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The Meaning of "One Subject" in the Kentucky Constitution

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This would place the employee in a position that the legislature did not intend.

When a financial institution loans money to individuals it must take every reasonable precaution to safeguard this investment, for the money loaned is that of the private citizen who had made deposits with the bank or has stock in the loan company In its efforts to protect said investments the lender ordinarily requires adequate security which will assure its repayment. A loan company that engages in the unsound practice of lending money without security should not be "bailed out" by being allowed to coerce payment by informing the debtor s employer of the indebtedness with the polite request attached "would appreciate anything that you can do for me."

While in the early law redress was given only for physical interference with life and property, there came later recognition of man's spiritual nature, of his feelings and his intellect. And "now the right to life has come to mean the right to enjoy life,— the right to be let alone." There have been tremendous strides made within the last fifty years to provide a remedy for those who have been injured by an unwarranted invasion upon their rights. As is customary there is always a period where there is no remedy for the wrong because the wrong must be incurred and recognized before a remedy can be provided for it.

It is the opinion of the writer that such a wrong exists where a creditor informs the debtor s employer of the debt, and that a remedy should be provided by allowing the debtor to have a cause of action for an invasion of his "right to be let alone." In the expressive language of Dean Pound:

> "To attempt to compress a developing doctrine within the conservative confines of prior concepts often stunts its natural growth."[46]

WILLIAM DEEP

THE MEANING OF "ONE SUBJECT" IN THE KENTUCKY CONSTITUTION

The present Constitution of Kentucky, adopted in 1891, like most state constitutions is so detailed as to render it incapable of continued effectiveness in our rapidly changing society without continual revision. Instead of laying down broad general principles, as does the Federal Constitution, to be implemented by the legislature and inter-

[46] 39 MICH. L. REV. 526, 535 (1941).

preted by the courts, Kentucky s constitution makers felt the interests of the people could best be served and protected if the basic document itself defined many of the governmental functions rather than leaving this essentially legislative task to the General Assembly

Realizing the need for constitutional revision the General Assembly in November, 1947, submitted for the voters approval a proposal calling for a constitutional convention. This proposal was defeated.[1] Unable to call a constitutional convention, and desirous of finding some method of revision, Governor Earle C. Clements, by Executive Order dated February 1, 1949, created the Constitution Review Commission. This was made a permanent commission by the General Assembly and charged with carrying on a "continuous program of study, review and re-examination of the Constitution of Kentucky "[2]

In its initial report to the General Assembly the Commission noted the methods by which the Constitution could be brought up to date, and concluded that the most effective would be through the amendment process. This method would be more desirable than calling a convention because it was less expensive, speedier, would enable the public to discuss each amendment rather than an entirely new constitution, and would permit the calling in of expert help in preparation of various sections rather than charging one group with the responsibility for creating a complete constitution.[3] Added to this, of course, was the fact that a proposal for calling a convention had just been defeated.

Inasmuch as section 256 of the Constitution limits the General Assembly to the submission of only two amendments to the voters at one time, the Commission recommended, and the General Assembly adopted, a proposal for amending that section to enable the submission of as many amendments to the public at one time as the General Assembly might deem desirable.[4] The Commission recognized the fact that similar amendments had been defeated in 1929 and 1937, but concluded, on the basis of the history of other amendments which were finally adopted after several submissions, that "perseverance eventually pays off and, once the people are educated to a problem, they can be depended on to solve it."[5]

The proposed amendment, however, was defeated at the polls in November, 1951. It would appear, therefore, that if the Constitution is to be effectively revised it will have to be accomplished within the

[1] As was a similar proposal submitted in 1931.
[2] KY. REV. STAT. sec. 447.180 (1950).
[3] Report of the Constitution Review Commission, 10 (1950).
[4] Acts 1950, c. 137.
[5] Report of the Constitution Review Commission, 10 (1950).

