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REDISTRICTING

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The 1952 session of the Kentucky General Assembly was faced with the necessity of reducing the congressional districts of the state from nine to eight. This resulted from the fact that the growth of population within the Commonwealth failed to keep pace with that of the nation.

There also appeared to be a constitutional mandate that the state legislative districts be reapportioned. The Kentucky Constitution of 1891 provided (section 33) as follows: "The first General Assembly after the adoption of this Constitution shall divide the state into thirty-eight Senatorial Districts and one hundred Representative Districts. . . ." and added: ". . . the General Assembly shall then and every ten years thereafter, redistrict the state. . . ."

The Bureau of Government Research of the University of Kentucky, being cognizant of the fact that congressional districts had to be reapportioned and legislative districts should be, began in the early fall of 1951 a systematic study of congressional and legislative redistricting. The Bureau's report, *Legislative and Congressional Districting in Kentucky,* released on February 21, 1952, contained recommended districts, congressional, senatorial and representative, which were the result of an attempt to divide the state into compact, contiguous districts, as nearly equal in population as possible.

Governor Lawrence W. Wetherby, in his message to the General Assembly, delivered January 15, 1952, asked the legislators to give immediate attention to the budget bill, other specific recommendations contained in his message, and their own bills, before taking up the question of congressional redistricting.[1] At about the same time he let it be known that later in the session the administration would make specific recommendations on redistricting.

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[1] Louisville Courier-Journal, January 16, 1952, Section 1, p. 4.

The administration's bill (House Bill 400) was introduced by the majority floor leader on February 25. It bore little resemblance to the scientific recommendations of the U. K. Bureau of Government Research. Whereas the districts recommended by the Bureau varied in population from 262,217 in the first district to 374,371 in the fourth, the districts provided for in House Bill 400 contained population ranging from 304,978 in the first district to 416,936 in the eighth and 484,615 in the third. In addition, the administration measure violated the principle of compactness, especially in the first, second, and fifth districts. The first district bulges into the second like a tulip, and the fifth district is strung out along the Ohio and Big Sandy Rivers from the eastern boundary of Trimble County to the southern boundary of Lawrence County.

The above facts about the administration bill were pointed out in the newspapers of the state, and there was considerable criticism of the measure in the editorial columns. For instance, the Louisville Courier-Journal said that House Bill 400 was "a creature of political design"[2] and pointed out that it would practically insure the election of six Democratic congressmen from Kentucky. According to the Louisville newspaper, the bill was also designed to help some of the party faithful in prospective congressional primaries. In some cases editorial comment was even more critical than that of the Courier-Journal, and many prominent individuals either publicly or privately condemned the measure.

Despite its defects and criticism, House Bill 400 passed both houses of the General Assembly in record time with only eight dissenting votes in the House and three in the Senate. Immediately after its passage, a friendly suit for a declaratory judgment on its validity was brought by Representative John C. Watts of the Sixth Kentucky District. In upholding the act, in the case of *Watts* v. *O'Connell*,[3] the Court of Appeals stated that reapportionment of congressional districts is a question vested in the General Assembly and one with which the courts are not concerned ". . . except where the redistricting does violence to some provision of the Constitution or an Act of Congress." The Court pointed out

[2] February 27, 1952.
[3] 247 S.W. 2d 531 (Ky. 1952).

that the United States Supreme Court, in *Wood* v. *Broom*,[4] held that the requirements of contiguity, compactness and equality of population contained in the Congressional Reapportionment Act of 1911 were deliberately omitted from the Act of 1929. Since these requirements were not contained in the Amendment of 1942, the Court of Appeals found that House Bill 400 violated no Act of Congress. Watts also attacked the redistricting contained in House Bill 400 on the ground that it violated section 6 of the Kentucky Constitution, which states, "All elections shall be free and equal." The Court held that since absolute equality is impossible of attainment, section 6 of the Constitution is not violated by the inequalities that result from redistricting.

In spite of the provisions of section 33 of the Constitution, the General Assembly completely ignored the question of state legislative redistricting. There is, of course, no way of compelling a legislative body to perform its duty, but representative districts ranging in population from less than 13,000 to more than 50,000 seem to point to the desirability of providing some effective means of bringing about redistricting. A legislative redistricting commission, whose recommendations, to be submitted after each decennial census, would go into effect unless the General Assembly enacted a different redistricting plan, might fill the need. Such a redistricting body was recommended by the Constitution Review Commission in its 1950 report.[5]

In view of legislative inaction on legislative redistricting, it seems unlikely that we will have such redistricting prior to the 1960 census unless strong public sentiment develops to demand it. In view of House Bill 400 and the decision in *Watts* v. *O'Connell*, it appears certain that the redistricting contained in the bill will remain law until 1962, perhaps longer if Kentucky does not gain nor lose a seat in Congress by the census of 1960. Enthusiastic Kentuckians may hope that Kentucky will regain the lost seat, and those interested in equal and proper representative may hope that by 1962 the requirements of contiguity, compactness and equality of population will be reenacted by the United States Congress.

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[4] 287 U.S. 1 (1933).
[5] *Report of the Constitution Review Commission*, 1950, p. 18.