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LEGISLATIVE RESEARCH AND PLANNING IN KENTUCKY

GLADYS M. KAMMERER*

Kentucky made a fresh start in 1948 in attempting to meet the problem of legislative research and planning. The old Legislative Council was abolished, to be replaced by a wholly new Legislative Research Commission. The latter agency has the opportunity now to build a new tradition and effectiveness for a field of endeavor which in the past was starved, side-stepped and neglected by the legislature, the very branch it was designed to help achieve a new efficiency

Kentucky's Legislative Council, in existence from 1936 to 1948, suffered a steady decline after its first two or three years. Established during the reformist wave of the nineteen thirties, its potential value and role were but dimly understood by the majority of Kentucky's legislators. Merely a good idea transplanted from a state where it was on the road to unqualified success, it never took real root in the soil of Kentucky's legislative process. By 1947 it had reached the nadir of ineffectuality

Fifteen states had established legislative councils or legislative research committees by 1946.¹ These states with the dates of establishment of their councils or research committees are Kansas, 1933, Kentucky and Virginia, 1936, Connecticut, Illinois, Maryland, and Nebraska, 1937, Pennsylvania, 1939, Maine, 1940, California, 1941, Missouri, 1943, and Alabama, Colorado, Indiana, and North Dakota, 1945. Differing in their organization, size, scope of their powers, and the budget available for research, these councils or committees run the gamut of effectiveness from Kentucky's at the bottom of the scale to the respected position of that of Kansas, the model.

A short resume of the development of legislative councils among the states will provide a basis of comparison for the

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¹ *Report of Committee on Legislative Processes and Procedures, OUR STATE LEGISLATURES 11* (1946).

Kentucky Council with those of other states. A study of the evolution of these councils will yield a few benchmarks by which to measure the Kentucky Council's shortcomings, and to evaluate the new Legislative Research Commission.

THE DEVELOPMENT OF THE LEGISLATIVE COUNCIL IDEA

The short biennial session characteristic of state legislatures, imposed by many state constitutions, subjected the legislative process to severe pressures during the thirties. Not a year passed during the depression when state legislatures did not face acute problems occasioned by expanding relief rolls, rising fiscal burdens, dwindling revenues, citizen demands for new governmental services, new administrative requirements to meet federal grants-in-aid, as under the social security system, and the regulation of additional phases of economic activity. The usual confusion and duplication of bills during the first half of the session matched by a log jam of bills and the pressures of lobbyists at the end became more intense. Legislative rules and organization were antiquated, geared to a more leisurely tempo of civilization. There was no inherent capacity or machinery for legislative planning. When legislators confronted critical problems without study or plans for their solution, as most of them did during the thirties, the people looked to the governor for the development of a legislative program.

Those who sensed the eclipse of the legislative branch through the compulsion upon the chief executive to lead the state legislature became alarmed at the implications for democracy in this trend. The only solution seemed to be to provide the legislature with modern tools of research, in the form of a well-qualified non-political staff and a legislative committee or council which would meet during the interim between sessions to plan a definite legislative program. Only by equipping the legislature with the machinery to plan its own program could the people's representatives compete in part with expanding leadership of the executive branch. Of course, reforms in organization and procedure were also essential if state legislatures were to conform to modern demands upon them.

Although the Model State Constitution of the National Municipal League provided for a legislative council as early as 1921, the first states to seize upon this idea were Kansas and Michigan in 1933. The Kansas council obtained a grant of \$15,000 per year for research from the Spelman Fund and a total of \$50,000 for research before the Kansas legislature came to appreciate the value of research, and to appropriate funds to finance it. By 1939 the Kansas legislature appropriated \$20,000 annually for research, an amount which has since been increased. In addition, other appropriations have been made to cover special studies. In the meantime, the Michigan legislative council foundered on the rocks of political dissension between the executive and legislative branches and was abolished in 1939.³ Other states, however, learning of the marked success of the council in Kansas, gradually one after another adopted the idea. Among the councils, in addition to that of Kansas, which have attracted attention through their activity in comprehensive legislative research, are those of Illinois, Maryland, and Nebraska. Promising foundations have been laid in Alabama and Missouri.⁴

Effective legislative planning by a legislative council is postulated upon the existence of a research agency attached directly to the council. Legislators themselves are not trained for impartial fact-finding and analysis, nor have they the time to devote to the task. A full-time permanent director of research, and several full-time assistants, all thoroughly trained in the methods of social science research, including statistical analysis, and with adequate stenographic help, are required to staff such an agency. Publication of legislative council reports is essential.