framework of section 256. Essentially, this section provides that not more than two amendments shall be voted upon at any one time; nor shall the same amendment, once rejected by the people, be resubmitted within five years; a separate vote must be taken on each; *and no amendment shall relate to more than one subject.* Since no more than two amendments may be submitted to the voters at one time, and these can be submitted only at two year intervals, if each amendment is limited to one section of the Constitution,[6] it is obvious that no effective revision could be accomplished except over a very long period of time. But does "one subject" mean that only one section of the Constitution can be amended in any one amendment? There are those who would so interpret it. Indeed, the General Assembly itself appears to have followed that view in the past, on the basis of the amendments it has proposed. It is the writer's view, however, that "one subject" should not be so narrowly limited.

Nor does it appear that the framers of the Constitution intended "one subject" to be so limited. It has been said, "The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it."[7] Accordingly, it would seem appropriate to quote from the Debates of the Kentucky Constitutional Convention of 1890—the group which framed our present Constitution—in order to show that "one subject" was adopted precisely because it was thought to have a broader meaning than, for instance, "one proposition." This interpretation would enable the General Assembly to amend several sections of the Constitution in one amendment. Mr. Mackoy, delegate from Covington, speaking on the proposed substitution of the word "subject" for "proposition" said:

> "Then I move to strike out and no such amendment shall contain more than one proposition. As the report came in originally from the Committee, the word subject was used instead of proposition. A subject may embrace several propositions. It may be necessary to remould an entire article. It may be necessary to submit to the people a subject which embraces several distinct propositions, each of which is necessary to the other."
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> "Therefore, we ought not to be limited to this word proposition. It would put it in the power of a Judge, who might be hostile, to give a very narrow construction to it. We would do better to strike out that, and leave it to be determined by the General

[6] The Kentucky Constitution contains 263 sections.
[7] 11 AM. JUR. 674 (1937).
[8] The so-called device by which amendments are allowed to originate in the General Assembly, rather than, as in the Constitution of 1850, leaving the only method of revision in a constitutional convention.

> Assembly and the people. The open clause,[8] more than anything else, is that which is demanded by the people."[9]

Mr. Mackoy continues:

> "The word subject' may underlie a number of sentences and a number of propositions. If, for instance, we should want to remodel our Court of Appeals hereafter, it would require an entire article to do. (sic) *and it would be proper, if the word subject' were used, to form an article with reference to the Court of Appeals.* That word has been used properly, and the sense is well understood in our own Constitution where it says: 'No law enacted by the General Assembly shall contain more than one subject, and that expressed in the title. " (Writer s italics.)
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> "The word subject, in that connection, has been defined by the Court of Appeals as embracing every thing which might pertain to the particular subject. If an act were passed to amend the charter of the city of Louisville, everything pertaining to the government of that city, or the putting in operation of details of the city government, would properly be embraced under the word subject. The details of city government would be embraced in many propositions; but the government of the city of Louisville is one subject, so that anything that relates to that would be covered by an act, entitled An act to amend the charter of the city of Louisville. "[10]

Mr. McDermott, delegate from Louisville, speaking on the same issue, said:

> "That (one proposition) would put it in the power of a majority of the Court of Appeals to absolutely prevent amendments. You will find that you can hardly correct any part of the Constitution by a single amendment.
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> "I do not want the open clause made too easy· that would be a great mistake. The Constitution should not be changed as easily as a statute; but do not so hamper yourselves that the Court of Appeals will be able to destroy any amendment by deciding that it contains two propositions. That is a dangerous power."[11]

It is apparent from the above quoted remarks of the delegates that the framers of Kentucky s Constitution intended that one amendment could include many propositions so long as it pertained to only one subject, and that the phrase "one subject" was to be taken in a broad sense.

