all proposed public buildings and any major additions or alterations thereto. The bureau is also responsible for the "inspection of institutional occupancies, hotels, motels and operations wherein the storage, handling, and/or use of hazardous materials and flammable liquids present special hazards."⁴⁰³ Its personnel have a continuing training program relating to technical problems of plans and specifications.

³⁹⁷ KRS 234.120, 234.140, 234.180.

³⁹⁸ KRS 234.150, 234.180, 234.210-234.260.

³⁹⁹ KRS 234.165(1).

⁴⁰⁰ Dep't of Public Safety, *op. cit. supra* note 385, at 31.

⁴⁰¹ Ky. Acts ch. 89, § 2 (1962).

⁴⁰² Dep't of Public Safety, *op. cit. supra* note 385, at 8.

⁴⁰³ *Id.* at 9.

PUBLIC SERVICE COMMISSION

The Public Service Commission consists of three members appointed for four-year terms by the Governor with the advice and consent of the Senate.⁴⁰⁴ The commission investigates, regulates and enforces the laws concerning Kentucky public utilities, including rural electric and rural telephone co-operative corporations.⁴⁰⁵ The investigations are conducted by the divisions of engineering and accounting usually after receiving a complaint. The Division of Engineering has six experts in civil engineering, electrical engineering, telephone, and gas; the type of complaint received determines the kind of engineers sent to make the investigation.⁴⁰⁶ The commission may hold hearings, issue process, examine witnesses and certify official acts.⁴⁰⁷ Obedience to the commission's orders may be compelled by proceedings brought in a court of competent jurisdiction, and an appeal may be taken to the courts from the commission's final determination.⁴⁰⁸ The jurisdiction of the commission extends to all utilities but the statute specifies that this does not "limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions;"⁴⁰⁹ cities' powers relating to utilities are set out elsewhere in the statutes.⁴¹⁰ Thus, the cities' power to regulate their utilities, except as to rates, by the grant of a franchise remains unimpaired.⁴¹¹

REVENUE

The Department of Revenue is responsible for administering the principal revenue laws of the state. It is headed by a commissioner who is appointed by the Governor⁴¹² and includes divisions of sales tax, property and inheritance tax, income tax, and motor vehicle tax. The legal staff and field division aid in the enforcement of the various tax laws. The Field Division has representa-

⁴⁰⁴ KRS 278.050.

⁴⁰⁵ KRS 278.040, 279.210(1).

⁴⁰⁶ Telephone interview with J. Gardner Ashcraft, Ass't Att'y Gen., Public Service Comm'n, in Frankfort, Ky., Nov. 12, 1963.

⁴⁰⁷ KRS 278.310, 278.320, 278.330, 278.340.

⁴⁰⁸ KRS 278.390, 278.410, 278.450.

⁴⁰⁹ KRS 278.040(2).

⁴¹⁰ KRS ch. 96.

⁴¹¹ Telephone interview with J. Gardner Ashcraft, *op. cit. supra* note 406.

⁴¹² KRS 131.020.

tives in thirteen district offices throughout the state. The commissioner may request in writing any field officer, accountant, or attorney to investigate the accounts, books, and records of all officers whose duties include collecting taxes and report the results of the investigation to that county's fiscal court.⁴¹³ When any insurance company owes back taxes or fails to pay its correct taxes, the commissioner must institute an investigation of the company's accounts.⁴¹⁴

The department has power to make regulations, direct proceedings and actions for administering and enforcing tax laws, take depositions, and, when necessary, examine records or equipment "of any taxpayer or of any person whose records, documents or equipment will furnish knowledge concerning the tax liability of any taxpayer."⁴¹⁵ The department may require Commonwealth's or county attorneys to prosecute or perform other services relating to enforcement of the revenue laws.⁴¹⁶

The commissioner is chairman of the Kentucky Tax Commission, which equalizes assessments, and hears appeals from findings made by the department and rulings made by the county boards of supervisors on local assessments.⁴¹⁷ It has authority to summons and compel attendance of witnesses, take depositions, and order the production of documents or other evidence.⁴¹⁸ The commission's decisions may be appealed to the courts.⁴¹⁹

SUMMARY

The twenty-four state agencies and the various boards and commissions discussed herein constitute an important part of the state's law enforcement structure. About half of them have power to commission certain employees as peace officers, whose powers are usually restricted to enforcing statutes relating to the agency. Most agencies, boards, and commissions have power to issue regulations, to hold hearings and to proceed against violators through

⁴¹³ KRS 131.210.

⁴¹⁴ KRS 134.410.

⁴¹⁵ KRS 131.130(1) and (2).

⁴¹⁶ KRS 131.130(5).

⁴¹⁷ KRS 131.020(2), 131.090.

⁴¹⁸ KRS 131.100(1).

⁴¹⁹ KRS 131.110, 131.120.

administrative action or judicial process. A number have specially-trained law enforcement staffs or field inspectors.

There is obviously a trend toward regulating a larger number of occupations, professions and activities involving the health, welfare and safety of citizens, and toward increasing the law enforcement responsibilities of state agencies. This is not, however, always accompanied by an awareness of the need for trained enforcement personnel, with adequate authority to discharge their duties. The qualifications and training of enforcement officers are generally left to the agency to determine. Even when employees may be vested with peace officer authority, their selection is left to the agency. As an increased number of agencies are given law enforcement duties, the qualifications of their enforcement staffs becomes a matter of growing importance.

FEDERAL AGENCIES

A discussion of federal law enforcement officers is outside the scope of the present report. Any consideration of law enforcement would, however, be invalid without some recognition of the federal government's activities in this area. Some services of federal agencies have been described in previous chapters. The Federal Bureau of Investigation's academy and the participation of federal experts in various state and local training programs are described in the chapter on training. The availability of federal laboratory and investigative services to local and state police was described in connection with state facilities. Many state agencies, such as the departments of Health and Agriculture, work closely with federal agencies in co-ordinated law enforcement programs. These services and programs are an important and integral part of law enforcement in Kentucky.

The Federal Bureau of Investigation, which is the investigative branch of the United States Department of Justice, is the best-known federal enforcement agency. It handles over 165 different types of investigations, including federal criminal laws, internal security matters, and civil inquiries in which the government has an interest. Matters within its jurisdiction range from admiralty claims to violation of Veterans Administration stat-

utes.⁴²⁰ It offers a great variety of services to all law enforcement officers, including highly technical laboratory tests and specialized training. The number of F.B.I. agents permanently stationed in Kentucky is confidential information. There are, however, resident agencies in the larger Kentucky cities, and a main office in Louisville.⁴²¹

The United States Secret Service is a bureau of the Treasury Department, and has various law enforcement duties. Its main functions are to guard the president, vice-president, and their families, and to protect the integrity of the money of the United States. There are five secret service agents attached to the Louisville office, who serve the Kentucky area. These men's work generally involves investigating check and bond forgery and counterfeiting.⁴²²

The Bureau of Narcotics of the Treasury Department conducts investigations concerning the detection and apprehension of those engaged in illicit narcotic traffic. It also conducts inspections to ensure safeguards of legal narcotics and investigations to prevent any unlawful use or diversion. The bureau has two agents in Kentucky, one in Louisville and one in Lexington. They work closely with state agencies, such as the Department of Health, as well as with other federal agencies.⁴²³

The United States Marshal is the oldest law enforcement office of the federal government. Marshals are appointed by the President of the United States, and are responsible administratively to the Attorney General. The marshal makes arrests on federal warrants, has charge of federal prisoners, serves subpoenas, and exercises other functions which do not, however, include investigation. Kentucky is divided into two geographical districts: the eastern district, with offices in Lexington, has one marshal, one chief deputy marshal, and four deputy marshals;⁴²⁴

⁴²⁰ Federal Bureau of Investigation, Cooperation—the Backbone of Effective Law Enforcement 15.

⁴²¹ Telephone interview with Ian MacLennan, Special Agent in Charge, F.B.I., Louisville Division, in Frankfort, Ky., Nov. 14, 1963.

⁴²² Telephone interview with Andrew P. O'Malley, Special Agent in Charge, Louisville Office, U.S. Secret Service, in Frankfort, Ky., Nov. 18, 1963.

⁴²³ Telephone interview with Albert Cook, Director, U. S. Bureau of Narcotics, Louisville Office, in Frankfort, Ky., Nov. 15, 1963.

⁴²⁴ Telephone interview with Charles H. Dudley, Chief Deputy U. S. Marshal, Eastern District of Ky., in Frankfort, Ky., Nov. 14, 1963.

the western district, with offices in Louisville, has one marshal, one chief deputy marshal, and seven deputy marshals.⁴²⁵

Other federal law enforcement agencies which operate in Kentucky include the Civil Service Commission, which investigates violations of civil service laws. The investigative branches of the Internal Revenue Service supervise legal liquor and tobacco industries, and suppresses illicit activities in these fields, as well as investigates other federal tax matters.⁴²⁶ The Intelligence Division has approximately twenty field agents with headquarters in Louisville and sub-offices in Covington and Lexington.⁴²⁷ The Post Office Inspection Service, investigates crimes related to the U. S. mail.⁴²⁸

In addition, each branch of the armed forces maintains its own police to enforce military regulations. They have jurisdiction over military personnel and over civilians on a military reservation in certain circumstances.

⁴²⁵ Telephone interview with Everett Langford, Chief Deputy U. S. Marshal, Western District of Ky., in Frankfort, Ky., Nov. 14, 1963.

⁴²⁶ The Alcohol and Tobacco Tax Division has thirty men who work out of Louisville in liquor and tobacco cases. Telephone interview with Gentry P. Grider, Sup'r in Charge, Louisville Office, Internal Revenue Service, in Frankfort, Ky., Nov. 18, 1963.

⁴²⁷ Telephone interview with V. B. Weitzel, Ass't District Director, Louisville Office, Internal Revenue Service, in Frankfort, Ky., Nov. 18, 1963.

⁴²⁸ For a detailed analysis of federal law enforcement in one state, see Governmental Research Center, University of Kan., Law Enforcement Agencies in Kansas 18-56 (1954).

XI. Training of Law Enforcement Officers

OBJECTIVES OF TRAINING PROGRAMS

Need for Professional Development. The progress of science and technology has increased the skills required in many kinds of work, including law enforcement. City, county and state law enforcement officials need an ever-increasing knowledge of crime prevention and detection methods. They should know modern techniques for investigation, radio communications, traffic supervision, riot control and identification. They should be familiar with a great body of law, particularly the laws governing search, seizure, arrest, and those defining crimes. They should be skilled in self-defense and the use of firearms and should be trained in the examination of witnesses, police reporting and recording procedures. The public expects law enforcement officers to enforce the law while acting within its limits. This requires that they know the law and the scope and limits of their authority.

Specialists in crime control agree that: “. . . no law enforcement, agency today can function efficiently or effectively unless it includes high standards of education and training in its plans and operations.”¹ This applies not only to new agencies such as state police, but to the traditional officers, such as the sheriff. These officers may carry titles which antedate American government, but they deal with modern problems. Most states, however, still lack adequate training facilities, or have schools which are conducted for brief periods by instructors with limited qualifications, and are of little benefit in raising the general level of police protection.² Some police forces rely solely on in-service training and probationary employment, which are not comparable to a training program.

Standards for Law Enforcement Personnel. To evaluate the adequacy of present qualifications and training, it is helpful to

¹Breton, *The Importance of Training and Education in the Professionalization of Law Enforcement*, 52 J. Crim. L., C. & P.S. 111 (1961).

²Smith, *Police Systems in the United States* 296 (Rev. ed. 1940).

review the standards developed by leading authorities. Law enforcement experts believe that training should aim at developing mental and physical attributes, teaching police methods and operations, and capitalizing on individual character, reputation and personality. Training programs should especially seek out those officers who possess the qualities found in wholesome and effective leadership.

One of the nation's foremost police administrators says that the ideal system would meet the following standards: (1) increase the academic requirements of law enforcement officers, with the goal of having the officers complete a four-year college course in law enforcement; (2) the certification of the applicant by a state authority attesting that the officer is qualified and trained; (3) the elimination of local residence requirements for employment of such officers; and (4) modernization of officers' salaries, retirements, insurance, sick pay, vacations and other benefits commensurate with the education, duties and responsibilities of the position.³

Another leading authority made the following recommendations: (1) requiring a medico-psychological examination of all police trainees; (2) postponing the grant of police authority to trainees until they have proved their abilities, on probation, to discharge the duties of the position; (3) continuing educational and promotional courses for policemen, especially on technical advances in law enforcement; (4) establishing a merit system within each police department; and (5) promoting public relations between the department and the public, with a view toward achieving friendship and co-operation.

The training available to law enforcement personnel can be analyzed in terms of these and similar standards. The types of training and facilities available in Kentucky are discussed herein.

TYPES OF TRAINING

In-service Training. In most police units recruits are usually trained by the chief or other experienced officers within the department itself. This training generally occurs while the recruit

³Brereton, *supra* note 1, at 122.

is working as a full-time peace officer. The quality of such a training system depends entirely upon the adequacy of the instructors, and requires experienced, able teachers who have kept abreast of modern crime prevention and detection methods.

Such instruction is a form of "in-service training." Police in-service training, in its broadest sense, includes:

(1) scheduled classes in self-defense, arrest techniques, and other general law enforcement topics, taught by the chief or older, experienced officers, either while the trainees are on duty, or during off-duty hours; or scheduled classes in city government, and civil and criminal law, taught by local or visiting experts, during on- or off-duty hours; or field work, such as patrolling with experienced officers, while on duty;

(2) institutes or seminars of from a few days to several months' duration, during which officers who are still on active duty devote full-time to a study course in one or more areas of police work; or

(3) courses or subjects offered at colleges or universities to law enforcement officers, on a part-time basis, during afternoon or evening hours, with the opportunity to accumulate credits to be applied toward a certificate or degree.⁴

In-service training meets two needs of law enforcement agencies: it provides a means of upgrading personnel, and provides regular officers with knowledge of recent developments in the fields of law enforcement, administration and investigation. As used for upgrading of personnel, in-service training is a satisfactory procedure. Officers may acquire both broad and specific knowledge in police administration and operations, and their grades from the courses may be used to evaluate the officers' potential for promotion. In-service training also keeps the men mentally active and stimulates interest in law enforcement work.