For competent research services the legislature must, of course, provide an adequate budget. An examination of the 1945 annual budgets for legislative councils indicates a range from \$60,000 in Missouri down to \$3,750 in Colorado. The budgets are as follows

Better Laws through Research (1945) 34 NAT. MUNIC. REV. 544.

³ Johnson, *A Review of Legislative Councils* (1940) 8 KAN. CITY L. REV. 65.

⁴ Farmer, *Legislative Planning and Research in Alabama* (1947) 9 JOUR. POLITICS 429.

⁵ OUR STATE LEGISLATURES 28 (1946).

Alabama	\$27,000	Indiana	\$36,000	Missouri	\$60,000
California	40,000	Kansas ^a	35,500	Nebraska	15,000
Colorado	3,750	Kentucky	11,000 ^b	North Dakota	12,500
Connecticut	12,000	Maine	5,000	Pennsylvania	25,000
Illinois	25,000	Maryland	40,000	Virginia	15,000

The Illinois legislative council, which originally was the recipient of a Spelman grant for research, received during its second year of existence \$50,000 from the state to finance a full-time permanent research staff under a qualified director for its second biennium. Within the first year legislators began to avail themselves of the council's facilities for sustained study by calling upon it to make various studies.⁸ The council itself gave direction to the research staff and acted as a buffer to protect it from political pressures.

The initial success of the Kansas council was in no small part due to the ability and vision of service of the director of research, Dr. Frederick H. Guild. He had been a professor of political science for a decade at the University of Kansas and had gained some experience in that capacity in legislative reference work. The legislators did not realize what services the legislative council should perform for them nor did they fully appreciate the value of research. Guild apparently did the most effective teaching of his career in winning recognition of the need for a thorough search for the facts before proposal or enactment of major bills. By 1945, 70 per cent of the legislative program prepared by the council for the session of that year had been enacted. Only two important council bills were not introduced by the legislative committees to which the council referred them and only four failed final passage in that session.⁹

Success of the legislative council, moreover, depends upon regular meetings during the biennium between sessions to consider proposals for legislation, to refer particular problems to the research staff, and to prepare a program. Continuity of study and planning is essential to determination of state needs. Thus by the time a regular session convenes, studies have been compiled on the proposals turned over to the research staff, and

^a For a biennium.

Kneier, *Illinois Council Completes First Year (1939)* 28 NAT. MUNIC. REV. 640.

^b *Ibid.*

^c *Supra* note 2.

the council is prepared to take a stand for or against various propositions or merely to present bills with the facts relevant to them without recommendation. The Kansas, Connecticut, Illinois, Alabama, Maine, and Missouri councils all meet quarterly, the Maryland council usually twice monthly¹⁰ Dr. Guild has said

Part of the Council accomplishment consists in the results of its studies passed on informally to the legislature itself, entirely apart from any published reports or formal recommendations. In addition, the council members, as legislators, do continue to have a sense of their representative function and discuss subjects with constituents in the period between sessions in a way that administrative officials might not have the opportunity to do.

Opportunity for information and consideration long before the session convenes is an important element in the work of the legislative councils in that development of a program for the legislature depends in part upon public reaction to the importance of the subjects and upon public understanding of the fundamentals involved. The chief value in this legislative council procedure lies in giving incoming legislators, and the constituency behind them, a fairly good impression of the major problems which will confront the legislature and carefully prepared material as a sound basis upon which conclusions can be reached.¹¹

Maryland's council which has met frequently, in practice twice monthly rather than quarterly as required by law, has benefitted from the regularity of attendance and serious interest of its members.¹² A large number of executive and judicial department members has attended various meetings, for the council was empowered to receive recommendations and suggestions from any state and local government officers.¹³ Thus council meetings and hearings have provided an arena in which major questions of public policy may be threshed out before bills are actually introduced on the floor of the legislature.

