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Kentucky Legislative Procedures Re-Evaluated

By GLADYS M. KAMMERER*

TO THE EXTENT that individual legislators are rendered ineffectual or obstructed in their participation in the legislative process by defective organization and procedures, the will of the electorate in this state or any state is minimized or negated. This problem is a recurrent one in American government because it is basic to one of our fundamental concepts—government should rest upon the consent of the governed. Therefore, movements for reform of legislative bodies present a persistent theme in the modern politics of states and nation.

Because the 1956 Kentucky General Assembly reorganized its committee structure and procedures, these changes should be described, analyzed, and evaluated.¹ The extent to which the changes meet the need for democratization of our state legislative process can then be assessed.

At the outset it is necessary to state the postulates of a democratic system of legislative organization and procedure. First of all, a legislature is a deliberative body, and sufficient time in the regular session for consideration and debate is requisite to the process of deliberation. In the second place, committees should be limited to the number necessary to study, sift, and report on the major types of subject matter within the jurisdiction of the legislature. Third, adequate opportunity must be afforded the electorate through open public committee hearings to present opinions respecting legislation under consideration. Fourth, local legislation should be delegated insofar as possible to municipali-

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¹ For an analysis of organization and procedures in the 1948 and 1950 sessions of the Kentucky legislature, see Kammerer, "Kentucky's Legislature Under the Spotlight," 39. Ky. L. J. 45-63 (Nov. 1950).

ties. Fifth, committee assignments should be made on a fair and equitable basis, within both political parties, so that each legislator may serve on the same number of major committees and minor committees. Sixth, referral of bills to committees should be made on the basis of subject matter contained in each bill as related to the defined jurisdiction of the committees and not on the basis of a design for control of the legislative program by an executive or legislative clique. Without acceptance of these standards—and procedures consistent with the standards—it is inconceivable that our principles of separation of powers, checks and balances, and consent can become operative at all. Consent involves the power of the voter to express his wishes freely, and in a representative system, the voter's primary channel for expression in statute law-making is through his legislator. Legislators must, therefore, have equal opportunity within the legislative body to study legislation and express opinions on legislative problems and issues.

In 1950 the Kentucky General Assembly fell far short of the postulates or standards for democratic organization and procedure in several ways.² First, an excessive number of committees in both houses caused overlapping and duplication of jurisdiction among committees and confusion both inside and outside the legislature as to the channeling of bills. For example, there were seventy House committees and thirty-seven Senate committees. Second, lack of parallelism between Senate and House committees made it difficult, if not impossible, to share committee facilities or hold joint meetings. Third, multiple committee assignments showed great variation among individual members and, if committees were meaningful, would have imposed an unduly heavy burden of committee work on some members. The range was from fifteen committee memberships held by a senator and fourteen committee memberships held by a representative down to two committee memberships held by one senator and none by one representative. Fourth, study of reference of bills to committees showed that twenty-seven House committees and eight Senate committees received no bills, and thirteen House committees and seven Senate committees received only one bill each. On the other hand, 258

² *Ibid.*

House bills and resolutions out of a total of 562 went to two regular standing committees and the Rules committee of the House, and 186 Senate bills and resolutions out of a total of 354 went to the parallel three Senate committees. Fifth, the sixty-day constitutional limitation on the length of the legislative session created a legislative log jam during the last week which rendered impossible any deliberative process at that time.

Beginning in 1952 some slight reduction was effected in the number of committees, but the legislature did not really come to grips with the problem at that time. At the beginning of the 1956 session some fundamental changes were made in committee structure. However, the potential benefits from these changes were never fully exploited because this session was arbitrarily shortened to thirty-nine days at the behest of the governor in order to permit his program to be presented at four special sessions.

The structural and procedural changes relating to committees consisted of a drastic reduction in the number of standing committees in each house and the adoption of a regular schedule of meeting times and places for all standing committees. Committees were reduced to eighteen in each house, other than those on enrollment and rules. The jurisdiction and titles were made parallel and almost identical as between the two chambers. Committee assignments were in consequence radically reduced, especially for those few members who carried an extreme load of committee memberships under the old system.

What did these changes mean by way of improving the legislative process? In evaluating their effect, one must recall the postulates of a democratic legislative system and measure the performance of the 1956 General Assembly under its reorganization against the yardstick of those postulates. Moreover, in that evaluation it is necessary at the outset to measure the extent to which the legislators conformed to their own rules.