On the other hand, "in-service training was never intended nor can it be expected to train a man professionally for a given field. . . ."⁵ In-service training presupposes a knowledge of basic police techniques upon which to build further understanding.

⁴Gourleg, *In-service Training of Policemen by Universities and Colleges*, 44 J. Crim. L., C. & P.S. 229, 230 (1953-1954).

⁵Leonard, *Police Organization and Management* 150 (1951); Clift, *Police Training*, 291 Annals 113, 117 (1954).

But in-service training, in the form of classes taught by officers within the department for recruits on active duty, is often used in lieu of pre-service training.

Police Training Schools. A second type of training is the police school, which may be conducted: prior to employment; after employment, but prior to assignment to active police duty; or after employment and after active police duty assignments. Training schools may take any of the following forms: (1) schools conducted by outside specialists for the officers of a particular locality, or schools where police officers from different localities come and reside for the duration of the program; (2) schools giving instruction in general law enforcement techniques, either basic or advanced, or in specialized subjects such as arrest tactics and investigation procedures, schools where one specific subject, such as fingerprinting, ballistics, or communications, is taught, or schools with a comprehensive training program, including general and specialized courses; or (3) schools where the instruction is designed basically for one kind of law enforcement official, such as, a sheriffs' school, or schools where the subjects are designed for all kinds of peace officers. Schools of any of these types offer certain advantages over departmental in-service training programs. The instructors are usually qualified as teachers, and may even be professional instructors, who are trained to teach complicated police subjects. Instructors usually have more adequate teaching facilities and materials, such as films, slides, and charts which make the instruction more understandable. Trained teachers and special facilities usually result in more effective instruction than most local programs. When police schools are used for pre-employment training, the recruits receive a substantial foundation in basic law enforcement techniques and procedures. When used as refresher training for active personnel, these schools provide continuing education.

Other Types of Training. State and district meetings and conventions also provide a type of law enforcement education. Attorneys, police chiefs, law enforcement specialists, and other qualified persons usually speak at these conventions. The attending officers are thus able to broaden their knowledge on certain topics, and discussions that follow the speaker's talk provide the

officer with a chance to apply the topic to his particular situation. Conferences or institutes on specific law enforcement problems constitute still another type of training. Such conferences may be sponsored by a university, the state police, the state Attorney General or an association of state peace officers. Conferences offer a framework in which attending officers may hear new ideas, and may present their own views on specific topics.

Another type of training is known as the police cadet plan. This plan is well established in England, and has recently attracted the attention of American police administrators. Police "cadet" or "aide" positions are open to young men who, except for age, meet all the requirements for a police appointment. They have no peace officer authority, and perform duties normally assigned to civilian employees. The cadets are rotated within the department, so that they gain experience in various departmental work situations. During this employment the cadet is receiving in-service training, which is designed to prepare him for active police duties. Upon reaching the minimum police appointment age, those cadets who have indicated probable success in police work are assigned full police responsibilities. The police cadet plan recruits young men who otherwise would go into other employment after high school graduation, and is geared so that the cadet will become a qualified officer and, eventually, an efficient administrator. One authority on police administration says that,

"the plan stands as a device for tapping a source of manpower that is presently out of reach. If viewed not as a substitute for, but rather as supplementing present methods of recruiting, it appears to be sound."⁶

POLICE TRAINING IN KENTUCKY

Present Training Requirements. In Kentucky the only training requirements for law enforcement officers are those set by some cities for their police departments and those set by the

⁶Seares, *The Police Cadet*, 291 *Annals* 107, 112 (1954). One authority reports that the police cadet program began fifteen years ago in Milwaukee, and is currently being used in police departments in Los Angeles, Miami, Baltimore County Md., Cincinnati, Detroit, New York City, Seattle, Honolulu, and Tucson. Golden, *Police Cadet Program and Its Role in the Police Service*, Mar. 8, 1963 (unpublished thesis at Northwestern University Traffic Institute).

State Police for their officers. There are no state-wide standards. Available information indicates not only that training is inadequate, but that most law enforcement officers recognize the need for more training. The Committee on the Administration of Justice's survey of sheriffs found that 41 per cent of the sheriffs reporting had no police experience or training of any kind, and very few sheriffs had any kind of formal training.⁷ The only qualifications required for election as sheriff relate to age and residence.

Similarly, there are no training requirements for the offices of jailer, constable and coroner. Once elected, these officers exercise wide powers in law enforcement, but they may be completely inexperienced and may lack knowledge of the law or of police techniques.

None of Kentucky's four county police departments require any formal police training prior to appointment. Law enforcement techniques and patrol training are taught by the experienced officers on the force during the recruits' probationary period. The recruit training requirements are set by the individual departments, so there is no uniform pattern among the four counties.⁸

There are no statutory training requirements for city police. It was noted in Chapter VI, *supra*, that twenty-five cities responding to a questionnaire require some training for their city police officers, and fifty-one do not. Some city police departments reported that they conducted their own training classes, other departments relied on patrol duty with experienced officers as a basis for training, some sent their recruits to a K. P. O. A. School and some required no training at all. The only training in most cities is accomplished by putting the recruit on active duty with an experienced officer, who may or may not have had any formal training himself.

Interest in Expanded Training Programs. There is widespread interest in expanded training programs among Kentucky's peace officers. In response to the committee's question as to whether more educational, informational or training facili-

⁷See Chapter II *supra*.

⁸See Chapter VII *supra*.

ties or services should be made available to local law enforcement officers, fifty sheriffs answered yes, three answered no, and three gave no answer. Ten sheriffs stated that general duties and responsibilities should be taught, seven said investigations and arrests, and two cited self-defense. Other subjects suggested were physical training, traffic violations, public relations and fingerprinting. When city police chiefs were asked the same question, seventy-three answered that more educational, informational or training facilities or services were needed in Kentucky; only four answered no. Thirty-four chiefs said all subjects of law enforcement should be taught; twenty-three emphasized legal subjects, such as arrest and search and seizure.⁹

This interest in law enforcement training is further illustrated by the existence of the Kentucky Peace Officers' Association's emphasis on education. The association has attempted to raise the standards of Kentucky officers by sponsoring periodic peace officer training schools.¹⁰ The Kentucky Sheriffs' Association has shown its interest in law enforcement training, and sponsors schools for sheriffs and their deputies.¹¹ On the basis of these data, law enforcement leadership in Kentucky is extremely interested in expanded training programs.

Problems of Training. Several problems hinder the improvement of training programs in Kentucky. Until some substantial effort is made to combat some of those problems, most Kentucky law enforcement systems must continue to operate without adequate training for their personnel.

One of the biggest problems involves costs. An adequate training program requires instructors, teaching aids, classroom or field facilities, transportation, room and board if the program is held away from the individual officers' department. In order to provide the program, someone must meet these expenses.

The larger cities and counties are more able to finance training programs, but the smaller jurisdictions may not have funds available. Requiring the individual officer to pay for his own police training does not solve the problem.

⁹See Chapter VI *supra*.

¹⁰Telephone interview with Elmer Gutterman, Exec. Secretary, Ky. Peace Officers' Ass'n, in Frankfort, Ky., July 19, 1963.

¹¹See Chapter II *supra*.

The quality of the individual recruit may be another problem. A police training program, no matter how good it is, cannot be expected to teach complicated laws and techniques of their enforcement to recruits of poor quality. Low pay usually makes it difficult to recruit men who have an aptitude and interest in professional education. Poorly paid personnel often have little or no interest in expanding their knowledge of law enforcement techniques, and training will have little effect on them. A capable law enforcement officer, who has received special training, may leave the department for a more lucrative position. The costs of training this man are lost when he leaves.¹²

The quality of the recruit also depends on his age. Most Kentucky law enforcement agencies require a minimum age of twenty-one years. Since the agencies also require a high school degree, this means an applicant has been out of school for three years. If the high school graduate is able and ambitious, he might well have entered a trade or position by the time he is twenty-one. A person who has not found permanent employment within three years after high school may find it difficult to adjust to regular employment; training such men may be useless, as they may later drop from the force.¹³

Another problem is that Kentucky law enforcement units do not take full advantage of existing training facilities. The reason may be the size of the unit. If, for example, a sheriff has only one deputy, their duties may require that both remain in the county, and it is impossible for them to attend a one-week training program. This holds true for many law enforcement units. In the larger units, when one officer leaves for a training school, another officer must substitute for him, and the department may not be able to assign a substitute. Budgetary considerations as to substitute officers, expenses, tuition and training costs generally are also limiting factors. These are but a few of the problems that hinder law enforcement training programs. Existing training facilities available to Kentucky officers are described in detail below. While Kentucky has some top-quality programs, they do not reach many officers and, therefore, their impact is limited.

¹²See Seares, *supra* note 6, at 111.

¹³*Id.* at 107.

SOUTHERN POLICE INSTITUTE

History. Two schools in the nation present a comprehensive program of advanced law enforcement training. One is the Federal Bureau of Investigation National Academy, and the other is the Southern Police Institute, located on the University of Louisville campus. The institute was established in 1951 to provide an advanced in-service type training program for law enforcement officers of commanding or supervisory rank, and, with a few exceptions, for officers who were being trained for such rank. The institute is financed primarily by the city of Louisville and the Ford Foundation.

Since its opening the institute has graduated about 900 law enforcement officers from its long-term program. The institute hopes its graduates will be enthused about police education and that, when they return to their respective departments, they will teach what they have learned to those officers unable to attend the institute. The institute's program is designed to qualify its students to teach other police officers.

Attendance and Curriculum. Before applicants are admitted they must pass the University of Louisville's entrance examination. Completion of the twelve-week program counts twelve college credits to the student toward a bachelor's degree. A certificate is awarded also at the end of the institute's course. The students are accepted from all over the United States, but 60 per cent come from the South. Each class consists of thirty students. Six positions in each class are reserved for Kentucky peace officers, distributed as follows: three officers from the Louisville Police Department, one from the Jefferson County Police, one from the Kentucky State Police, and one other from elsewhere in Kentucky. There are always many more applicants than can be accepted, which results in strong competition for each position. The institute's growing reputation has brought about an increase in the applications of high quality students.

Each student's tuition is 300 dollars for the entire course, and the total cost to the individual student is around 1,000 dollars. Usually these expenses are paid by the individual officer's department.

The curriculum is carefully planned to present a compre-

hensive course in police administration and science, with the ultimate purpose of qualifying the graduates to conduct further training in their respective departments. The six major courses are: police administration; police personnel administration; human behavior and community relations; law, evidence and criminal procedure; scientific investigation of crimes; and training procedures and techniques. Since the students are of commanding and supervisory rank, and the average age of each class is thirty-five, no physical fitness classes are taught. The students spend five hours a day in lectures, and must also undertake reference reading assignments, special research projects, and small group workshops with specific subject assignments.

The 300 hours' instruction course is held in one classroom, conducted by three full-time instructors, including the director of the institute, and by visiting lecturers. These lecturers are chosen because of their qualifications in particular fields of police science, administration, criminal law, and allied subjects. The institute pays expenses incurred by the visitors, including a 100 dollar per diem honorarium. The training programs attempt to teach a curriculum covering all phases of law enforcement, with major emphasis on management, administration and constitutional law. Little emphasis is placed upon laboratory courses or traffic, because the F. B. I. academy and schools such as the Northwestern University Traffic Institute are available in these areas. In effect, the institute trains its graduates to train others. Its success is reflected by the 1963 opening of a school at Louisiana State University which is modeled very closely after the Southern Police Institute.¹⁴

Seminars and Conferences. In addition to the institute's twelve-week classes, four two-week seminars are held during the year when the regular classes are not being conducted. Thirty law enforcement officers from all parts of the country are chosen for each seminar and pay a 150 dollar fee. The seminars, taught by visiting lecturers, cover such subjects as scientific investigation, police administration, delinquent youth and society, and other topics chosen from the current needs for instruction. The topics

¹⁴Letter from Julian A. Martin, Coordinator, Law Enforcement Training Program, La. State University, to Ky. Att'y Gen. John B. Breckinridge, June, 1963.

are offered in greater detail than those in the institute's comprehensive course, and fill a vital need in the continuing education of the country's law enforcement officers.

A Ford Foundation grant made possible a three-day conference for chiefs of police held at the Southern Institute during April of 1963. The subject was "Police Responsibility in Race Tension and Conflict" and was sponsored jointly by the institute, the International Association of Chiefs of Police, and the Louisville and Kentucky municipal, county and state police departments. The response to the conference was so great that it had to be held in a Louisville hotel rather than at the institute. Chiefs of police from all over the country attended and the visiting lecturers included the Dean of the School of Criminology of the University of California, the President of the International Association of Chiefs of Police, the Executive Secretary of the N. A. A. C. P., the National Director of the C. O. R. E., and the Deputy Attorney General of the United States Department of Justice.¹⁵

KENTUCKY STATE POLICE TRAINING ACADEMY

The Kentucky State Police Training Academy is located near Frankfort, the state capital. The academy, built at a cost of 540,764 dollars, is concerned primarily with the training of State Police recruits and the continuing education of all State Police personnel. Its facilities, instructors and special training programs are also available to municipal police officers, sheriffs and their deputies, and various divisions of the Department of Public Safety. The academy program consists of: (1) pre-service training for recruits, and (2) in-service training for regular State Police troopers and other law enforcement officers.