ORGANIZATION OF THE COUNCIL IN KENTUCKY

The winds of reform blew through Kentucky's legislative halls as elsewhere in the thirties. Kentucky was ready and eager

¹⁰ OUR STATE LEGISLATURES 28 (1946)

¹¹ Guild, *Legislative Councils* (1943) 36 LAW LIB. JOUR. 170.

¹² Bone, *Maryland's Legislative Council in Action* (1942) 31 NAT. MUNIC. REV. 146.

¹³ Bone, *A Legislative Council for Maryland* (1939) 28 NAT. MUNIC. REV. 428.

to adopt constructive ideas for the improvement of its governmental machinery. Reorganization of the state government was effected insofar as possible under the constitution of 1891, and the legislature was not neglected in that movement. The creation of the Legislative Council was an integral part of the Reorganization Act of 1936, enacted during the administration of Governor A. B. Chandler.

The unique feature of the Kentucky Legislative Council was the representation on it accorded to the executive branch. The original law provided for a body of fifteen members, consisting of five senators, five representatives, and five members from the executive branch.¹⁴ The lieutenant governor named the five senators, the speaker of the house the five representatives, and the governor the five administrative officers. In addition, the governor served as an honorary member and the lieutenant governor and speaker *ex officio*, the lieutenant governor acting as chairman, the speaker vice-chairman. The majority party in each house was accorded a majority of the representation from its own branch, but in no event was the majority party to receive more than three-fifths of the Council members from each house in which it had a majority. Meetings were to be held at least quarterly but could not exceed twenty days in any one calendar year. The chairman was empowered to call meetings of the Council, unless the members fixed them by resolution. Special meetings could be convened by written request of any three members if the Council had not already met its allotted twenty days during the year.¹⁵ In practice, quarterly meetings were soon dispensed with, and the Council met sporadically on the call of the chairman. The law fixed ten dollars as the per diem compensation for Council attendance by members.

The original statute gave sufficient authority to employ an adequate research staff. Specifically, the Council could employ a research director and assistants and hire the services of research agencies to help in the study and formulation of a legislative program or to study any matters within the jurisdiction of the legislative branch.¹⁶ But this statute carried with it no

¹⁴ KY. STAT. (Carroll, 1936) secs. 4618-138, 139.

¹⁵ *Ibid.*, sec. 4618-140.

¹⁶ Myers, *Kentucky's Legislative Council in Action* (1940) 13 STATE GOVERNMENT 85.

appropriation, and it was quite another matter to extract the funds from the legislature to implement the law. Therefore, at first the power to hire a professionally trained competent research staff remained latent.

Political changes in the state have induced changes in the organization of the Council. The first change, a minor one, occurred in 1938, when, to reward some of the party faithful, the speaker of the house promised eight Council positions to friends instead of the five provided by law. Revision of the Council was forced through in order that he might fulfil his promises.¹⁷ Thus both senate and house memberships were raised to eight, but the number of executive posts on the Council remained fixed at five. An amusing incident occurred in the legislature when members suddenly were reminded of the fact that three-fifths of eight would create strange results, and thus a further amendment was hastily introduced into the measure to allow the majority party in each house five of the eight seats.

The most sweeping change, however, came as a result of the gubernatorial election of 1943. When the Republican Party swept into the state executive offices, the Democrats in the General Assembly, who still retained their traditional majority in each house, decided to remove executive branch representation from the Council. Accordingly House Bill 292 was introduced by Representative Claude Hammons to change the size of the Council from twenty-three to eight from each house plus the lieutenant governor and speaker serving *ex officio*s.¹⁸ This became the new basic statute for the Council.¹⁹ By this stroke the legislative majority also cut off from the Council its last remaining research facilities, namely the assistance various department heads could offer in making studies of state government.

Not only did the 1944 statute cut off research facilities, but it also robbed the Council of any continuity of consideration of state needs and made it impossible to plan a legislative program by changing the time of meetings. Instead of meeting at least

¹⁷ Ky Acts 1938, c. 2, p. 999. This measure was passed as an emergency law during the first special session of 1938. It provided also that the terms of those Council members not reelected were to end automatically on November 15 succeeding the general election.