Scheduling of regular committee meetings and adherence to the schedule by committee members in any legislative body are intended to provide adequate opportunity for full study of bills by committees. Certainly no committee should receive and report out a bill before a regular hearing can be held. The degree of conformity by committees with the reason for scheduling regular meetings can be measured by the proportion of bills reported

out by committees before regularly scheduled meetings could be held. This degree of conformity in the Kentucky legislature in 1956 is shown in Table 1 below:

TABLE 1

Compliance in Holding Bills for Regular Committee Meetings, 1956

	House	Senate
Total Number of Bills Introduced		
Before Rules Committees Established ³	445	187
Number of Bills Held Over for		
Regular Committee Meeting	278	113
Number of Bills Reported Out Before		
Regular Committee Meeting in House of Origin	42	15
Number of Bills Initially Killed in		
Standing Committee Without Report	126	57
Number of Bills Killed in Rules		
Committee of Other Chamber	20	6

³ The Rules Committee supersedes all standing committees in each house 15 days before the end of the regular session. It takes over all bills not yet given third reading and receives all bills for initial committee consideration.

Actually, one may conclude from the above tabular presentation that the 1956 General Assembly showed a relatively high degree of compliance with its own standard in establishing a regular schedule of committee meetings. In the House only 9.4 per cent of all its bills referred to standing committees were reported out before a regularly scheduled committee meeting would take place. In the Senate only 8 per cent of its bills referred to standing committees were reported out before a regularly scheduled committee meeting would take place. This is a purely quantitative measure of conformance.

Qualitatively one must ask whether the electorate, either individually or in organized groups, had greater or less opportunity to obtain open public hearings on highly controversial legislation. Another question which must be raised is whether a regular schedule of committee meetings and better attendance at those meetings led to more real deliberation on the part of committee members with respect to the issues before them. Evidence on those points is more difficult to obtain but not impossible on some key issues. Let us examine some bills over which a real struggle ensued.

The bill dividing child welfare functions and program between two departments and abolishing the Children's Bureau and Youth Authority—H.B. 362—was one of the most controversial measures considered during the regular session, with two roll calls required to obtain original passage in the House and three to obtain final House passage of the Senate amendment. How did the Ways and Means Committee consider this bill? Were public hearings granted in response to vociferous requests from certain citizen and professional social workers' groups? Did the Ways and Means Committee give more than perfunctory consideration to this bill? On the basis of public evidence the answer is negative to both questions. Several citizen and professional groups and a number of individuals requested a public hearing before the Ways and Means Committee to no avail. One of the Ways and Means Committee members stated at a public hearing of another committee in Lexington that H.B. 362 was not read by him or by the chairman to the members at the meeting of the Ways and Means Committee, that no explanation of its contents was made, that he did not know or understand its effect nor could the chairman explain its contents or effect to the committee in any terms other than that this was a "good bill" and an "administration" measure. On the basis of this performance on one of the major measures of the regular session which evoked more newspaper editorials and letters to the editor than any other bill before that session, one can conclude that the legislature was operating as it always had. Like the French cabinets, the more it changes, the more it is the same.

On the bill to repeal the cigarette tax increase enacted in 1954, it was impossible for the tobacco pressure groups to obtain a hearing, public or private, to present their case. Whether or not one agrees with their particular arguments, the student of government must concede the importance of pressure groups in our society and their right to expression of views on public policies affecting their own welfare or that of the community as a whole. Therefore, refusal to grant a public hearing to these affected groups was as serious a breach in democratic procedures as was refusal of a hearing to citizen groups attempting to protest a child welfare measure they regarded as a regression in program for the state.

Another important set of measures dealing with reform of party organization and study of election laws was never submitted to public hearings although several citizen groups were interested in these bills. Considerable misunderstanding as to the objectives of the bills was expressed by individual committee members, but the first step—to clarify the issues by getting the protagonists of the bills before the committees—was not taken. It is still true that to many legislators it is far better to kill what one does not fully understand than to “ventilate” the issue thoroughly, as our British parliamentary friends would say.

The reduction in number of standing committees to eighteen major committees, in addition to that on enrollment and the super-committee on rules, made possible the great reduction in number of committee assignments to some members of the General Assembly. This change is shown by Table 2, contrasting the number of individual committee assignments in 1950 with that made in 1956.