Pre-service Training. A State Police recruit must complete successfully a thirteen-week introductory and orientation training program at the academy. Such programs are held as needed throughout the year. The 1962 graduating class consisted of forty men. A recruit must live at the barracks for the full train-

¹⁵Interview with Col. David A. McCandless, Director, Southern Police Institute, in Louisville, Ky., June, 1963; Letter from Col. David A. McCandless to Ky. Att'y Gen. John B. Breckinridge, Oct. 18, 1963.

ing period, with week-ends off unless he has low grade marks or is restricted to the post for discipline purposes. The recruits' training begins at 6 a.m., under very close supervision, and lasts until 9 p.m. Physical stamina is developed by having the recruits run up to four miles each morning, and by close-order drill after lunch.

Classes are taught in such subjects as traffic law, criminal law, departmental and divisional procedures, and inter-agency co-operation. Most classes are taught by qualified Kentucky State Police personnel. Particular emphasis is placed on weapons training, using the regular State Police weapons. Scientific training in fingerprinting and photographic work is given by State Police specialists and instructors with F. B. I. backgrounds. Classes in state, federal and local government and Kentucky history are taught by University of Kentucky professors. The associate director of the Southern Police Institute instructs in the rules of evidence for police officers. Over forty hours of instruction is given by the staff in driving. A library is maintained at the academy, with regular reading assignments given to the recruits. Examinations are given periodically. Before the final examination, each trainee must write a thesis of approximately 2,000 words on some police subject.

New graduates are assigned to various posts throughout the state, and work with experienced troopers for a one-year probationary period. At the end of this period each new trooper is interviewed by a personnel evaluation board, which discusses his experiences, problems and evaluations by his superior and then either grants him permanent status or dismisses him; both actions are subject to final approval by the Director of the Kentucky State Police. The new trooper's training is continued by the regular issuance of training bulletins, and participation in the second phase of training: in-service training.

In-service Training. The academy's in-service training program consists of: (1) courses designed to refresh the trooper's knowledge of the basic rules of law enforcement; (2) specialized courses, designed to bring up-to-date the trooper's knowledge of the developments in science and law; and (3) general information courses.

In order to maintain a high level of knowledge in police methods, an attempt is made to have each State Police trooper spend one week a year in a basic training course. The one-week courses are taught by the academy's staff, in self-defense, disarming, auto theft, arson, recent trends in bank robbery, rules of evidence, arrest, search and seizure. The attendance at these courses varies depending directly on the need for the troopers to be on duty in the field.

Since both methods and laws are constantly changing, specialized courses are necessary to keep troopers abreast of developments. Specialized one-week courses are taught by staff members and other guest experts on subjects such as sound equipment, latent fingerprinting, lie detector use and criminal pathology. General information courses are provided by the staff in human relations, effective communication, police-press relations, legal problems, accidents and civil rights. Courses are also provided for supervisors in maintaining discipline, personnel rating policy, and job planning. The curriculum for all these phases varies with the problems the force is currently experiencing.

The State Police has attempted to increase the quality of its troopers by seeking recruits with one or two years of college. One officer at the academy estimated that most Kentucky State Police officers have some college training. The force follows the policy of having at least one officer enrolled each year in the Southern Police Institute, at Northwestern University, in the Federal Bureau of Investigation's National Academy in Washington, at Michigan State University and one other college. The officer is granted a leave of absence with full pay for the duration of the course, and his costs are considered departmental expense.

Services to Local Law Enforcement Officers. These training facilities are available to all Kentucky law enforcement officers, but few take advantage of the program. The Kentucky Peace Officers' Association and The Kentucky Sheriffs' Association sponsor various courses at the academy. The K. P. O. A., in conjunction with the Louisville and Lexington Police Departments, the State Police, and the F. B. I., arranged six basic training courses for city policemen in 1962.¹⁶

¹⁶Telephone interview with Elmer Gutterman, Exec. Secretary, Ky. Peace Officers' Ass'n, in Frankfort, Ky, July 19, 1963.

The Kentucky Sheriffs' Association sponsored several training programs for sheriffs and their deputies with the academy furnishing instruction facilities, teachers, food and lodging. The fee was 25 dollars for the full week, and the academy absorbed the difference between the fee and actual costs. Only eight sheriffs and eleven deputies' attended the course. Their explanations for not attending were that they had to collect taxes, or that they simply did not have time. In August 1963, the association sponsored another school for sheriffs; only three persons planned to attend, so the school was called off.¹⁷ The academy has also indicated that it is willing to allow peace officers to participate in its regular state police recruit training program, but no local agencies have taken advantage of this offer. The academy has films and training plans which they will loan free of charge to local agencies, but this service is very seldom requested. The academy will, whenever it is necessary and they are available, loan its instructors to local law enforcement units free of charge; again, there is almost no demand for this service.

One State Police official estimated that over 98 per cent of all peace officers in Kentucky need more training. The academy represents one source of that training, but peace officers do not take advantage of its facilities. The State Police itself apparently do not make maximum use of training, due to the other demands on the time of its personnel. The academy, however is a half-million dollar facility which can be a key factor in any effort to upgrade police training in Kentucky.

KENTUCKY PEACE OFFICERS' ASSOCIATION TRAINING SCHOOLS

Training Program. The Kentucky Peace Officers' Association was organized for the primary purpose of improving the professional education of its members. It aims at improving the education of the individual officer in basic police techniques, and modernizing the police systems of individual communities. The first phase of the program is being carried forward by association-sponsored police training schools. These schools have been set

¹⁷Telephone interview with Sheriff Guy McMillan, President of the Ky. Sheriffs' Ass'n, in Frankfort, Ky., Aug. 8, 1963.

up in various communities throughout Kentucky, and teach such basic subjects as search and seizure, arrest, investigation techniques and traffic procedures.¹⁸ Classes are held in facilities provided by the local community. The instructors generally come from within the ranks of the association; they charge no fee for their services, nor is any fee charged to the trainee. This is an example of the "co-operative effort" that exists within the K. P. O. A. The size of the classes depends upon the size of the communities and the size of the law enforcement unit.

In the past few years, a one-week basic training course has been sponsored by the association at the Kentucky State Police Training Academy in Frankfort. The trainees live in the academy's barracks, and the instructors and facilities are provided by the academy's personnel. Instructors are also furnished by the F. B. I., the state arson bureau, the Lexington Police Department and the Louisville Division of Police. A 25 dollar tuition fee is charged. Approximately seventy law enforcement officers from throughout Kentucky attend these courses yearly. From February 1962 to October 1963, seven schools for city police officers were held, and a total of 194 officers attended.¹⁹

Special Service. The second part of the association's program is the modernization of local police systems. To further this aim, trained experts are sent to the local police departments to set up traffic records systems, revise department records, institute a local police identification bureau, reorganize personnel structure and suggest improved policing methods. Special surveys are also conducted for the individual departments as, for example, safety or traffic checks. One association executive remarked that these activities go on "continually, always a school or survey going on at any time."²⁰ No fee is paid to these specialists, nor is any charge made to the department receiving the benefits of these services.

These specialists, like the instructors, come from within the ranks of the association. The association coordinates the establishment of the schools and the surveys, and is responsible for the

¹⁸See discussion of city police training *infra*.

¹⁹Telephone interview with Sgt. L. G. Boucher, Staff Instructor, Ky. State Police, in Frankfort, Ky., Nov. 27, 1963.

²⁰Gutterman, *op. cit. supra* note 16.

deployment of the instructors and specialists throughout the state. The various police departments throughout the state have sent certain of their officers to specialized schools, such as the Southern Police Institute, the F. B. I. National Academy, the Boston School of Homicide, the Northwestern Traffic Institute and the National Narcotics School. After completion, the association uses these men to teach others and to make the surveys and studies within the individual police departments.

The association holds an annual meeting, where the main speaker discusses some topic of interest to Kentucky peace officers. At the last meeting the speaker discussed Kentucky's new parole law and its effect upon local law enforcement.

The association's program is presenting quality police instruction in Kentucky and, by virtue of holding schools in the local communities, is able to reach the peace officers on the working level. One third-class city police chief reported on the committee's questionnaire that his training program for recruits consists of requiring the recruits to attend a K.P.O.A. training school; seven police chiefs listed that their educational experience in law enforcement was derived from K.P.O.A. schools; and, three chiefs suggested that additional training for Kentucky peace officers should be provided by the association. An expansion of the association's peace officer training program would be beneficial to Kentucky law enforcement officers.

CITY POLICE TRAINING PROGRAMS

Louisville. In Louisville, Kentucky's only first-class city, police are employed, then given a three-month training course before being assigned to active police duty.²¹ The department is considering expanding their program to fourteen-weeks. The Louisville program is considered one of the best in the state.

Police recruit training began in Louisville in 1919, when a local high school professor worked part-time at teaching new officers methods of law enforcement. The professor and, later, other civilian employees continued the program until 1937 when

²¹Interview with Col. William E. Bindner, Chief, Louisville Police Dep't, in Covington, Ky., July 31, 1963; Interview with Col. William E. Bindner and others, in Louisville, Ky., Aug. 22, 1963; Letter from Col. William E. Bindner to Ky. Att'y Gen. Gen. John B. Breckinridge, Oct. 22, 1963.

an officer who was a graduate of the F. B. I. National Academy took over. The length of training gradually evolved from a six-week program to the present twelve weeks. Training is administered by the Police Personnel and Education Bureau, and the head of this bureau stated that he "personally feels that twelve weeks is enough time" to train the men; after completion, they patrol with older men during the first year of duty.²²

Twenty out of every one hundred applicants are usually hired and classes average from fifteen to twenty men. Whenever new officers are needed, recruits are hired, and placed as clerks in various jobs until there is a large-enough group for training. The recruits stay at such jobs as long as six months before the training class begins. The men are not police officers until they have successfully completed the training course. The recruits are trained for forty-five hours per week for twelve weeks. Over 90 per cent of the instruction is given by the department's staff officers. The F. B. I., secret service, U. S. Narcotics Bureau, the Alcoholic Beverage Control Board and other agencies teach in their respective fields. Defensive tactics are taught for one hour each day in the department's gym. Other classes are taught in the department's fifty-six seat classroom. Classes include criminal law, crimes and punishment, city ordinances, federal law, the law of arrest, scientific investigation, accident investigation, traffic laws, fingerprinting and civic government. Notes taken during these classes must be kept in a book, which is inspected by the staff.

The recruits spend the seventh week on the department's firing range, with emphasis on combat shooting. At the end of the tenth week the recruits are sworn in as police officers. Their one-year probation period begins to run from this date. The following week, the entire class is assigned to active police duty with older officers in the field. Each recruit spends two days in the districts, the traffic bureau, and the detective bureau. This gives him an idea of the department's main areas of work. The recruit observes and take notes. During the last week a question-and-answer panel, composed of the instructors and representatives from the department's bureau, answer any ques-

²²Interview with Capt. G. C. Kopp, Director, Police Personnel and Education Bureau, Louisville Police Dep't, in Louisville, Ky., Aug. 22, 1963.

tions asked by the trainees. After the final examination, including an agility test, the men graduate and are then assigned to active duty with older officers for the duration of the probation period.

Louisville has the only local police department in Kentucky that gives its recruits a comprehensive training program before assignment to field duty. As mentioned previously, experts believe this type of training to be the best. The Louisville Police Department, however, feels that "it takes about five years to make a good police officer, to learn what he needs to know, and he must know something about everything,"²³ so a broad program of in-service training is conducted, not only for new officers, but for all men on the force. Training courses are given by the staff at various times during the year. The courses are determined by the department's need for training in a certain area. The classes are of either mandatory or voluntary attendance. Fifty per cent of the force attends the voluntary classes, and over 90 per cent attends the mandatory classes. Some crippled or clerical officers are exempted from attendance. The classes last from two to four hours, and are generally conducted twice a day so all officers may attend. Some classes have covered search and seizure, criminal law and first aid. Speciality programs are given in certain areas; for example, surveillance and confidential statements have been taught for the detectives. The bomb squad receives special instruction.

The Louisville department follows the policy of sending as many men as possible to school. Each year one officer is sent to the F. B. I. National Academy, six men to the Southern Police Institute's regular course, twelve to the Southern Police Institute Seminars, and two men to the Northwestern Traffic Institute. Officers have been sent to the University of Chicago, University of Alabama, Western Reserve University, and the U. S. Narcotics School. The bomb squad studied bomb techniques from the ordnance section at Fort Knox.

In addition, the training staff explains new city ordinances to the force at roll calls. Daily bulletins are issued to all men, containing general information and training material. Occasionally, questions on the training material are included in the bul-

²³*Ibid.*

letins, and answers must be turned in by the members of the force. Firearms practice is required once every two months for all officers. If a man fails to qualify one month, he must fire every month until he does qualify.

Second Class Cities. Three of the second class cities have planned recruit training programs. The Covington Police Department reported that their recruits must undergo a thirty-day training period after employment but before assignment. The instruction is presented, at no cost, by qualified members of the force under the guidance of a graduate of the Southern Police Institute. After the thirty-day introductory course in police work, the new officers are assigned duty with experienced officers until completion of their one-year probationary period. The department also conducts an in-service training program and refresher courses for all their officers. Every officer receives instruction for one hour per week in general police subjects, such as search and seizure. The classes are taught by F. B. I. agents, Cincinnati police officers, secret service agents, K. P. O. A. instructors, and officers from within the Covington department. Regarding the use of this type of program, the Covington department "definitely thinks they're worth while."

