Kentucky Law Journal

Volume 43 | Issue 1 Article 2

1954

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It was during the 1950 session of the General Assembly that there first appeared in Kentucky an awareness of the need for means by which a continuous study could be made of the state judicial system. Enactments resulted in the creation of two new agencies, the Civil Code Committee and the Judicial Council. The first of these has since completed its assigned task in admirable fashion and expired on July 1, 1953. It has been succeeded by an Advisory Committee on rules of civil procedure operating under direction of the Court of Appeals. The Judicial Council was established as a permanent body and assigned the duty, among others, of carrying on a continuous survey and study of the organization, operation, condition of business, practice and procedure of the state judicial system.

The time that elapses between the beginning of any study and the approval of a suggested change, if any, is necessarily long. Where legislation is needed, this period of time may be, and usually is, longer and may require a carefully planned and coordinated campaign. As a consequence of this and other factors, the overall program for improvement of the administration of justice is, and should be, a slow process. In view of this, it is encouraging that so much progress has been made in Kentucky in four years and that the 1954 session of the General Assembly continued the steady pace and, also, laid the basis for consideration of fundamental changes by directing a study of the judicial department with particular reference to court structure.

One of the most significant enactments of the 1954 session of the General Assembly was House Bill No. 28, establishing the first retirement program for circuit judges in Kentucky. This legislation was prepared and enacted to meet two of the most troublesome problems confronting the administration of justice

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in Kentucky. The first of these takes much of the time of the Chief Justice and is generally as unpleasant and irritating as it is constant. It is the necessity for and the securing of attorneys to act as special judges.

There will always be a need for special judges to act due to the disqualification or illness of the regular judge. The framers of the present constitution of Kentucky were aware of this, and various methods for dealing with it were advocated. The present method is authorized by statute and has the sanction of long usage. It calls for the selection of attorneys to act for the regular judge when other regular judges are unavailable, and it is unpleasant and irritating, because in so many instances the need for them is not known sufficiently in advance, and attorneys must be requested to make the sacrifice of leaving their offices and their practice. Fortunately, in most cases, they have been public-spirited and have accepted.

Within the past two years, considerable relief has resulted from the splendid manner in which the regular circuit judges have accepted assignments as special judges. During this time, more than one-third of them have taken one or more designations ranging from single cases to full terms. Over the same period, two former circuit judges, Roscoe C. Littleton and Lawrence F. Speckman, have rendered invaluable service as special judges and with such efficiency and capability that attorneys have requested their re-assignment when possible. Another enactment of the 1954 session, which will be noted later, may lead to even greater use of the regular judges.

The second troublesome factor that House Bill No. 28 was designed to meet and relieve was the lack of any provision for security in the later years of the circuit judge from which there were three undesirable results. Many good and able men felt forced to leave the bench in order to make some provision for the future; other capable attorneys who might have sought the office found it unattractive because of the absence of any adequate retirement system; and judges who were physically incapable of performing the continuous duties of a regular judge had to remain in office since they had been unable to accumulate any property on the small salary paid. This last condition, also, increased the demand for special circuit judges.

House Bill No. 28 attacks these two problems by creating the office of special circuit judge, and making eligible therefor each person who, after July 1, 1954, has served as a regular circuit judge; whose total service, including service prior to July 1, 1954, is as much as ten years; who has contributed for a minimum of two years to the special circuit judge fund; and who is sixty years of age. Appointments are to be made by the Court of Appeals, and the appointees are required to serve as special judges and perform such other duties as may be assigned them by the Court of Appeals or the Chief Justice, and may not hold any other public office or otherwise engage in the practice of law while holding the office of special circuit judge. Should any special circuit judge fail or neglect, without cause, to perform any duty assigned to him, he shall be forthwith removed from his office by the Court of Appeals.

Each special circuit judge shall be paid an annual salary of thirty-five hundred dollars, plus one hundred fifty dollars for each year of service as a regular circuit judge in excess of ten, with the maximum salary set at five thousand dollars. When serving as a special judge in a county not his residence, he, also, shall be paid his expenses but no per diem. To provide a fund from which the salaries of special judges are to be paid, each circuit judge is required to contribute two per cent of his salary paid him by the state as a regular circuit judge, to which the state has added an appropriation of $32,800 for 1954-55 and $7,800 for 1955-56. By July 1, 1956, the earliest date an appointment could be made, the fund will exceed $57,000 plus such interest as may have been earned through investment. It has been estimated that the state will recoup what it contributes in the reduced costs of special judges which, at the present time, totals about $20,000 each year. The fund is under the exclusive supervision and control of a committee of five, composed of a Justice or Commissioner of the Court of Appeals to be designated by the Chief Justice, three circuit judges to be selected by the circuit judges, and a member of the Kentucky Bar Association appointed by the president of that organization.