Table 2

Number of Committee Memberships Held by Kentucky Legislators in 1950 and 1956

	1950		1956	
	Senators	Representatives	Senators	Representatives
15 Committee Memberships	1	....	....	....
14 Committee Memberships	2	....	....	....
13 Committee Memberships	6	....	....	....
12 Committee Memberships	5	....	....	....
11 Committee Memberships	11	5	....	....
10 Committee Memberships	11	14	....	....
9 Committee Memberships	1	22	....	....
8 Committee Memberships	1	20	....	....
7 Committee Memberships .....	....	27	1	....
6 Committee Memberships .....	....	8	2	4
5 Committee Memberships .....	....	2	13	19
4 Committee Memberships .....	....	....	22	31
3 Committee Memberships .....	....	1	....	42
2 Committee Memberships .....	....	....	....	3
1 Committee Memberships .....	....	....	....	....
0 (Speaker) .....	....	1	....	1

The effect of this reduction in committee memberships for the individual is three-fold. In the first place, it makes possible a

scheduling of regular committee meetings without conflicts as to meeting times, thus promoting better attendance at committee meetings. Secondly, through regular attendance at his committee sessions the individual member can increase his knowledge of a particular field of legislation and give more continuity of attention and interest to it, thus presumably developing more informed judgments respecting the bills coming before him. Third, individual members should have more time to study bills coming before their committees if they have fewer committee assignments. All this, however, would assume that the only weakness of the legislative process in Kentucky was in the committee structure. However, past and present studies point to many serious defects in that process entirely apart from committee structure.

In examining reference of bills to committees in each house, we discover the survival of the Ways and Means Committee in the House as the committee for administration control of significant legislation, either to expedite or kill. It continued to be in 1956 as it had been heretofore: a "catch all" for any subject of legislation, receiving bills not on the basis of subject matter but of importance of the bill to the leaders. In the Senate, the Committee on Executive and Legislative Affairs played a similar role. Therefore, the respective members of these two committees were in a position to determine the legislative program qualitatively for the session and carried a disproportionate amount of power. These committees are, in effect, steering committees and have no counterpart in the standing committee structure of our U. S. Congress or in the legislatures of a number of states. The focus of power in these committees was a constant factor which made the general functioning of the legislature almost the same as before the reform of committee structure.

A mere statistical analysis of the number of bills referred to each committee in each house reveals great disparities in committee work loads. The greatest burden, however, which falls on the Rules Committee of each house, is not shown. The latter committee not only supersedes all standing committees during the closing days of the session but at the same time receives all bills still pending at *any* stage in its chamber and can throttle such legislation as well as newly introduced bills. Tables 3 and 4 show relative committee workloads.

Table 3

House Committee Workloads in Terms of Bills Referred to Each, 1956

Committee	No. of House Bills Referred	No. of Senate Bills Referred
Agriculture and State Fair	13	...
Appropriations .....	...	...
Banking and Insurance	15	1
Claims	3 (resolutions)	...
Conservation	15	...
Education	24	...
Executive and Legislative Affairs	5	...
Health and Welfare	13	...
Judiciary	37	1
Labor and Industry	4	...
Military Affairs and Civil Defense	1	...
Municipalities	38	...
Public Utilities	15	...
Revenue and Taxation	15	...
State and County Government	41	...
Suffrage, Elections, and Constitutional Amendments	23	1
Transportation and Highways	19	...
Ways and Means	167	23

Table 4

Senate Committee Workloads in Terms of Bills Referred to Each, 1956

Committee	No. of Senate Bills Referred	No. of House Bills Referred
Agriculture and State Fair	5	1
Appropriations .....	...	...
Banking and Insurance	7	2
Claims	11 (resolutions)	...
Conservation	4	1
Education	9	2
Executive and Legislative Affairs	34	14
Health and Welfare	12	1
Judiciary	40	7
Labor and Industry	6	...
Military Affairs and Civil Defense	4	...
Municipalities	9	16
Public Utilities	2	1
Revenue and Taxation	10	1
State and County Government	16	3
Suffrage, Elections and Constitutional Amendments	12	1
Transportation and Highways	9	6
Ways and Means	6	3

The disproportionate load carried by the House Ways and Means Committee is clearly revealed in Table 3. Either the members assigned to that committee were gifted with omniscience, which is a confession of lack of faith in our very system of democratic government, or the committee was being used, as is the Rules Committee, as a controller of program. It is questionable as to whether any committee should so serve, under a separation of powers system of government, within a legislative body which purports to establish committees according to fields of subject matter. In other words, the House Ways and Means Committee constitutes a body whose jurisdiction overlaps that of every other committee, and which can, therefore, pre-empt from each committee the most important bills which would otherwise be referred to those committees. To point up this state of affairs we need merely check into the referral of eight resolutions to permit suits against the Commonwealth to the Ways and Means Committee instead of to the Claims Committee. To the other committees, therefore, are relegated the minor and non-controversial bills of each field of jurisdiction.