The Constitution Review Commission has taken the further view, on the basis of the debates, "that a subject' embraced by an amendment could, if desired, be an entire portion of the Constitution that concerned an integrated part of the State Government, which ordinarily, if separately numbered articles had been used in framing the Constitution, would have been covered by one article with its own separately numbered sections thereunder, or even by the most limited

[9] 4 Debates, Constitutional Convention, 5238 (1890).
[10] *Id.* at 5250.
[11] *Id.* at 5254.

construction, be a general subdivision set out by a separate title within an article, but embracing a number of separately numbered sections."[12] As Mr. Mackoy said, in his speech quoted above, if the word "subject" were used it would be proper to form an entire article with reference to the Court of Appeals.

Although the present Constitution does not contain separately numbered articles, still it has divisions according to subject matter, with titles and sometimes sub-titles, followed by a group of sections. An example of this is involved in Sections 69 to 108. This group of sections is titled "The Executive Department," and has two groups of sections thereunder, each headed by a sub-title. Practically speaking, the only real difference between this organization in our present Constitution and that used in the one which preceded it, viz., the Constitution of 1850, is that the latter used specific articles with separately numbered sections thereunder, while the present Constitution is numbered in consecutive sections with titles and sub-titles much the same as they would be if the framers had decided to use the "article system" again.[13]

On the basis of the foregoing discussion it becomes quite obvious that the framers of our present Constitution intended the phrase "one subject" to include everything pertaining to one general subject such as is found in one of the broad divisions of our present Constitution, or which had been embraced in one article in the Constitution of 1850.

The Constitution Review Commission has concluded, therefore, that one amendment could revise all of the Constitution covering the subject "The Executive Department" as found in sections 69 to 108 since they all relate to one subject. They add, however, in a spirit of caution, that since the two sub-titles under this section were framed as separate articles in the 1850 Constitution, it might be wise to include in any proposed amendment only one of these sub-sections. Accordingly, they recommended an amendment covering only the subdivision "Officers for the State at Large" rather than the entire division entitled "The Executive Department." At the same time the report emphasizes that it is the belief of the members of the Commission that the entire division could be revised in one amendment.[14] It is the writer's belief also that one amendment could be framed with reference to the entire division entitled "The Executive Department."

The meaning of "one subject" has never been interpreted directly by the Court of Appeals. From a consideration of dicta in several cases, however, it would appear reasonable to expect that the court

[12] Report of the Constitution Review Commission, 26 (1952).
[13] *Ibid*, this is an excellent and more detailed discussion.
[14] *Id.* at 29 *et. seq.*

will give it the broad interpretation (and that which the framers apparently intended) when it is called upon for such interpretation. In these opinions the Court also allayed the fears of the framers, quoted above, that a narrow interpretation by the court would leave the matter of constitutional revision entirely in its hands.

In *Hatcher* v *Meredith*[15] the Attorney General filed an action assailing Chapter 171 of the Acts of 1942, which submitted to the electorate a proposal to amend section 246 of the Constitution by (1) removing the salary limitation on public officials and providing for regulation of the salaries of those officials by the General Assembly, and (2) providing that such regulations should affect the compensation of those in office, or elected to office at the time of the amendment, but that thereafter the compensation of those officials should not be increased or decreased during their terms in office. It was contended that two amendments were joined as one, and that they related to different subjects, in violation of section 256. In holding the proposal constitutional the court said that if each provision of a proposed amendment is an integral part of a general plan the amendment is not plural.

In the recent opinion in *Funk* v *Fielder*,[16] a test case involving the proposed amendment (mentioned above) of section 256, which proposal was later defeated at the polls, the Court said, "It is generally held that a single amendment may cover several propositions if they are not distinct or essentially unrelated. The demand of the Constitution that an amendment shall relate to but one subject is met if several propositions in it are congruous and germane to a general object or purpose, and are all legitimately connected or related to one subject; "

It should be noted that the Court of Appeals and the Constitution Review Commission have cited precedents[17] from other jurisdictions and have apparently proceeded upon the assumption that other states in addition to Kentucky have phrases in their constitutions limiting the contents of an amendment to matters relating to one subject. A study of the constitutions of all the states, however, reveals that that assumption is erroneous. Kentucky s Constitution is the only one containing such a limitation.[18] Twenty-nine of the constitutions, in-

[15] 295 Ky. 194, 173 S.W 2d 665 (1943).