Covington has three graduates of the F. B. I. academy, two graduates of the Southern Police Institute, fifteen members who attended a Northwestern University course, and members who have attended various other schools.²⁴

The Bowling Green Police Department conducts a one-week orientation course for recruits, followed by duty assignments with experienced officers during the recruits' three-month probationary period. In addition, the department sends all of their patrolmen and some of the commanders and supervisors to a special course at Western Kentucky State College. This is a one-week training program of a general police nature, conducted by the faculty, on first aid and report writing; by Louisville military policemen on traffic and traffic control; and by intelligence corpsmen from Fort Knox on investigations. The cost is between 25 and 50 dollars per man, paid by the city. K. P. O. A. courses are taught

²⁴Telephone interview with Capt. Joseph Megerle, Covington Police Dep't, in Frankfort, Ky., June, 1963; Letter from John J. Bornhorn, Chief, Covington Police Dep't, to Ky. Att'y Gen. John B. Breckinridge, Oct. 18, 1963.

in Bowling Green for local officers. The department also sends seven or eight men per year to the State Police Training Academy at city expense. The interviewed officer reported that completion of this training course by his men "changes the atmosphere" at the department among the officers, and increases the quality of the department's law enforcement.²⁵

The Lexington Police Department's recruit training program is considered one of the best in Kentucky; hence its program is discussed here in great detail. The training is administered through the department's planning and training division, which is headed by the assistant chief and two full-time instructors. Emphasis is placed upon "recruiting the right type of personnel in the beginning", then training them "to get a good end product."²⁶ The police applicants are given a standard practical judgment examination and an adaptability test. The results of these tests and an oral interview determine whether the applicant is given a probationary appointment. Of approximately 150 applicants in April 1963, fourteen men were recruited.

The recruits are immediately sworn in as police officers, and given a one-week indoctrination course. This course includes instruction in police ethics, loyalty, courtesy, pursuit driving, traffic safety, elements of arrest, use of police authority, ballistics and range firing. For three weeks the recruits are placed with patrol training officers on active police duty. The training officer files a weekly report on his recruit, checking off those police procedures which were explained, demonstrated, or performed.

Following the practical field training, the recruits receive one week of classroom training by the training staff, using manuals prepared by the staff. An examination is given at the end of the week and the recruits are responsible for knowing the material presented in the classroom and while on patrol. The classroom training consists of instruction in such subjects as rules and regulations, detective training, general police procedures, organization, records, patrol and observation, scientific aids and technical procedures, and socio-legal and public relations. The

²⁵Telephone interview with William Brummett, Ass't Chief, Bowling Green Police Dept, in Frankfort, Ky., June 1963.

²⁶Interview with Maj. Wallace MacMurray, Ass't Chief, Lexington Police Dept, in Lexington, Ky., July 15, 1963.

training manuals are issued to the recruits prior to actual training, and they are encouraged to study ahead. Some classroom instruction is given by outside speakers, such as F. B. I. and secret service agents. Unarmed defense is taught by the State Police instructors.

The recruits are then sent back to patrol training, and every fourth week they are given classroom instruction. The program lasts for the entire six-month probation period. During the last week of probation, the training division officers patrol with the recruits, and successful trainees are employed on a permanent basis. The training program's washout rate is approximately 20 to 25 per cent of the beginning class.

The Lexington department also encourages in-service training for its older officers and issues bulletins on various police subjects regularly to all officers. When necessary, older officers are sent through the recruit training program. Instruction on new procedures or changes is provided to the entire force by the training division. Key personnel are sent to the Northwest Traffic Institute, the Southern Police Institute, the F.B.I. National Academy and other police training schools. The department hopes eventually to develop a program to retrain every officer every three years.²⁷ Courses are also inaugurated to meet special needs, such as working with a new "canine corps" and using the new uniform traffic ticket and complaint form.²⁸

Ashland, another second-class city, has no comprehensive recruit training program. The Ashland department presently gives approximately eight hours of instruction to its recruits on departmental functions and police procedures. The recruits are then placed on active patrol duty with older, experienced officers. At the end of the six-month probationary service, the recruits may be hired as permanent officers. Whenever a K.P.O.A. school is held in the area, as many officers as possible attend. The Ashland department, however, is planning an in-service training program for all of its officers, to consist of one day per week of classroom training with lectures from the chief and other officers, and from city and county officials. Motion pictures and slides are to be used in the program, and the lectures will

²⁷*Ibid.*

²⁸Lexington Police Dep't, 1962 Annual Report 11-12.

have panel discussion afterwards. The duration of the program is still indefinite, but will be of sufficient length to improve the over-all performance of the force.²⁹

Other Cities. Of the third-class cities reporting, one required attendance of the new officer at a Kentucky Peace Officers Association school, one had a one-year city training program, and the remaining held classes or instruction conducted by their chief or by experienced officers on the force, or placed the recruits on patrol duty with older officers.

Four of the reporting fourth-class cities required training prior to permanent employment on the force. Two of these cities sent their recruits to K.P.O.A. schools, one to the Kentucky State Police Training Academy and the other to a nearby city that has its own training program. Seven cities conduct short orientation or explanation classes within the department, or require the recruit to work with experienced officers during a probationary appointment. Twenty-three cities of the fourth class do not require any training for their recruits prior to permanent assignment to active police duty.

Of the twenty-nine cities of the fifth class responding, only five required training prior to permanent placement on the force. Two cities required attendance at a police school, and others have local training and instruction programs, one requiring a two-week indoctrination program whereby new officers patrol with older, experienced officers.

None of the four reporting sixth-class cities required formal police training prior to employment. One city, however, did list previous police experience as a requirement in hiring a new officer.

County Police Training Programs. None of Kentucky's county police departments require formal pre-employment training. The Fayette County Police Department hires its recruits for a six-month probationary period, then conducts a local in-service training school for five days each month to teach recruits general procedure and law enforcement methods. During this probationary period the new men patrol with experienced police offi-

²⁹Telephone interview with Lewis E. Mutters, Chief, Ashland Police Dep't, in Frankfort, Ky., Aug. 19, 1963.

cers. All recruits attend a two-hour continued training program three days per week.³⁰

The Jefferson County Police hires its new officers and then gives them a four-week training program before assignments. The subjects are taught in the department's own classrooms and include departmental procedures, reporting writing, accident investigation, a comprehensive study of the laws of arrest, a survey of the *Kentucky Revised Statutes*, methods of approaching and searching an automobile, the laws of search and seizure, firearm training and range firing. Several officers of supervisory grade are sent each year to the Southern Police Institute in Louisville for advanced training. The force also tries to anticipate law enforcement problems that will arise, and to train its men in advance to meet these problems. For example, when a narcotics problem was believed to be developing in Jefferson County, two detectives were sent to the Narcotics Bureau School in Washington, D. C., thus enabling the force "to get the jump on dope pushers."³¹

Recruits on the Kenton County Police force are hired on six-months' probation. During this period the new men receive one-hour talks each week on various law enforcement topics and spend one day per week on the firing range. Whenever the K. P. O. A. sets up a one-week police school, these new officers attend.³²

New appointees to the Campbell County Police force usually have some previous police experience. This is because recruits generally come from the auxiliary police force, where they gained experience in traffic and patrol work. After the applicant passes a merit board examination he is granted a probationary appointment for one year. Due to the lack of facilities, the new officer receives training only from the older officers and from his own experience. Occasionally some of the officers are sent to a K. P. O. A. police training school.³³

³⁰Telephone interview with Col. John Kersey, Chief, Fayette County Police Dep't, in Frankfort, Ky., July 2, 1963.

³¹Telephone interview with Thomas Holsclaw, Chief, Jefferson County Police Dep't, in Frankfort, Ky., July 2, 1963.

³²Telephone interviews with James E. Callahan, Jr., Chief, Kenton County Police Dep't, in Frankfort, Ky., July 3, 1963, and August 2, 1963.

³³*Ibid.*

Summary of Local Police Training Programs. A few local police departments in Kentucky have formal training programs, some of which are outstanding. Most, however, rely on in-service training after employment and assignment to active police duty. This program is usually combined with a probationary appointment under close supervision. Experience is gained by assigning the recruit to duty with older, experienced officers. Adequate training during a probationary period, whether a few days or one year in duration, depends to a large extent upon the knowledge and experience of the instructing officer, and his ability to communicate to the new policemen. If the instructor is a poor officer or an inadequate teacher, or if he is wrong about certain laws and their enforcement, the recruit may learn little, and the errors of the instructor will be passed on to the rookie. Thus the adequacy of this type of training depends directly on the adequacy of the instruction.

FEDERAL BUREAU OF INVESTIGATION NATIONAL ACADEMY

History. The Federal Bureau of Investigation National Academy was organized in 1935 to provide police training to local, county, and state law enforcement officers. The program is designed to qualify every graduate as an instructor or administrator, and to prepare him to organize local police training schools. The F. B. I. offers the facilities of its academy to all branches of local law enforcement free of charge. These facilities include not only instruction, but also use of the bureau's identification division, laboratory, crime reports, bulletins, consultant advice and local training schools. The trainees at the academy are taught to use these facilities effectively in their law enforcement work. In its first twenty years of operation the academy graduated over 3,000 officers from throughout the United States and several foreign countries.

Admission. The National Academy is open to candidates from all law enforcement agencies. The candidates must be nominated by their superior. Chiefs, commissioners, and sheriffs may nominate themselves, or they may be nominated by their mayor, city manager or other superior. The size of the law

enforcement agency is immaterial in selecting a representative, but the academy wants the man selected to be the best man available in the department.

Requirements for admission are as follows: (1) the applicant can not be over fifty years of age; (2) he must be capable of performing vigorous physical activity and a statement by a physician to this effect is required; (3) he should be able to grasp a large amount of information in a minimum period of time, take notes and impart this knowledge to his fellow officers; (4) he must undergo an F. B. I. investigation to ascertain his character, reputation, and standing in his community; and (5) he must be a regular full-time officer employed by a duly established municipal, county or state law enforcement agency with at least five years of substantially continuous experience in such work. The students are chosen by the academy staff, and only one representative from a department can attend a given training session. Approximately one hundred officers attend each session.

Curriculum. The curriculum is flexible, and changes occasionally to meet new law enforcement problems. Two twelve-week sessions are taught each year and each includes a basic ten-week period, plus two weeks on one or two specialized subjects. Teaching is by lectures, motion pictures, slides, reading assignments and practical experience in the academy's laboratories or in the field. The first ten-week period covers scientific and technical topics, such as police records, police tactics, criminal law, fugitive investigations, bank robberies and document examinations. During the last two weeks the student specializes in two one-week training courses, such as laboratory aid to investigation, police photography, police organization and administration or fingerprint identification. A physical training program is maintained throughout the course and includes instruction in methods of self-defense, disarming tactics and judo.

These courses are taught by full-time academy instructors, supplemented by F. B. I. experts in individual fields. Visiting criminologists, police officials and educators complete the staff. Facilities and instructors at the Marine base in Quantico, Virginia, are utilized by the academy for outdoor firearms training.

Approximately fifty Kentucky peace officers are graduates of the National Academy.³⁴

TRAINING PROGRAMS IN OTHER STATES

There is a trend among the states to improve the training of law enforcement officers at all levels of government and, particularly, to integrate state and local programs. Selected state programs are described in this report to illustrate developments in training. California, Oregon, Louisiana, New York and New Jersey were chosen as examples, because they show various approaches to the problem of providing effective training, and because of the relatively high quality of their programs. In California a statutory commission helps pay the cost of training local officers at approved facilities. In Oregon a statutory board acts in an advisory capacity to co-ordinate training and develop standards. In Louisiana a university-administered program provides a variety of police training by "circuit riding" instructors. New York has a statutory council to develop training standards, which are mandatory for local police units. The New Jersey program is voluntary but, as in New York, a commission sets up training zones and approves schools and facilities.

California. California's peace officers are usually considered the most educated and efficient in the nation. The objectives of the state's program are: (1) to select only the qualified; (2) to provide adequate training; and (3) to maintain local control.³⁵

In 1959 the legislature created the California Commission on Peace Officer Standards and Training to set minimum standards for the selection and training of city and county law enforcement officers. The commission was placed in the state's department of justice,³⁶ and is composed of city and county officials who are intimately familiar with local problems.³⁷ Its nine mem-

³⁴Dep't of Justice, Federal Bureau of Investigation, *The Story of the FBI National Academy* 4.

³⁵Cal. Comm'n on Peace Officer Standards and Training, *The California Peace Officer Standards and Training Program*.

³⁶Cal. Penal Code § 13500 (1959).

³⁷Letter from Cal. Att'y Gen. Stanley Mosk to Ky. Att'y Gen. John B. Breckinridge, June 28, 1963.

bers are appointed by the Governor for three year staggered terms; the Governor consults with the attorney general, in making appointments, which must then be approved by the state senate. Five members "must be either sheriffs or chiefs of police or peace officers nominated by their respective sheriffs or chiefs of police, two must be elected officers or chief administrative officers of cities in this State, and two must be elected officers or chief administrative officers of counties of this state . . .".³⁸ The attorney general is an *ex-officio* member of the commission and "represents the interests of the State and people at large."³⁹

The commission is authorized to adopt rules establishing minimum physical, mental, and moral fitness standards which shall govern the recruitment of any city or county law enforcement officer.⁴⁰ The cities and counties are required to adhere to these standards only if they take advantage of available state financial aid.⁴¹ If a city or county applies to the commission, qualifies, and sends its recruits to a commission-approved training school, it receives up to one-half the salary paid to the peace officer during his training period, including one-half of the living expenses incurred by him during the training period.⁴² In order to qualify for the state reimbursements the city or county must have passed an ordinance providing that it will adhere to the standards of the commission while receiving the money.⁴³ These funds come from a 5 per cent assessment on every fine, penalty, and forfeiture imposed by the courts for criminal offenses,⁴⁴ which is paid into the California Peace Officers' Training Fund and used exclusively for the costs of administration and for the reimbursements made to the local governments.⁴⁵

A California peace officer to qualify for training under the commission's program must be a United States citizen, twenty-

³⁸Cal. Penal Code § 13500 (1959).

³⁹Letter from Stanley Mosk, *op. cit. supra* not 37.