Also apparent from an examination of Tables 3 and 4 is the fact that the Appropriations Committees served a totally useless or even vestigial purpose in 1956. Under normal legislative conditions these committees should have only two bills, the major omnibus appropriation bill for the biennium and the bill for extra or additional legislative expenditures. However, under administration pressure the regular legislative session was abbreviated to thirty-nine days. Both the major revenue and the appropriations bills were delayed to two special sessions to consider each of these bills alone. Therefore, the appropriations committees had absolutely no bills referred to them in the regular session, for special legislative appropriations were referred to the Ways and Means Committee, as was a controversial resolution to investigate the need for repair and remodeling of the Executive Mansion.

What was the effect of the abbreviation of the regular legislative session on the deliberative process? Table 5 shows the number of bills enacted each week during the session, both in 1950 and 1956. This tabulation gives the time-table for action as taken, but one must remember that the 1956 regular session lasted

only seven weeks, as against the usual eleven weeks required for the sixty-day session permitted by the state constitution.

Table 5

Time Table for Passage of Bills, 1950 and 1956

Week of Session	Number of Bills Passed	
	1950	1956
1st week .....	....	....
2nd Week .....	....	....
3rd week	2	....
4th week	2	....
5th week	2	....
6th week	2	6
7th week	4	153
8th week	10	....
9th week	17	....
10th week	27	....
11th week	213	....

The shortening of the regular session crowded passage of all bills into the last two weeks, with 153 out of the grand total of 159 passed being enacted in the last week alone. One can scarcely claim that this kind of log-jam improved the chances for deliberation. Nor can the calling of four special sessions be said to increase deliberation inasmuch as the Rules Committee alone is operative during a special session. No more debate was expended on the few bills before the legislators in the special sessions than had been expended during the regular session. The crowding of legislative calendars due to artificial time limits increases control of subject matter by legislative leaders. The degree of control forced through the constitutional sixty-day limit is severe enough, but that engendered by the politically contrived thirty-nine-day session of 1956 makes a farce of the "deliberative" process.

An objective appraisal of the total effect of the structural changes made in the Kentucky General Assembly in 1956, in the light of actual performance by the General Assembly, leads one ineluctably to the conclusion that the committee reorganization was desirable but superficial. Far more basic changes must be made if the democratic postulates of legislative organization and procedures are to be achieved in this state. One of those changes

must be the elimination of the "catch-all," administration-controlled committees for "traffic control." In other words, the House Ways and Means Committee and the Senate Executive and Legislative Affairs Committee must be converted into specifically defined subject matter standing committees with no more power or status than any other standing committee. Either the standing committees should function, each over a definite assigned jurisdiction of subjects, or a cabinet system of an executive-legislative junta in control of all legislation should be explicitly instituted through a constitutional amendment. Secondly, local legislation should be delegated to municipalities by the legislators to free the latter body for consideration of larger matters of statewide concern. Third, every effort should be made to accede to constituents' requests for public hearings. In fact, the weekly-scheduled meeting day of each committee should be open to the public for hearings. The denial of hearings to sincere well-intentioned groups or individuals is an arbitrary suppression of what has come to be regarded as a right in modern democracies. Certainly no one can deny that the right to lobby is a right guaranteed under the First Amendment to the U. S. Constitution and federalized by the Fourteenth Amendment. One of the most important channels today for lobbying activities is the public legislative committee hearing. The present arbitrary time limit on the session should be eradicated so as to free the time of the legislature for debate of issues.

These are but a few of the basic changes needed in Kentucky if the legislative branch is to mature into democracy by mid-twentieth century standards. Alone of all major parts of government, our legislature is still behaving at the operating level of the standards of the Jacksonian period. The problems of this century and the gradual rise in level of education attained by the electorate require, however, a seriousness of attitude, democratic procedures, open public hearings, rational organization, and time and opportunity for intensive deliberation to provide solutions to our problems in keeping with our needs. We must still travel a considerable distance to attain the kind of legislative organization and procedures required.