¹⁸ 2 KY. HOUSE JOUR. (1944) 1346.

¹⁹ KY. R. S. (1946) sec. 7.020.

quarterly, the new Legislative Council was required to meet only on the second Monday in September preceding a regular session which is also immediately prior to a general election.²⁰ It could remain in session for no more than sixty days to prepare a program. Had the Council met as the law literally stipulated, the effect would have been to place legislative planning in the hands of "lame ducks," already either defeated in the primary or retired by their own desire. For example, in September, 1947, all but one of the eight house members on the Council were not to be members of the 1948 General Assembly. Even though special sessions of the Council might be called between regular sessions of a legislature, the Council was forbidden to sit more than sixty days in a biennium. Council recommendations were supposed to be ready thirty days before the opening of a regular session of the General Assembly.

In order that action by the Council might at least reflect a popular mandate, regular meetings had to be postponed until after the November election. That recess gave the presiding officers an opportunity to select new Council members. But by delaying meetings until mid-November the Council's *raison d'être* was rendered impossible of fulfilment. Six weeks did not allow sufficient time to undertake broad effective consideration of state problems for legislative planning.

Therefore, by striking at the executive branch to which it was politically hostile the legislature rendered impotent its own arm for maximizing its power to do independent policy planning. The Council was left without resources for research and was condemned to meet only just before a new session. The net effect was to leave the legislature even more dependent than before upon the executive branch for leadership paradoxically at the very time the majority party in the General Assembly was attempting to frustrate the executive. Had the legislative majority deliberately set out to build up executive power over the legislature, it could have devised no more effective step.

²⁰ Ky. R. S. (1946) sec. 7.040 (proposed by Representative J. Lee Moore as an amendment to H. B. 292.) 3 KY. HOUSE JOUR. (1944) 2918.

RESEARCH FACILITIES

The experience of Kansas, Illinois, Maryland, and the few other states which have established effective legislative councils underlines the essentiality of a competent research staff to the practical success of a legislative council. Time, training in the search for and analysis of facts, as well as the cultivation of habits of objectivity in thinking and in marshalling evidence—all are lacking insofar as the majority of legislators are concerned. Indeed, legislators are not elected for any such qualities as constitute research ability but rather as advocates of particular programs and policies or as spokesmen for certain shades of opinion. If they are to have facts to provide a frame of reference within which to consider their proposals, they must turn to competent persons trained in modern social science research methods. It was not, in fact, until Kansas had obtained funds for a full-time research staff for its legislative council that the council began to attract the attention of other states by successful operation. The Bureau of Government Research of the University of Kansas has commented on this point

While the Council was authorized to employ such assistants or engage the services of such research agencies as its appropriations would permit, the original plan did not provide for a permanent research staff and the appropriations for the first biennium were not sufficient to permit intensive research services. If it had been necessary for the Council to operate within the original limits it is doubtful whether the plan would have met with sufficient legislative approval to have been continued.²¹

Kentucky was never able to employ a permanent full-time director, for the legislature did not provide the funds to make such a position attractive. The staff was an ephemeral group with divided interests. The first director who had the largest staff, eight persons, at any time available for research was a practicing attorney who retained his position as county attorney while directing Council research. Three other directors who followed him soon left because of inadequate financing and lack of assistants.²² For a time the Council leaned on the Department

²¹ *The Kansas Legislative Council, Your Government* (1947) BULL. BUREAU OF GOVERNMENT RESEARCH, UNIVERSITY OF KANSAS, v. 2, no. 5.

²² Myers, *supra* note 15.

of Revenue for studies until that source was eliminated by the divorce of executive officers from the Council in 1944.