⁴⁰Cal. Penal Code § 13510 (1959).

⁴¹Cal. Comm'n on Peace Officer Standards and Training, *op. cit. supra* note 35.

⁴²Cal. Penal Code §§ 13511, 13523 (1959).

⁴³Cal. Penal Code at § 13522 (1959).

⁴⁴Cal. Penal Code at § 13521 (1959). On Sept. 20, 1963, the California legislature raised the penalty assessment to 10 per cent. Letter from Arlo E. Smith, Cal. Chief Ass't Att'y Gen. to Ky. Att'y Gen. John B. Breckinridge, Nov. 13, 1963.

⁴⁵Cal. Penal Code at § 13520 (1959).

one years old, a high school graduate and of good moral character with no felony conviction. The recruit must be fingerprinted and must pass a physical fitness examination and an oral interview.⁴⁶ The commission investigates the cities and counties receiving state aid to insure compliance with these standards.⁴⁷

After selection the recruits must attend a basic course at a commission-certified school. The commission certifies only those institutions that it deems adequate to teach effectively the basic course, and can revoke the certificate whenever a school is deemed inadequate.⁴⁸ Thirty-nine institutions have been certified, nineteen of which are affiliated with local junior colleges which confer college credit for the course. The other schools are operated by individual police and sheriffs' departments which train their own personnel as well as men from other departments, usually without charge.⁴⁹

The requirement for completion of the basic course is 160 hours of instruction, including eighteen hours of elective subjects.⁵⁰ The basic course includes arrest techniques, collection, identification and preservation of evidence, basic criminal investigation, criminal law, defensive tactics, firearms, first aid, juvenile procedures, laws of arrest, search and seizure, patrol and observation, public and race relations and report writing.⁵¹ Electives are devised to meet specific needs such as Spanish language, narcotics and boat and small craft laws and regulations.⁵² Written examinations are required.⁵³ The trainee must complete the basic course within eighteen months of his appointment, unless the commission grants an extension due to illness

⁴⁶Cal. Comm'n on Peace Officer Standards and Training, *op. cit. supra* note 35; Cal. Comm'n on Peace Officer Standards and Training, Rules & Reg. § 1002 (1961).

⁴⁷Cal. Penal Code § 13512 (1959).

⁴⁸Cal. Comm'n on Peace Officer Standards and Training, *op. cit. supra* note 46, at § 1012 (a) and (b).

⁴⁹Letter from Stanley Mosk, *op. cit. supra* note 37.

⁵⁰Cal. Comm'n on Peace Officer Standards and Training, *op. cit. supra* note 46, at § 1005(a). The basic course now requires 200 hours, including sixteen hours of electives. Letter from Arlo E. Smith, *op. cit. supra* note 44.

⁵¹Cal. Comm'n on Peace Officer Standards and Training, *op. cit. supra* note 46, at § 1005(b)(1)(A).

⁵²*Id.* at § 1005(b)(1)(B).

⁵³*Id.* at § 1007.

or injury,⁵⁴ and is awarded an official certificate of completion by the commission.⁵⁵ Since the program's inception in October, 1960, 4,200 peace officers have completed the basic course.⁵⁶

The minimum training required is 160 hours, but each 1962 trainee received 389 hours of basic training. If the large departments' figures are excluded, the remaining state average is 247 hours each, and it is anticipated that the minimum will be raised to 200 hours. The total annual costs are around 3,000,000 dollars, or an average cost to the state of about 1,500 dollars per officer.

The advantages of this system are indicated by the remarks of California's Attorney General, Stanley Mosk:

We feel that one feature responsible for the success of the California program is its voluntary nature. The financial aid provided is small compared to the total costs to local governments, but it is a powerful incentive to budget-minded local officials. Most necessary is the unqualified support of law enforcement agencies of cities, counties, state and federal governments. The program is endorsed by the Governor, the Attorney General, the League of California Cities, the County Supervisors Association, the California Taxpayers Association and the Peace Officers Association of California.

Leadership and direct support and assistance were provided by the F.B.I. field officers, Treasury Department investigative agencies, State Bureaus of Identification and Investigation, Narcotic Enforcement, and Criminal Statistics, as well as the State Department of Education and junior college districts.

The use of locally available physical facilities has proven to be practicable and is desirable as a tax saving measure. It also permits local government to assume a prominent role in the program.⁵⁷

Oregon. The Oregon legislature created the Advisory Board on Police Standards and Training in 1961. The board consists

⁵⁴*Id.* at § 1009(a) and (b).

⁵⁵*Id.* at § 1010(a).

⁵⁶Letter from Stanley Mosk, *op. cit. supra* note 37.

⁵⁷*Ibid.*

of nine members who are appointed by the Governor for four-year terms.⁵⁸

"The Board has no mandatory powers but acts in an advisory capacity only, coordinating training for county and municipal officers and employees, by working closely with the Oregon Association of Police Officers, Chiefs' and Sheriffs' Association and the League of Oregon Cities."⁵⁹ The board recommends to the various police departments reasonable minimum standards of physical, emotional, intellectual and moral fitness, minimum training, facilities for instruction, qualification of instructors and methods of instruction,⁶⁰ and procedures to determine whether a police officer meets minimum standards or has the minimum training.⁶¹

The enabling act became effective in August, 1961, and by October, 1962, the board had mailed the following to all police departments and sheriffs' offices: (1) recommended minimum standards for police officers; (2) recommended minimum training requirements; (3) recommended procedures for recruitment and investigation of police applicants; (4) a suggested interview guide; (5) a suggested application form; (6) sample letters requesting and reporting applicant background investigations; and (7) a questionnaire requesting certain information as to present recruitment standards and training procedures.⁶²

The board's recommended minimum schedule for basic training includes twenty-two courses which total eighty hours of instruction. This includes such courses as the laws of arrest, the motor vehicle code, search and seizure laws, accident investigation and reporting, crime scene investigation, firearms, criminal law, and interrogations, confessions, statements and interviews. The schedule is designed to meet the needs of presently employed police officers; no pre-employment training was considered.

During 1962, the board approved and assisted in two types of police training programs. A two-week Oregon Police Academy

⁵⁸Ore. Rev. Stat. § 181.620(2) (1963) [hereinafter cited as ORS].

⁵⁹Letter from H. A. Ellsworth, Chrmn., Ore. Advisory Board on Police Standards and Training, to Ky. Att'y Gen. John B. Breckinridge, June 27, 1963.

⁶⁰ORS 181.640(1)(a) and (b).

⁶¹ORS 181.640(1)(c).

⁶²State of Ore. Advisory Board on Police Standards and Training, 1962 Annual Report 16.

Basic Training School was set up at a national guard camp.⁶³ No tuition was charged, and the officers' employers paid only the costs of subsistence and lodging.⁶⁴ Thirty-five men from nineteen police departments were trained at this academy.⁶⁵ The second program was advanced regional police training schools for experienced officers, sponsored by the Oregon Association of City Police Officers. These schools were held in fifteen cities throughout the state. A total of 679 men from eighty-six departments were trained at these schools.⁶⁶ There was no tuition fee. The instructors, who travel on a circuit, received no compensation, but were reimbursed for actual expenses by the League of Oregon Cities. These training schools are provided annually.⁶⁷

In 1962, the Oregon Association of City Police Officers and the Federal Bureau of Investigation jointly held a three-day administrative school which trained 186 officers from fifty-seven departments. These three programs trained a total of 900 officers from 162 different departments during the 1962 calendar year.⁶⁸ Other types of training are also encouraged by the board, for example, in-service training within the respective police organizations. The board assists these programs by supplying instructors, manuals, or both, for basic and advanced subjects.⁶⁹

The board's program is financed by a 1961-1963 biennial appropriation of 20,000 dollars, 11,122 dollars of which was for personal services. The appropriation comes out of the general and highway funds. An increased appropriation is expected for the 1963-1965 biennium.⁷⁰ The chairman of the board stated that "while our progress has not been rapid, we have moved slowly, yet are confident that progress is being made and the results so far obtained are very gratifying. We would encourage other states to consider similar legislation."⁷¹

⁶³*Id.* at 22.

⁶⁴Letter from H. A. Ellsworth, *op. cit. supra* note 59.

⁶⁵State of Ore. Advisory Board on Police Standards and Training, *op. cit. supra* note 62, at 22.

⁶⁶*Ibid.*

⁶⁷Letter from H. A. Ellsworth, *op. cit. supra* note 59.

⁶⁸State of Ore. Advisory Board on Police Standards and Training, *op. cit. supra* note 62, at 24.

⁶⁹Letter from H. A. Ellsworth, *op. cit. supra* note 59.

⁷⁰State of Ore. Advisory Board on Police Standards and Training, *op. cit. supra* note 62, at 20.

⁷¹Letter from H. A. Ellsworth, *op. cit. supra* note 59.

Louisiana. Louisiana has an In-Service Law Enforcement Training Program administered through the General Extension Division of the Louisiana State University.⁷² This program is sponsored by the Louisiana Association of Chiefs of Police, the Louisiana Peace Officers' Association, the Louisiana Sheriff's Association and the Municipal Police Officers' Association of Louisiana, in co-operation with the F. B. I. and the Louisiana State Police.⁷³ Although there is no formal commission involved in the operation of the program, there is an advisory committee of eighteen law enforcement officers who make recommendations to the university.⁷⁴

The program offers both basic and advanced courses in principles of law enforcement and specialized training. Principles of law enforcement classes are taught by circuit-riding instructors in eight cities throughout the state. The classes are three hours long for one night each week for seventeen weeks.⁷⁵ Subjects given in the basic course include: public relations, jurisdiction of the F. B. I. and other federal agencies, laws of arrest, search and seizure, criminal code and procedures, custody and transportation of prisoners, use of the red light and siren and sex offenses. Up through July 1, 1961, sixty-four basic courses had been given, training 2,154 officers. An advanced course is available to those officers who have completed the basic course. Subjects taught include: police duties in riots and strikes, road patrol, pursuit driving and road blocks, civil rights, law of evidence and courtroom demeanor. Sixty-four of these courses have been offered and by July 1, 1961, 1,572 men had completed the course. A second advanced course, open to those who have completed both the basic and advanced courses, includes such subjects as criminology, polygraph, alcoholics, surveillance and explosives investigations. Since this course is relatively new, there are no reports on the number of graduates.⁷⁶

⁷²Letter from Julian A. Martin, Co-ordinator, Law Enforcement Training Program, La. State University, to Ky. Att'y Gen. John B. Breckinridge, June 17, 1963.

⁷³La. State University, In-service Law Enforcement Training Program 1 (1961).

⁷⁴Letter from Julian A. Martin, *op. cit. supra* note 72.

⁷⁵*Ibid.*

⁷⁶La. State University, *op. cit. supra* note 73, at 2.

Specialized courses are given by traveling instructors usually for a five-day period "with six to eight hours per day devoted to the training."⁷⁷ The subject matter depends on needs of the Louisiana law enforcement officers and has included fingerprinting, criminal photography, police records and traffic. The instructors for both types of training come from the university's staff, from the training program's staff, from other colleges' staffs, from the various law enforcement organizations and from the professions. They receive expenses, but no salary.⁷⁸

The program co-ordinator reported that:

As of this date (June, 1963), there have been 3,504 officers who have taken one or more phases of the training programs. There has been a total of 6,749 completions of all phases of our program. The 3,504 individual officers represent approximately three-fourths of the law enforcement officers in Louisiana outside of the City of New Orleans. New Orleans has its own training program.⁷⁹

The co-ordinator also stated that the university set up a twelve-week school for advanced training of law enforcement officers, with a curriculum similar to the one offered at the F. B. I. Academy and the Southern Police Institute. The first session started in September 1963.

New York. In 1959, New York enacted legislation requiring all local police officers to complete a mandatory minimum course of training. A Municipal Police Training Council, composed of eight men appointed by the Governor for two-year terms, was created and directed to recommend regulations concerning the approval of police training schools, minimum courses of study required in such schools, and minimum qualifications of their instructors.⁸⁰ As a result of their recommendations, the Governor promulgated rules requiring an eighty-hour minimum training course consisting of seventeen subjects.⁸¹ The minimum course

⁷⁷Letter from Julian A. Martin, *op. cit. supra* note 72.

⁷⁸*Ibid.*

⁷⁹*Ibid.*, Letter from Julian A. Martin, Co-ordinator, Law Enforcement Training Program, La. State University, to Ky. Att'y Gen. John B. Breckinridge, Oct. 31, 1963.

⁸⁰N.Y. Exec. Law, art. 19-F, § 481, 483(d) and (e) (1960).

⁸¹Municipal Police Training Council, Municipal Police Training in New York State 8 (1961).

has been raised to 120 hours, including three new subjects: racial and minority group relations, police ethics, and recognition and handling of abnormal persons.⁸² This council is now located in the Office for Local Government within the executive branch of state government.⁸³

The state is divided into thirteen training zones. Each zone comprises from two to nine counties and is headed by two voluntary co-ordinators, one of whom is a police chief and the other a sheriff. The co-ordinators' duties are to assure the availability of a training school to every new police officer.⁸⁴ During 1961 at least one school was held in each of the twelve training zones outside of New York City, and as many as nine were held in a single zone during that period.⁸⁵

The schools are located within a zone nearest the largest concentration of new officers to be trained. Thirty days in advance of the training the school director must submit a complete schedule of courses and list of instructors to the council. If the council is satisfied that the minimum requirements have been met, the school is certified. When the course is completed the director certifies the record of each graduate, including attendance, classroom notebook, score in firearms, and grade on the written examination. Permanent record cards of each graduate are kept in the council's files.⁸⁶

During the first year of the mandatory program's operation certificates were awarded to 822 graduating police officers from 267 different municipalities or agencies. The classes ranged in size from eleven to thirty trainees, averaging twenty-four per class. There were thirty-five schools, eighteen of which were sponsored by police departments, seven by sheriffs' departments, and ten of which were sponsored jointly. Twenty-five schools exceeded the eighty hour minimum training program and the average number of instruction hours was 125.⁸⁷ From July 1,

⁸²Letter from Orrell A. York, Exec. Director of the N.Y. Municipal Police Training Council, to Ky. Att'y Gen. John B. Breckinridge, July 1, 1963.