[16] 243 S.W 2d 474 (Ky. 1951).

[17] For example, in the Fielder case, it was stated "an amendment shall relate to *one subject* if several propositions in it are congruous and germane to a general object or purpose, and all are legitimately connected or related to one subject; or, as stated in Kerby v. Luhrs, 44 Ariz. 208, — 36 P. 2d 549, 554, (1934), 'if, logically speaking, they should stand or fall as a whole, then there is but *one amendment* submitted. (Writer s italics).

[18] The only constitution containing any similar limitation is the new Missouri Constitution. It provides, in Article XII, Section 2 " No such proposed amend-

cluding Kentucky's, place a limitation on the manner of submitting and framing proposed amendments, to the effect that, "If two or more amendments are proposed, they shall be submitted in such a manner that the electors shall vote for or against each of them separately"[19] The reason given for this limitation is to prevent "logrolling," or including one proposition which the people dislike with one in which they are very much interested, thereby forcing them to accept the bad proposal in order to get the good one. Thus in other jurisdictions the question to be decided whenever the constitutionality of a proposed amendment is tested is: Have two amendments been joined as one? Whereas, in Kentucky it must be decided first, as in those other jurisdictions, that there is in reality only one amendment proposed, then there is this further question which must be determined: Does this one amendment relate to more than one subject?

It is obvious of course that these questions are very closely related. Although the question as to the meaning of "one subject" is one which must be determined by the Kentucky Court of Appeals without any supporting cases directly in point from other jurisdictions, it would seem that in interpreting "one subject," the court should adopt the same test as used by other jurisdictions in determining whether two or more amendments have been proposed as one. Actually this is the line of reasoning pursued by the court in the dicta from the two cases above quoted. They must first decide that there has been only one amendment submitted. The next question, viz., the meaning of "one subject," will, in practically all cases, be decided at the same time. If a successful test for duplicity is contingent upon a finding that all matters are germane and essentially related to one *general* subject then the further question as to whether they comprise "one subject" has been answered too, unless it be held that that term has a much narrower meaning. Such a holding, however, would be contrary to the expressed intentions of the framers of the Constitution.

In view of the dicta in the two Kentucky cases referred to, it would not be unreasonable to assume that Kentucky's Constitution can be revised and modernized in a relatively short time through the amenda-

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ment shall contain more than one amended and revised article of this Constitution, or one new article which shall not contain more than one subject and matters properly connected therewith."

[19] Article 20, Section 2 of Idaho's Constitution. The other twenty-eight constitutions having this limitation in similar language are: Arizona, Arkansas, California, Colorado, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, West Virginia, Washington, Wisconsin, and Wyoming. The remaining state constitutions have no limitations in this respect.

tory process, if the General Assembly is permitted to revise all the sections of the Constitution relating to one general subject, in any one amendment. As the Court of Appeals stated in its opinion in *Funk* v *Fielder*, the question as to whether an amendment related to only one subject "is a matter for the General Assembly to determine in the first instance when it proposes the amendment," and, "being a political matter, or a question which pertains to the polity of government with which the legislative body is vested, the courts should review the action of the General Assembly with a deep sense of their own constitutional limitations."[20]

As recommended by the Constitution Review Commission[21] the General Assembly, at its present session, adopted as a proposed amendment to be submitted to the people, one dealing with the subject "Officers for the State at Large."[22] It is hoped that a test case arises soon, in regard to this proposed amendment, which will give the Court of Appeals a chance to decide directly the meaning of "one subject." It is also to be hoped that the court will, as it has intimated it would, give it the broad interpretation.

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[20] *Supra*, note 16 at 478, 475.
[21] Report of the Constitution Review Commission, 31 (1952).
[22] Acts of 1952 General Assembly, Senate Bill 170.