Since 1944 the Legislative Council has been floundering without any staff. In 1945 it employed an attorney as counsel to assist in conducting the hearings it held before the 1946 session opened, but these hearings, budgetary in nature with the attorney assisting in questioning administrative officers, were not in any way related to research, as that term is understood. In 1947 the Council had nothing in the way of facilities. Even its files from previous years were in chaotic incomplete condition. Symbolic of its inactivity and low estate, it met in the Lieutenant Governor's chamber on November 17, 1947, amid the dust and dirt accumulated since the close of the 1946 session. Not even the janitors in the State Capitol respected it sufficiently to air and clean its meeting room.

The 1944 statute reorganizing the Council provided that it might request special studies to be made by any state officers or departments including the state university and state colleges "within the limits of its appropriation."²³ This provision was meaningless for the most part inasmuch as the university had no staff members it could afford to detail for extended periods to make comprehensive reports to the Council. In fact, the state university has been operating under a stringent budget and has needed every available faculty member to meet the mounting enrollment since 1944. There is no evidence that the Council requested any studies to be made by the university since 1944.

The legislature's attitude toward appropriations for legislative research was niggardly and unimaginative. For the first biennium it appropriated only \$5,000 for this purpose. But various members of the Chandler administration turned to the Spelman Fund, which gave Kentucky over \$16,000 for legislative research in 1937-1938. During this period the Spelman Fund had been active in financing the establishment of legislative research in other states. The foundation made the grant to Kentucky on the premise that once the value of research was realized by the legislature, adequate appropriations would be made to support it. That proved to be a valid premise in Kansas and Illinois, but not in Kentucky

²³ Ky. R. S. (1946) sec. 7.060.

The legislature conceived of the Legislative Council staff, when the latter existed, composed as it was more largely of attorneys than of trained social scientists, as a bill-drafting agency.²⁴ When legislators turned to the Council, it was to request immediate short-term service in the form of bill-drafting rather than to propose problems for study and investigation as a preliminary to the formulation of legislative proposals. Thus the legislature failed to understand the broader purposes in employing a research staff, to say nothing of failing to comprehend the role of the Council itself.

Nevertheless, the Council in part with the help of the Department of Revenue and of the University of Kentucky, provided a few studies during these early years which became the basis for legislative action. For example, it published a study in 1940 on chain store regulation which was followed by the legislature in acting on chain store license fees.²⁵ The 1940 General Assembly also followed Council recommendations in the enactment of an industrial peace officers' act, reenactment of the Teachers' Retirement Act, the creation of a farm tenancy investigating committee and of an administrative agency in the state department of agriculture to encourage cooperative marketing of agricultural products.²⁶ In addition, the legislature proposed an amendment to the state constitution for distribution of 10 per cent of the public school fund on a basis other than that of the child census, another recommendation of the Council.

Failing to follow the original statutory requirement of quarterly meetings, the Council met infrequently and sporadically and found it difficult to plan a legislative program because of lack of continuity of consideration. The reason for this was that during the two administrations when the Democratic Party controlled both the legislative and executive branches, the legislature looked to the governor to develop a legislative program. Thus it was quite natural that during the first eight years the administrative departments did most of the research back of the legislative program. The presence of executive department heads

²⁴ The Council employed two attorneys in addition to its director, also an attorney, in 1937-1938. It also employed one person trained in political science and another in economics.

²⁵ Myers, *supra* note 15.

²⁶ *Ibid.*

on the Legislative Council up to 1944 facilitated utilization of departmental staffs by the Council for special studies also. But without departmental aid since 1944, condemned to wait until the September prior to a legislative session, the Council was impotent to study problems over any extended period of time and was compelled to divert its energies into channels other than legislative planning. Today several recent studies of state government are gathering dust in the state library in Frankfort untouched by the state legislators. The Post-War Planning Council's report and the reports on Kentucky schools and institutions of higher education, surveyed by Griffenhagen and Associates on the order of Governor Willis, point up significant problems in state government. But the Legislative Council has not met long enough to give cognizance to problems raised by these reports or to any other problems. The majority of the legislators need a research staff to prepare a digest of these reports in brief comprehensible form.

THE STRUGGLE FOR FUNDS

Some few members of the General Assembly perceived the necessity of building an effective research agency for the Council which was implicit in the excision of the executive members from the Council. It was clear that the Council must have its own research staff and must itself meet at regular intervals if it were ever to formulate a comprehensive legislative program. To that end a struggle for appropriations was launched in the 1944 session and continued in the 1946 session.