⁸³Municipal Police Training Council, *op. cit. supra* note 81, at 9.

⁸⁴*Id.* at 32.

⁸⁵*Id.* at 12.

⁸⁶*Id.* at 28.

⁸⁷*Id.* at 10-11.

1960, to November 1, 1963, 109 basic schools had been set up, and approximately 2,800 new police officers had been awarded graduation certificates.⁸⁸

The success of the program has been facilitated by a faculty of professional persons who share, without compensation, their specialized knowledge with these police officers. Thus judges, district attorneys or private attorneys teach such subjects as the penal code, criminal procedure, and court testimony; family court judges and juvenile aid bureau officers instruct on juveniles; American Red Cross instructors teach emergency first aid; Northwestern University Traffic Institute experts cover the traffic field; and F.B.I. instructors handle such courses as crime scene searches, techniques and mechanics of arrest, the role of law enforcement and statements and evidence.⁸⁹

The program costs about 70,000 dollars per year, which includes salaries, office expense, a film lending library, trainees' and instructors' materials, a monthly police training bulletin, travel, communications and miscellaneous items. It serves the basic training needs of New York's city, town, county and village police departments. Two law enforcement agencies are excluded from coverage under the law. The New York City Police Department was exempted⁹⁰ as a matter of recognition of its long-established and highly-successful training program.⁹¹ The New York State Police is also exempted; it maintains its own program, with standards far exceeding the council's minimum standards for municipal police officers.⁹²

The Municipal Police Training Council is attempting to expand its program. The first project is the organization of an Institute for Training Directors, to take place in January 1964, followed by regional workshops throughout the state for police instructors. The second project is a survey of in-service training to create a coordinated program for police personnel at all levels.⁹³

⁸⁸Letter from Orrell A. York, Exec. Director of the New York Municipal Police Training Council, to Ky. Att'y Gen. John B. Breckinridge, Oct. 31, 1963.

⁸⁹Municipal Police Training Council, *op. cit. supra* note 81, at 14-15.

⁹⁰N. Y. Gen. Mun. Law, art. 10, § 209-q 3 (1960).

⁹¹Letter from Orrell A. York, *op. cit. supra* note 82.

⁹²Letter from Orrell A. York, *op. cit. supra* note 82.

⁹³*Ibid.*

New Jersey. The New Jersey Police Training Commission, which is located in the New Jersey Department of Law and Public Safety, sets the state's minimum requirements for training. The commission is composed of nine members, as follows: three citizens appointed by the Governor, one of whom may be the F.B.I.'s special agent in New Jersey; the president or a representative from each of the following: the New Jersey Association of Chiefs of Police, the New Jersey's State Patrolman's Benevolent Association, Inc., and the New Jersey State League of Municipalities; and the attorney general, the superintendent of the state police, and the commissioner of education, who serve *ex-officio*.

This commission is authorized to: set the standards for approval of the police training schools; to certify schools and instructors; to prescribe the curriculum, minimum hours, attendance, equipment, facilities and standards of operations; to set minimum qualifications for instructors; and, to certify police officers who have satisfactorily completed the minimum program. The New Jersey Training Commission has divided the state into four training areas, with a training co-ordinator from each county within the area to help administer the programs. The co-ordinators are chiefs of police who are selected by the departments within the county and are responsible for setting up the training schools. There are fourteen commission-approved training schools located throughout the state and administered by these local police officials. Half of the schools are conducted in permanent police academies. Others are held in police headquarters, military armories, schools and county buildings.⁹⁵

The minimum course is 185 hours, but, "in 1962, there were 5,523 hours programmed at the facilities or an average of 240 hours per training course."⁹⁶ There are 205 certified instructors, 127 of whom come from municipal police departments and the rest from agencies such as the F.B.I., the state police and the motor vehicle division. These certified instructors teach such subjects as basic investigation, basic accident investigation, the

⁹⁴Cullo, *Statewide Police Training in New Jersey*, New Jersey Municipalities (Oct. 1962).

⁹⁵Letter from Leo A. Culloo, Exec. Secretary, Police Training Comm'n, to Ky. Att'y Gen. John B. Breckinridge, July 1, 1963.

⁹⁶*Ibid.*

New Jersey court system and the criminal and motor vehicle laws, first-aid, firearms, self-defense, police ethics, laws of evidence and juvenile offenders. A state certificate is issued by the state to successful trainees. Since the inception of the program in the fall of 1962, 574 officers had attended twenty-three courses held throughout the state; 519 of the trainees were city policemen, and the others included county police, sheriffs, park police and housing authority officers.

The cost of maintaining the program is approximately 39,000 dollars, derived from state funds. The costs of maintaining and operating the fourteen local schools are met by the local agencies in their respective training zones. There are no training costs chargeable to the trainee.

In regard to the New Jersey permissive training system, Leo A. Culloo, Executive Secretary of the New Jersey Police Training Commission, has written, "The success of this program will depend upon your [the municipalities] cooperation in seeing that newly appointed police officers are channeled into approved state training facilities. Failure to do so may result in a breach of faith to the communities you represent and to the new officers in your community."⁹⁷

Suggested State Legislation. The Committee of State Officials on Suggested State Legislation of the Council of State Governments included a proposed municipal police training act in its 1961 program. The proposal allows a variety of methods of providing training. The committee pointed out that:

States may find it desirable to utilize their state police academies, facilities of institutions such as the state university, existing local police schools, or to encourage the establishment of new local training centers to serve municipalities within a region of the state. . . . States may find that a combination of these types of facilities will best meet their needs. In any event, each state must determine the manner in which costs of training will be divided between the state and local units of government.⁹⁸

⁹⁷Culloo, *supra* note 94.

⁹⁸Council of State Governments, *Suggested State Legislation, Program for 1961-90* (1961).

The suggested act creates, within the appropriate department, a police training council of seven members. The head of the department serves *ex-officio* as chairman of the council, and the Governor appoints the other six members, two of whom must be sheriffs and two must be chiefs of police. The council is directed to establish training facilities and may enter into agreements with other agencies for the use of their facilities. The council must set requirements for minimum basic training, which police officers must complete before being eligible for permanent appointment.

Other States. Many states in addition to those discussed provide some type of training for peace officers. A 1956 study reported that most state police training schools invite local law enforcement officers to attend and summarized other types of training programs as follows:

(1) Separate peace officers training school supported by special appropriation.

(2) Separate peace officers training school conducted by the state police.

(3) Special training programs for specified officers, such as prison guards and game wardens.

(4) Conferences conducted by the attorney general's office and other law enforcement associations.

(5) Regional training programs sponsored by the F.B.I.

(6) Police training courses conducted by state department of education.⁹⁹

The same study found that most states which had a regular training school maintained special facilities for this purpose, but others used a variety of facilities; these included: national guard camps or armories, state fair grounds, air force or army bases, and public schools.¹⁰⁰ Generally, the state law enforcement agency was responsible for conducting the school.¹⁰¹

Kansas is an example of training supported by a special state grant to a university. A 1951 law requires the university to pro-

⁹⁹Research Dep't, Ark. Legislative Council, Training of Law Enforcement Officers in the Various States 10 (Research Memo. No. 1, 1956).

¹⁰⁰*Id.* at 11.

¹⁰¹*Id.* at 12.

vide an instructional course for peace officers, which must include training in the collection, preservation and evaluation of evidence, ballistics, firearms, fingerprinting, and other subjects which may be necessary. The course is conducted annually by the university extension service and bureau of government research. Any Kansas peace officer may attend without charge.¹⁰²

The program is designed to meet the needs of Kansas peace officers. One year, for which complete information is available, the program lasted for one week and was divided into three parts: a basic course for peace officers, a police science course, and a basic course in traffic. During the courses, a special session was held for sheriffs and their deputies. The instructors were obtained from the F.B.I., the United States Secret Service, the Kansas Alcoholic Beverage Control, the state's highway commission, Northwestern University Traffic Institute, the Kansas State Highway Patrol, the Southern Police Institute, the Menninger Foundation, and various sheriffs' offices and city police departments. Attendance consisted of 138 law enforcement officers from sixty-eight cities.¹⁰³

Another type course is that confined to a particular subject of police work. For example, since 1955, the University of Wisconsin has conducted an annual two-week course for law enforcement officers in methods of juvenile delinquency control and prevention. The course is conducted on the university campus and includes instruction in community public relations, inter-agency co-operation, and intra-departmental techniques for preventing and controlling juvenile delinquency. The thirty attendants come from police departments throughout the state, and, to a limited extent, from other states. The costs of the program are met with grants from the University of Wisconsin, the United States Department of Health, Education and Welfare, the Wisconsin Juvenile Officers Association, the Sheriffs' and Deputy Sheriffs' Association, the F.B.I., the Allis-Chalmers Corporation, and the Milwaukee Exchange Clubs. The course is taught by personnel of the University of Wisconsin and the Kansas Depart-

¹⁰²Kan. Gen. Stat. § 76-330 (Supp. 1961).

¹⁰³University of Kan. Governmental Research Center, Ninth Annual Peace Officers Training School—A Report 8 (Spec. Rep. No. 70, 1955).

ment of Public Welfare. Training is also conducted in three-day institutes, regional training courses, and individual departmental training courses, conducted by the university and designed to reach those officers who are unable to attend the two-week program.¹⁰⁴

Training Manuals. Another aid in keeping officials informed about their duties is the preparation of handbooks or manuals. The California Department of Justice, for example, issues an edition of that state's penal code to peace officers. This special edition is "intended to provide peace officers with a handy reference to the provisions of the law respecting their work" and embodying "a collection of those sections which define crimes likely to be encountered by the working peace officer and those sections defining his duties in the field of criminal procedures, particularly as regards the law of arrest."¹⁰⁵ The California Attorney General has issued various other publications such as a guide to race relations for peace officers.¹⁰⁶

In the State of Washington a law enforcement training manual was sponsored jointly by the Washington Association of Sheriff and Police Chiefs and the Office of Attorney General. It is in a loose-leaf format so that it may be kept up to date. The manual includes laws, state supreme court decisions and general instructions on writing reports.¹⁰⁷ This kind of publication would be of use to even the most experienced and knowledgeable officer for convenient reference to the law while on duty.

The great variety of approaches to training indicate that programs are designed to meet the needs, resources and existing relationships in a state. These programs, however, have a number of common features. They usually include more than one type of local law enforcement officer. They are under the direction

¹⁰⁴University of Wis. Bureau of Government Research and Advisory Service, Delinquency Control and Prevention Training for Police Officers—Digest of Findings 6 (Rep. NS 1, 1959).

¹⁰⁵Penal Code of Cal. 7 (Peace Officers Ed. 1962).

¹⁰⁶Cal. Dep't of Justice, Division of Criminal Law and Enforcement, Guide to Race Relations for Peace Officers 3 (1952).

¹⁰⁷Wash. State Ass'n of Sheriffs and Police Chiefs and Wash. Att'y Gen. John J. O'Connell, Washington State Law Enforcement Training Manual (1963).

of a board or commission on which local officials are given representation. They are supported, in part at least, by a state appropriation. Instructors are trained and qualified. Graduates are certified by the state. Most programs include special services as well as basic training for law enforcement officers.

XII. Conclusion

Preceding chapters have described in detail Kentucky's law enforcement officers and agencies: the basis of their authority, their organization and operation, and their jurisdiction and relationships. What emerges is a picture of a complicated, loosely-coordinated collection of agencies. This cannot accurately be called a structure for law enforcement; instead, it is a group of authorities which reflect historical development, rather than realistic planning to meet current society's needs. It is a tribute to the flexibility of our institutions and to the dedication of many individuals that law enforcement operates as well as it does under existing conditions.

This chapter points out a few of the conclusions that emerge clearly from this study. It does not include specific recommendations or suggest any definite programs. Many of the problems which have been described show a need for remedial action. The alternative programs and systems which have been discussed may merit consideration for Kentucky. The need for some revision of laws and procedures is implicit throughout the report. The general conclusions herein concern the efficiency and effectiveness of our system. They also concern more fundamental issues involving the structure of government and the effectiveness of public control over police.

1. *Kentucky's Law Enforcement System Results from Historical Development Rather Than Realistic Planning.* Our basic law enforcement system has not changed greatly over the centuries. In medieval times, this system probably was logical, cohesive and fairly effective. The sheriff kept the King's peace in the shires, aided by a constable in each parish. The coroner was principally a judicial officer who investigated deaths and ascertained if the Crown had rights to property. The jailer was an agent of the sheriff and kept his prisoners. Citizens could be summoned to aid these officers, whose great powers derived from their direct relationship to the sovereign. These offices were adopted as part of the original American governments, except that they became agents of the sovereign people, rather than the King, and served the county, rather than the state.

Centuries later, these officers remain the constitutional basis for Kentucky's law enforcement, although their roles have been greatly modified. The sheriff is now more concerned with collecting taxes than keeping the peace, and the jailer has been made an independent officer. The office of constable seems to be disappearing for practical purposes. The coroner no longer serves to guard property interests, and his duties in determining the cause of death are often performed by trained pathologists. Despite these changes, these officers retain most of their traditional powers. The courts have held generally that the common law is in force in Kentucky, except as abrogated or modified by statute,¹ and the common law role of these offices is very great.

The inability of these originally rurally-oriented officers to meet metropolitan problems led to the employment of city watchmen and finally, in the Nineteenth Century, the establishment of city police. State traffic patrols and state police were established during the Twentieth Century to strengthen the state's power to enforce laws. Their work is supplemented by specialized personnel of various state departments, many of whom have peace officer powers.