In order to remove all doubts as to the authority of all regular circuit judges to act as special judges in all circuit courts, House Bill No. 172 was prepared and enacted. Prior to this legislation,

KRS 23.220 did not authorize the issuance of a commission as a special judge to judges of courts of continuous session. Whether such a judge could have been designated special judge, under the authority to select an attorney having the qualifications of a judge, is a question that has not been presented. House Bill No. 172 provides that the regular circuit judge may act as special judge of the circuit courts and does away with the separate commissioning of any regular judges as special judges by giving to the regular commission the added effect of a commission as a special judge with jurisdiction coextensive with the state.

There was, also, a lack of express authority for a regular judge from outside a county having a court of continuous session to act as a special judge therein, and House Bill No. 172 supplies this by placing courts of continuous session and term courts on the same basis. Provision for selection of an attorney by the parties when the regular judge cannot act has been retained, but the technical necessity for attempting to obtain an agreement upon an attorney has been eliminated where sufficient time is not available in which to ascertain if the parties can agree, or if it is impracticable to attempt to obtain agreement because of the large number of parties. The regular judges make these determinations and the clerk then certifies the facts to the Chief Justice.

The beneficial effects of House Bill No. 28 and House Bill No. 172 will not be fully noticeable at first, but in time they may well prove to be among the most salutory legislation affecting the judicial process in Kentucky. The circuit court is the basic tribunal in our court structure. To the extent that the ablest and best-fitted men are attracted to the office; that capable and experienced judges are induced to remain in office and without a disturbing concern for the future; and that the special judge problem is answered by an available pool of trained judges, whether regular or special circuit judges—to that total extent there will have been a decided improvement in the administration of justice in Kentucky, a real and lasting achievement.

The second major legislative enactment affecting the operation of the courts was Senate Bill No. 33 revising the statutory law relating to the qualifications, exemptions, selection, empaneling and service of grand and petit jurors. The grand jury, as an investigating and charge preferring agency in our criminal law,

and the petit jury, as the finder of the facts in criminal and civil cases, are essential and integral parts of our judicial process. It is just as important and necessary that the juries be composed of well-qualified people of integrity and honor as that the judge measure up to high standards. It is frequently said that jury service is a duty and privilege of citizenship, and one of the most important. It is regrettable that in so many instances people who pride themselves on being good citizens must be coaxed and even forced to serve on grand and petit juries. Senate Bill No. 33 removes many of the legal dodges, as well as some of the limitations in the selection process, that have permitted many to escape jury duty. The principal deficiency in this 1954 enactment, and it does not purport to be ideal, is probably its failure to go far enough in this respect.

The primary change in the qualification of jurors is the removal of the "housekeeper" requirement and the substitution therefor of citizenship and residence in the county for at least one year. The same change is also made in the qualifications of jury commissioners. The many and illogical exemptions which had been generously granted by piecemeal legislation over a period of time, and which ranged from members of boards of education to public accountants, were all stricken and exemption or, more properly, excuse from jury service now rests in the discretion of the judge. It is worth noting that women are no longer exempt from service on grand and petit juries. Under the law, prior to Senate Bill No. 33, the jury commissioners were limited to the persons whose names appeared on the taxrolls, except in counties containing a city of the second class and a court of continuous session in which the jury commissioners might also consult the last returned registered election voters' book. The tax rolls contain the names of many persons who are deceased or who have moved away. Unless the jury commissioners have an acquaintance with the county residents, they will pick many of these, and usually have, in urban areas. The current voters' registration records should be a far more accurate list of the eligible persons, and Senate Bill No. 33 recognizes this by giving the jury commissioners of all counties access thereto as well as the tax records. The number of names the jury commissioners

are required to select and place in the drum has been increased in some counties.

A change of major significance is found in section 14 of the act. Rather than draw a number of names for service on the grand jury, and then draw names for service on the petit jury, the judge is now authorized to draw sixty names (seventy-two in the criminal branch of courts of continuous session) from which the grand and petit jurors are to be selected by the judge as he sees fit. This will permit the judge to make better use of the persons whose names are drawn and in the capacity he thinks they are best suited. The judge may draw additional names when he deems it advisable because of the nature or notoriety of a case or for other reasons. The slips containing the names of those drawn from the drum by the judge must be preserved until the juries have been formed, and the slips bearing the names of those excused because of temporary disability are then to be returned to the drum.