A leading authority points out that the whole nature of law enforcement has changed:

Police tasks of today differ widely from those of a hundred years ago, although the fundamental purpose remains the same. Modern inventions and social changes bring new problems and added threats to the peace, comfort, security and welfare of citizens. The adaptation of new inventions to criminal use has imposed additional burdens on the police, and the vastly increased use of the automobile by delinquent youngsters as well as by adult criminals also has affected the crime rate. Traffic accidents and congestion demand a large part of police attention, and transient populations resulting from rapid and easy transportation have added to the growing list of problems.²

¹ E.G., *Miller v. Scott*, 339 S.W. 2d 941 (Ky. 1960); *Commonwealth v. Allen*, 235 Ky. 728, 32 S.W. 2d 42 (1930); *Morris v. Morris*, 255 Ky. 823, 10 S.W. 2d 277 (1928). The courts have generally held that Ky. Const. § 233 has the result of adopting the common law of England that existed prior to March 24, 1607.

² Wilson, *Police Administration* 5 (1963 ed.). Mr. Wilson is Dean Emeritus, School of Criminology, University of Cal. and Superintendent of Police, Chicago, Ill.

The peace officer of antiquity has not much in common with the modern policeman, who must apply modern methods to prevent and solve crimes, deal with traffic, and cope with criminals who do not observe jurisdictional lines. Yet few counties or cities are large enough to provide necessary training, equipment, or specialized services. State law enforcement agencies have developed in an *ad hoc* fashion, with little co-ordination and with limited power. There has been little effort throughout the centuries of police history to revise the relationships and responsibilities of the various law enforcement agencies into an effective structure. Kentucky's agencies are a direct result of historical development and, in many instances, are not capable of meeting modern problems.

2. *Major Changes Would Require Constitutional Revision.* Sheriffs, jailers, constables and coroners are constitutional officers. The office of jailer may be consolidated with that of sheriff,³ but the other offices cannot be changed without constitutional revision. The constitution does not deal with these offices in detail, but merely sets qualifications of age and residence, provides for selection and removal, and requires bonds.⁴ Even these brief requirements prohibit substantial changes. For example, it is generally established that, where the constitution provides for officers and prescribes their qualifications, the legislature cannot add other qualifications.⁵ An office established by the constitution may not be abolished by statute⁶ and, as the legislature cannot abolish the office, neither can it "do so indirectly by depriving the incumbent of all of his substantial prerogatives or by practically preventing him from discharging the substantial things appertaining to the office."⁷

These and similar limitations mean that many changes would require constitutional revision. This has proven very difficult to accomplish;⁸ as a practical matter, most changes may have to be

³ Ky. Const. § 105.

⁴ Ky. Const. §§ 91, 100, 101, 103.

⁵ 61 C. J. S. *States* §§ 67, 76 (1953).

⁶ *Payne v. Davis* 254 S.W. 2d 710 (Ky. 1953); *Black v. Sutton*, 191 S.W. 2d 407, 301 (Ky. 1945).

⁷ *Johnson v. Comm. ex rel Meredith*, 291 Ky. 829, 165 S.W. 2d 820 (1942).

⁸ Only eighteen amendments have been adopted since the constitution became effective in 1891.

brought about within the present constitutional framework. Many proposals for improving law enforcement are not possible under the present constitution. The office of constable, for example, cannot be abolished, even though it is anachronistic. Each county must elect its own coroner, even though it might seem sensible for several counties to combine this office. Sheriffs may not succeed themselves, although this might enable them to benefit from experience. Much progress can, however, be achieved within the existing constitutional structure. These restrictions apply primarily to county officers; at the time the constitution was written, the State Police were unknown, and city police were few in number. This has allowed much more flexibility in the development of city and State Police.

3. *Law Enforcement Officers have Many Duties in Addition to Crime Control.* Kentucky has thousands of law enforcement officers. Each of the 120 counties has a sheriff, jailer and coroner, making a total of 360 elective officers. Most of these, in turn, have deputies; the fifty-six sheriffs who answered a Committee on the Administration of Justice questionnaire had an average of over five deputies each. Each county is required to have from three to eight constables, although many do not. There are 442 uniformed officers of the State Police. Other state agencies employ hundreds of law enforcement officers. A single city has over six hundred police employees. The membership of the Kentucky Peace Officers' Association runs as high as 6,500. While the total number of law enforcement officials in Kentucky is not known, it is obvious that it would be an impressively large figure.

Few of these officers, however, can devote their whole time to law enforcement. Only a small per cent of peace officers' activities is concerned with crime control, other than traffic violations. There has been a tendency to impose a variety of duties on law enforcement officers. The sheriff enforces laws, but he must also collect taxes, serve processes, wait on courts and perform other functions.⁹ City police report that most of their work concerns traffic control, as does 70 per cent of the State Police's activity. Coroners and constables seldom devote full time to official duties,

⁹ A survey of sheriffs showed that slightly over one-third of their offices' work was concerned with criminal matters. See page 16 *infra*.

but have other occupations. State agency employees usually have peace officer powers only in connection with specific statutes. Thus, the effective crime control force in the state is small.

The scope of these officers' activities makes it difficult for them to be well-trained in each phase. It also prevents maximum use of trained personnel. Extensive training in investigation, for example, may be wasted if the officer spends most of his time directing traffic and collecting parking meter tolls. Similarly, the specialized skills required for administration, record keeping, and personnel matters are wasted if the officer is assigned to investigation. Only the largest police forces in Kentucky, however, have anything approaching specialized staff assignments. The wide range of activities involved in modern police work will probably call for increasing analysis and definition of functions, to assure optimum use of personnel and maximum results from training.¹⁰

4. *Overlapping Jurisdiction may Lessen Responsibility and Prevent Uniform Enforcement.* The constitution provides that the sheriff, jailer and coroner are county officers and that the constable has county-wide jurisdiction.¹¹ City police are responsible only for the city, but county police are responsible for both incorporated and unincorporated areas. The county officers may not neglect the city, even though it has an adequate police force of its own. Sheriffs and county police must enforce the laws in both incorporated and unincorporated areas of the county.¹² The State Police have state-wide jurisdiction, except that they may operate in cities only by invitation of the mayor or by direction of the Governor. Law enforcement personnel of other state agencies have jurisdiction throughout the state.

The final result of these assignments of responsibility is that various police agencies have jurisdiction over any given crime.

¹⁰ The scope of activities is illustrated by the contents of yearbook of the International Ass'n of Chiefs of Police. Of its approximately 250 pages of text, 38 concern administration, 71 concern crime control, 61 concern personnel administration, 24 concern public relations, 27 concern traffic, and the rest relate to other topics. International ass'n of Chiefs of Police, *The Police Yearbook* (1963).

¹¹ Ky. Const. §§ 99, 101.

¹² See page 110 *supra*. Ops Att'y Gen. #62-698 (Ky. 1962) restates the sheriff's county-wide jurisdiction. In *Stuart v. Combs*, 360 S.W. 2d 144 (1962), the court held that county police may not restrict their activities to unincorporated areas.

Law enforcement in a city is the duty of the city police, county police, sheriff, constables, and other officers, including the State Police in most cities. If enforcement is lax, it is difficult to determine which should be held to account. Even if enforcement is effective, there may be a duplication of effort in police work, unless there is a high level of co-operation.

As a practical matter, informal divisions of responsibility have developed. County police chiefs report that they work primarily in the unincorporated areas.¹² The reason for this is seen in the uneven distribution of police protection; Fayette County, for example, has one county policeman for each 3,664 citizens, while the largest city in the county has one police employee per 427 population. Most cities have police forces, but there are only four county police systems. Sheriffs are not staffed adequately to enforce law, and have many other duties. State Police concentrate on traffic control on highways. As a legal matter, division of responsibility is impossible. As a practical matter, it is often used to effect more even distribution of police protection.

One reason for overlapping jurisdictions is that city police, State Police, and state agency peace officers were superimposed on the original county system. The size and relative wealth of cities was not foreseen when the common law system was made part of Kentucky's constitutions. Today, however, city residents have more police protection than do rural people. This may be a reason why, in reply to a questionnaire, Kentucky's city police overwhelmingly opposed consolidation of city and county law enforcement agencies, while almost half of the sheriffs favored consolidation.¹³

A second reason for overlapping jurisdictions is that the concept of local autonomy has been used to justify the establishment of police forces by cities and state agencies. An expert on police systems points out that:

. . . the decentralization and fragmentation featuring our police defenses . . . are the most striking characteristics of American police patterns. . . . If every local government, no matter how weak or how small, is to maintain its own police facilities, the latter become so numerous that their interrela-

¹³ See page 25 *infra*, pages 99-100 *supra*.

tionships are unduly complex and burdensome . . . nor does the process of dispersion stop there. Our city, county, state and federal governments are replete with examples of police forces created for special and limited purposes and existing side by side in the service of one single government.¹⁴

Instead of strengthening the existing constitutional law enforcement officers, our tendency has been to create new agencies and to give peace officer powers to more and more persons.

5. *The Work of Police and Prosecutors is not Effectively Co-ordinated.* The police, the prosecutors and the courts comprise our system for administering justice. While this study has not dealt directly with prosecuting attorneys or courts, it is apparent that police cannot be considered out of this context.¹⁵ Police and prosecutors are interdependent. Effective police work is futile unless it is supported by the prosecutors and courts, who, in turn, must depend on the police to arrest offenders and to collect evidence.

In Kentucky, there is often little co-operation between these two branches of justice. Commonwealth's and county attorneys and most county law enforcement officers are responsible directly to the electorate. City police and most city attorneys or prosecutors are appointed by the governing body of the city. The Attorney General is elected, and the State Police are appointed. What co-operation exists results more from custom and necessity than from the requirements of law.

This situation creates considerable problems. A questionnaire of the Committee on the Administration of Justice asked whether prosecutors should have more control over local law enforcement; of those responding, 75 per cent of the Commonwealth's attorneys, 33 per cent of city attorneys, and 40 per cent of county attorneys thought this was needed. Over half of the city and Commonwealth's attorneys responding said that there was a need for more assistance from law enforcement agencies in such matters as gathering and presenting evidence. From another point of view, city police chiefs were asked at what phase of the

¹⁴ Smith, *Police Systems in the United States* 316 (Rev. ed. 1949).

¹⁵ 51 Ky. L. J. (1963), describes the work of Kentucky's prosecuting attorneys: the Attorney General, the Commonwealth's attorney, county attorney, and city attorney.

prosecution they felt that their duties were complete; thirty-three said not until the verdict or enforcement of the judgment, but eight said after their presentation of testimony, and nine said their work was finished after the arrest or delivery to court. Again, three sheriffs said that they never sought legal advice, and twenty-five said that they asked advice only from the county attorney.

Another indication of the lack of co-ordination between police and prosecutors may be implied from the former's frequent suggestions that police be given more power. Police chiefs were asked for suggestions on improving the police system: of thirty-eight changes suggested, eleven concerned strengthening the laws on arrest, search and seizure, and making parole laws more strict. A number of sheriffs made similar suggestions, such as "speeding up the trial system," stricter juvenile laws, and prohibiting the judge from dismissing charges without the sheriff's consent. This seems to indicate a lack of sympathy with the present judicial system. A similar variance is found in the fact that the Kentucky State Police are rated well nationally in terms of traffic law enforcement, but Kentucky has one of the lowest ratings in terms of convictions. Although the prosecutor's role must be separate from the police, it is obvious that more co-ordination would be beneficial to both groups, as well as to the public.

6. *Procedures for Removing Law Enforcement Officers are Complicated and Inconsistent.* The methods of removing those officials who abuse their office has not been discussed in any detail in this report, but is an important factor in the effective administration of justice. Kentucky's constitution provides that "the Governor and all civil officers" are liable to impeachment.¹⁷ The House of Representatives has the sole power of impeachment and the Senate tries such charges, requiring a two-thirds vote for conviction.¹⁸ This method of removal is seldom used.¹⁹ The con-

¹⁶ *Id.* at pp. 81-S-85-S.

¹⁷ Ky. Const. § 68.

¹⁸ Ky. Const. §§ 66, 67. Impeachment procedures are set out in Ky. Rev. Stat. §§ 63.020-63.075 (1963) [hereinafter cited as KRS].

¹⁹ The last impeachment was in 1888, when the Treasurer was tried *in absentia* for absconding with state funds; he was found guilty after a trial lasting from March 25 to March 30. See Senate Journal, 1887-1888, pp. 1114-1140. The last impeachment trial was in 1916, when a county judge was tried on twenty charges, in a trial lasting fourteen days. He was acquitted on every charge, although the majority voted him guilty on some charges. 4 Senate J. 69-83 (Ky. 1916).

stitution: disqualifies from office any officer who receives profit from the use of public funds, who is convicted of using money to influence his election, or who is convicted of a felony.²⁰

The constitution also provides that certain elective county officers, including sheriffs, coroners, jailers, and constables may be prosecuted for misfeasance, malfeasance, or willful neglect in the discharge of their official duties, and that the General Assembly may "provide other manner, method or mode for the vacation of office, or the removal from office of any sheriff, jailer, constable or peace officer for neglect of duty. . . ."²¹ Pursuant to this, the statutes define neglect of duty in considerable detail²² and authorize the Governor to sign written charges, supported by affidavits of two witnesses, setting forth the grounds for removal. If the Governor, after a hearing, finds the officer guilty of neglect, he may remove him from office. The officer may appeal directly to the Court of Appeals.²³ The courts have held that peace officers who are under civil service are not exempted from these provisions.²⁴

Other statutes provide alternative removal procedures for certain officers. A non-elective peace officer or deputy may be removed by a suit in equity for failure to be qualified under Ky. Rev. Stat. § 61.300, which sets general requirements for qualification.²⁵ Certain officers, including sheriffs, coroners, jailers and constables, may be indicted in their county for misfeasance, malfeasance or willful neglect, and shall forfeit their office on conviction.²⁶ The Commonwealth's attorney must institute removal suits against an usurper of a county office, who is defined as "[A] person who continues to exercise an office after having committed an act, or omitted to do an act, the commission or omission of

²⁰ Ky. Const. § 150, 151, 173.

²¹ Ky. Const. § 227; the latter part was added by amendment in 1919 and the court held that its purpose was to secure more diligence and efficiency on the part of peace officers. *Holliday v. Fields*, 210 Ky. 179, 275 S.W. 642 (1925).

²² KRS 63.090, 63.140.

²³ KRS 63.100-63.130. The Governor is not personally required to conduct the hearing. *Cornett v. Chandler*, 307 S.W. 2d 918 (Ky. 1957).

²⁴ *Frederick v. Combs*, 354 S.W. 2d 506 (Ky. 1962).

²⁵ KRS 63.150.

²⁶ KRS 63.170. The court has defined misfeasance as the wrongdoing of an official act; malfeasance as the wrongdoing of an official act with evil intent, accompanied by gross negligence; and neglect of duty as careless or intentional failure to exercise due diligence. *Holliday v. Fields*, *supra* note 20.

which, by law, creates a forfeiture of his office. . . ."²⁷ City police may be removed by their departments for inefficiency, misconduct, insubordination, or violation of law or rules adopted by the city legislative body. Procedures vary according to the class of city and its type of government.²⁸

This short summary of removal procedures indicates the complexity of the statutes in this area. Separate statutes, directed at different groups of officials, create confusion. No official is made responsible for bringing suits against persons who abuse their office. Although the Governor can remove peace officers, he cannot name their replacements. This lack of clarity and responsibility is a problem that needs correction.

7. *The State Lacks General and Effective Law Enforcement Powers and Procedures.* The constitution requires that the Governor see that the laws are enforced, and provides for an Attorney General to ensure enforcement. The 1890 constitutional convention, however, did not foresee the growing importance of state government, so no provisions were made for a comprehensive state law enforcement effort. In 1890, there was no automotive traffic and the state had barely entered such fields as health and welfare. Growing problems in these and other areas led eventually to creation of the State Police and to granting law enforcement powers to various state agencies. These measures have had substantial effect, but have not resulted in a co-ordinated state law enforcement effort.

The Governor's law enforcement powers are limited. He may call out the National Guard in certain instances. He may appoint and remove most state agency heads who, in turn, control certain specialized enforcement staffs. He appoints the head of the Department of Public Safety, and may order the State Police into cities. He may remove peace officers under certain conditions but may not appoint their replacements. Otherwise, the Governor has no control over local police, prosecutors, or judges, who constitute the major part of Kentucky's system for administering justice. The Governor is made responsible for law enforcement, but most

²⁷ KRS 416.040-416.050. Examples of such acts are failure to renew an official bond, or permanent removal of residence from the district.

²⁸ KRS 95.450, 95.700, 95.765.

peace officers are locally selected, compensated, directed, and controlled.

The Attorney General has even less power to enforce laws. The statutes name him "the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies and political subdivisions" and provide that he shall "exercise all common law duties and authority pertaining to the office of the Attorney General under common law, except when modified by statutory enactment. . . ." ²⁹ Other statutes and judicial decisions, however, have sharply limited his authority, so that his role in law enforcement is considerably diminished. ³⁰ He is also limited by a lack of investigative facilities and the absence of any formal relationship to local prosecutors.

A number of states have attempted to meet these problems by integrating most state legal and enforcement services under a single agency. The California Department of Justice and the New Jersey Department of Law and Public Safety are two examples. The American Bar Association, which has promulgated a model department of justice act, argues that this approach "provides an integrated and rational system for state-wide supervision, direction and coordination of law enforcement agencies." ³¹ The model act makes the attorney general head of a department of justice and gives him supervisory powers over local prosecuting attorneys. It also requires local police and sheriffs to co-operate with the attorney general, and empowers him to make studies of all law enforcement agencies. It is further argued that this approach prevents any abuse of police power by putting it under the direction of non-police officials.

Most of the states attempt to maintain some uniformity in law enforcement by allowing the Attorney General to initiate, intervene or supersede in local criminal matters, either on his own motion or on direction of the Governor. ³² Available information

²⁹ KRS 15.020.

³⁰ See generally 51 Ky. L. J. 1-S (1963).

³¹ Final Report of the ABA Commission on Organized Crime 110 (Sept., 1952).

³² See 51 Ky. L. J. 90-S-92-S (1963).

indicates that such power is seldom used.³³ It can, however, be invoked on occasions when local law enforcement breaks down. Kentucky officials generally are opposed to state intervention, but this may indicate a lack of information about the discretion with which such power is usually exercised. When asked whether a state bureau of investigation should be established, with power to intervene in local law enforcement, 45 per cent of the responding police chiefs and 46 per cent of the sheriffs favored intervention. A previous study showed that about the same per cent of Commonwealth's, county and city attorneys believed that the Attorney General should be allowed to intervene in local prosecutions.³⁴

Strengthening the state's law enforcement powers would not necessarily weaken local autonomy, but could strengthen it. If the experience of other states is typical, the power to intervene would seldom be invoked, but it would prevent the continuation of those few instances of lax local enforcement which decrease respect for public officials. Furthermore, the state has a duty to all of its citizens to see that order is maintained:

The administration of public justice and the uniform enforcement of the criminal laws is a matter of general, and not merely local, concern. So is the elimination of organized crime from any community. The state should recognize that it has some responsibility in this matter. The state should require some accounting from those to whom it has delegated extraordinary duties and powers of law enforcement.³⁵

³³ Two examples, chosen at random, are as follows. The Attorney General of Kansas may initiate or intervene in local prosecution, but seldom does so. "Where the Attorney General does intervene, it is usually in the form of sending an investigator to assist local law-enforcement officers." Letter from Kansas Ass't Att'y Gen. Arthur E. Palmer to Ky. Att'y Gen. John B. Breckinridge, May 22, 1963.

The Attorney General of Iowa may initiate criminal proceedings on his own motion, or on request of the governor, legislature, or local prosecutor. As a practical matter, "very infrequently the Attorney General will lend assistance in local matters if specifically requested by the County Attorney and where cause is shown to exist." Letter from Iowa Solicitor Gen. Wilbur N. Bump to Ky. Att'y Gen. John B. Breckinridge, May 21, 1963.

³⁴ 51 Ky. L. J. 83-S, 84-S (1963).

³⁵ International City Managers' Ass'n, *Municipal Police Administration* 48 (4th ed. 1954).

8. *Existing Technical Facilities and Aids are not Adequate.*

The most striking development in law enforcement has been the invention of new techniques and skills. Our system for enforcement may be archaic in many ways, but the tools available are not. Such recent innovations as the two-way radio, laboratory analyses, fingerprinting, and polygraph examinations can be of great value in solving crimes. Coroners may order highly technical examinations, conducted by skilled pathologists. In investigations, laboratory analyses of physical evidence may make it possible to identify and convict the criminal.

The specialized training and the laboratory equipment required for such services have tended to favor the establishment of central laboratories.³⁶ Obviously, each police department cannot maintain its own facilities for investigation and identification. Kentucky has a modern and well-equipped service which is operated by the State Police and is available to all law enforcement officers. The Federal Bureau of Investigation laboratory will make tests for any law enforcement officer in the United States. A few Kentucky police departments have special investigative staffs. The effectiveness of such facilities is, however, limited by the extent to which they are used. Other areas of law enforcement are also handicapped by inadequate technical services. Coroners, for example, cannot maintain medical-legal investigating staffs. One plan proposes to make such services available on a regional basis, so that even the smallest county could have modern post-mortem investigation facilities.

Almost two-thirds of the sheriffs and police chiefs who replied to a questionnaire believed that a state bureau of investigation and identification should be established for the use of local law enforcement officials. In a previous questionnaire, four-fifths of the local prosecutors responding wanted the services of a state bureau of investigation made available to local officials.³⁷ The kind of services desired included scientific and laboratory analysis, state-wide record keeping, trained investigators, and other experts to provide technical services. Many local officers now make use of State Police facilities and call upon State Police detectives, but

³⁶ Kirk, *Progress in Criminal Investigation*, 291 Annals, 58-61 (1954).

³⁷ 51 Ky. L. J. 82-S (1963).

the overwhelming interest in a state bureau of investigation indicates that the present system is not wholly successful. Many states have established investigation bureaus expressly for the use of local officials, which, presumably, would encourage wider participation. In any event, expert services and technical facilities have become an integral part of modern police work, and their use by all law enforcement officers should be encouraged.

9. *Expanded Training Programs and Minimum Qualifications for Peace Officers are Essential for Improvement.* Most of Kentucky's law enforcement personnel are not required to meet any professional standards. The State Police and the police of certain cities are under a merit system, and must meet qualifications. The elective officers and their deputies, however, must meet only qualifications of age and residence. Furthermore, they are not allowed to benefit from experience, as they may not succeed themselves. The statutory qualifications for city police vary according to the class of city, but deal primarily with age and residence. Kentucky's qualifications for most peace officers are not high enough to assure efficient law enforcement personnel.

Qualifications and merit systems alone cannot, of course, attract and retain competent officers. Pay scales must be adequate, personnel policies must foster professionalism, and effective supervision must be provided. Even with qualified personnel training must be made available at all levels:

Police service, even of the simplest kind, is unlikely to be of a high quality unless policemen have special training. The patrolman must recognize a criminal act and know the elements to be proved in each crime, the rules of arrest and evidence, and the principles of first aid. In addition he must understand how and when to use his police weapons, he must be skilled in the art of self-defense, and he should know how to handle people.⁸⁸

In addition to police training, the peace officer

. . . must be able to distinguish between civil and criminal cases. He must know how to collect and preserve evidence and how to present evidence in court. He must be able effectively to control himself during trying cross-examina-

⁸⁸ Wilson, *op. cit. supra* note 2, at 161.

tions, understand the operations of the various courts . . . [and] understand the function of the prosecutor in order that relationships with him may be based upon mutual understanding and respect.³⁹

While everyone would agree that training is essential, many Kentucky peace officers have no professional training of any kind. Of fifty-six sheriffs answering a questionnaire, only twenty-six had any kind of police training, and this "training" included prior service in the sheriff's office. Only Kentucky's larger cities have any training program for policemen. Training programs in Kentucky have been described in Chapter XI and it is apparent that despite present deficiencies, tremendous progress has been made in this area.

The problem, however, is that only a fraction of local officers take advantage of training programs. The last scheduled sheriffs' school was cancelled because of low attendance and the last one that actually was held was attended by eight of the state's 120 sheriffs. Less than 200 city police have attended Kentucky Peace Officers' Association schools at the State Police academy during the past two years. A number of factors may contribute to low attendance. The smallest departments, which may be most in need of training, may not be able to spare a man. The city or county may be unwilling to pay even the small costs involved. The agency may not realize the importance of training, or may feel that the program offered does not meet its particular needs. Careful study is needed to determine Kentucky's training needs, the factors involved in law participation and the type programs that would be most effective.

In Kentucky, the training that is available is conducted through the State Police, the peace officer associations and other groups, and special facilities such as the Southern Police Institute. Other states, however, have state-sponsored programs usually set up under a special training council, composed of representatives of the groups concerned. A variety of programs are offered, adapted to the needs of the participants. The costs are low in relation to the scope and impact of the programs. This approach

³⁹. Cal. State Dep't of Education, *Law Enforcement Training in California*, 9 (Cal. State Peace Officers' Training Series 72, 1963 ed.).

would seem worthy of consideration in Kentucky; all evidence is that statutory programs are much more effective than the *ad hoc* approach followed to date in Kentucky.

10. *Concerted Planning and Action is Necessary to Meet Kentucky's Law Enforcement Problems.* A number of professional organizations in Kentucky are working to improve law enforcement. Such groups as the Kentucky Peace Officers' Association, the Kentucky Sheriffs' Association, and the Kentucky Coroners' Association have made a major contribution by encouraging training programs for their members. The Kentucky Bar Association and the Commonwealth's and county attorneys' associations have done much to improve law enforcement. These groups also play an important role in representing their members before the legislature and before the public. Increased emphasis on public relations, combined with increased emphasis on professional standards, will encourage more public support for effective law enforcement. Equally necessary is an increased emphasis on the factors associated with a career service, such as planning for professional development.

While the existing groups are effective and have done much to improve law enforcement, there is an obvious need for increased co-operation. Peace officers have many mutual problems and interests. Many subjects about which more information is needed, such as arrests, search and seizure, are important to all peace officers. Many suggestions for constitutional revision, such as allowing officers to succeed themselves, would involve a number of officers. A formal structure for co-operative action would not only increase the effectiveness of the various groups, but would allow them to benefit from an exchange of ideas.

The Kefauver Committee made the following recommendations:

It might be advantageous for each state to institute a survey of its law enforcement agencies with a view toward bringing about greater cooperation between agencies, greater centralization of responsibility for law enforcement of the criminal law, and greater efficiency.⁴⁰

⁴⁰ U.S. Senate Comm. to Investigate Organized Crime in Interstate Commerce, 3rd Interim Report.

This report is a step in this direction, but the need for continued study is apparent. Continued research, realistic planning, and co-ordinated action are essential to improving law enforcement in Kentucky. The daily recurrence of incidents reflecting inadequacies or even breakdowns in the proper enforcement of the law reflect a continuing need for improvement of the administration of justice. The continuing requests from local officials for clarification of their duties show a need for informational handbooks and other materials. This study, which is the first comprehensive analysis of law enforcement in Kentucky, may hopefully become a stepping-stone toward achievement of these goals.