After the judge has drawn the names from the drum, the jury list is placed in a sealed envelope and delivered to the clerk. The clerk then must make a copy of the list and deliver it to the sheriff in time for him to summon the persons and make return thereon seven days in advance of the day they are required to attend. This change was made so that the judge might know a week in advance the number of persons upon whom the sheriff could not make service, and, if necessary, could draw additional names from the drum. The judge may have the full number summoned to appear the first day, or he may specify less than the full number for the first day and the subsequent day on which he desires the remainder to appear. In this way the judge may have only his grand jury in session the first week, or such time as he deems proper, and begin his petit jury cases later in the term. This is in keeping with the underlying policy of Senate Bill No. 33 to give the judge greater control over the use of the juries so that he may make the most efficient use of his and their time. Along with the greater control goes an increased responsibility.

Should one of the grand jurors become ill or the court find it necessary to excuse one or more during the session, replacements must be from the current list of persons summoned and when the list has been exhausted by drawing from the drum. This does

away with the use of bystanders on the grand jury. Finally, the 1954 enactment increased the time a grand jury might remain in session by providing that in counties not containing a city of the first class the grand jury might sit for six days at any term, which can be increased up to nine additional days if necessary. In Jefferson County, the grand jury is authorized to remain in session from the first Monday of the month for which it is impaneled to, but not including, the first Monday of the following month in the discretion of the court.

Many of the changes made by Senate Bill No. 33 have been in effect in terms or sessions of courts which began after March 1954. Circuit judges who have had the opportunity to observe the operation of the juries under these changes have been unanimous in their approval. An increased efficiency of juries, as well as a more interested and higher caliber juror, should be evident after the changes in the selection process have become operative. Senate Bill No. 33 may well prove to be one of the most salutary acts of the 1954 session of the General Assembly.

Two other acts are worthy of mention. The first, House Bill No. 71, permits the circuit judge, by order of record, to determine the terms, out of the total number authorized, at which criminal and penal cases shall be heard. The second, House Bill No. 465, abolishes the offices of Sergeant-at-Arms, Tipstaff, and Bailiff, and replaces these three with an Administrative Director to be appointed by the Court of Appeals. The Administrative Director, under the direction of the Court of Appeals, is to ascertain the necessity for assignment of special circuit judges, make reports concerning their performance of duties, certify the expenses and compensation payable to them, and generally perform such services in the supervision of the state judicial system as the Court of Appeals may require. Actually, this latter act does little more than make a change in title.

Studies that could result in recommendation for changes in our court structure and the divorce laws and their administration are directed to be made by two resolutions. Senate Resolution No. 52 calls for a survey and study of the Judicial Department with particular reference to the desirability of establishing an intermediate appellate court, and a separate court of original jurisdiction with continuous term in each county with transfer thereto

of the present judicial functions of the county judge. Thus an opportunity is presented to carefully analyze our court structure in the light of present-day litigation and legal processes, and, in so doing, to give consideration to the most recently advocated plan of court organization which calls for one great court having a number of specialized functional divisions. Two of the principal advantages claimed to result from this plan are the avoidance of much litigation over jurisdictional questions and a more efficient use of judicial man power since all judges could serve in all divisions. This study is to be made by the Legislative Research Commission in cooperation, and by and with the advice and counsel of the Judicial Council, the Kentucky State Bar Association, and the members of any special citizens committee which the Governor may see fit to appoint for that purpose. Through inadvertence, the Constitutional Review Commission, which has already done much research in this field, was not named in the Resolution, but has accepted the invitation of the named agencies to participate in the study. A report is to be made to the 1956 General Assembly.

House Resolution No. 41 directs the Judicial Council to make a thorough investigation of our divorce laws and to report its findings with proposed legislative revision to the 1956 General Assembly, incorporating therein its findings with respect to "Family Courts" which have operated successfully in some states. Insofar as possible, the study required to be made by this Resolution will be coordinated with that done pursuant to Senate Resolution No. 52.

Considering the many demands that are made on our legislative body during the short time it is in session, it is evident that the judicial department and its operation received fair and generous treatment. The bench and bar should be deeply appreciative, and every effort should be made to take the fullest advantage of the opportunities and to continue the advances which this legislation has made possible.