In the 1944 session of the General Assembly fifty-two Democrats and two Republicans introduced House Bill 241, which provided for two Legislative Research Committees, one in each house. Meetings of the committees were to begin in April at the close of each session and continue monthly throughout the biennium. Each committee was to consist of eight members, the house contingent was to be appointed by the speaker and that of the senate by the president pro tem. These two appointing officers were to act as chairmen of their respective committees. Although each committee could individually direct that research studies be made and report its findings and drafts of bills,

House Bill 241 proposed that the research staff be employed jointly under the direction of a joint subcommittee. The speaker, three house members appointed by him, the president pro tem of the senate, and three senators appointed by him were to constitute the joint subcommittee to coordinate activities and use of personnel by the committees. House Bill 241 provided for the employment of a "skilled and professional" staff which would have been financed by an appropriation of \$100,000 for the biennium and the remainder of fiscal year 1943-1944.

House Bill 241 was ultimately defeated in the house. In the course of the debate Speaker Waterfield vacated the chair to offer a substitute measure which changed the name of the Legislative Research Committees to Commissions and named numerous fields specifically within the scope of research and investigation by the Commissions. By a relatively close vote, fifty-one to forty-seven, the bill was defeated and recommitted to the Ways and Means Committee on February 18, 1944.²⁷

The General Assembly instead appropriated an item of \$11,000 to continue the Legislative Council. This item represented a sum barely sufficient to cover the per diem expenses incurred, particularly if the Council met for the statutory limit of sixty days. Thus the legislature foreclosed all possibility for research.

Representatives F. O. Baker and Jerry F. Howell renewed the campaign for legislative research by introducing in the 1946 General Assembly, House Bill 202, to create a Legislative Research Committee of eight members from each house, appointed by the speaker and president pro tem of the senate.²⁸ The latter officers were also to serve on the committee. The committee was to meet monthly in the interim between regular sessions. The 1946 bill provided for an appropriation of \$25,000 to finance research for the remainder of the 1945-1946 fiscal year. One of the co-authors, Representative Howell, moved several significant amendments from the floor when House Bill 202 came up for debate.²⁹ His amendments reduced the size of the committee to three members from each house, who would elect their own

²⁷ 2 KY. HOUSE JOUR. (1944) 1545, 1650.

²⁸ 1 KY. HOUSE JOUR. (1946) 879.

²⁹ 2 KY. HOUSE JOUR. (1946) 1820.

chairman. House members were to be selected by their respective party caucuses instead of by the presiding officers, the majority party was to be entitled to two members and the minority party to one from each house. Caucus selection was to be binding on the presiding officers of the two houses. The name of the bill was changed to the Harry Lee Waterfield Bill. This time the bill passed the house only to meet defeat by being tabled in the senate.³⁰

Having lost the fight for his bill, the speaker transferred the struggle to the appropriations bills and fought for an appropriation of \$100,000 for legislative research for the existing Legislative Council. House Bill 124 passed the house with this item intact,³¹ but the item for legislative research met defeat in the senate, where it was deleted by committee action before the bill was reported out.³² The senate remained adamant in conference and refused to recede from its position against any appropriation for research by the Legislative Council.

Thus the Legislative Council found itself in September, 1947, without any funds for 1947 meetings as a result of the failure to appropriate the \$100,000 sought for legislative research. The General Assembly had failed to insert a smaller amount in the appropriation act to substitute for the deleted item. The members of the Legislative Council, when they met briefly on September 8, 1947, asserted that the omission had been an oversight by the General Assembly, an interpretation which was supported by an opinion of the Attorney General following their meeting. Thus the last previous amount appropriated, \$11,000 in 1944, could be held legally available to the Council in 1947. A number of persons close to the legislature disagree with the opinion that failure to appropriate was an oversight but rather believe that it was a deliberate omission. Nonetheless, Kentucky practice does not permit failure to appropriate to be utilized to abolish a statutory agency.

The political tension in Kentucky in 1944 and 1946 precluded any chance for success for the bills for legislative research. Sharp lines had been drawn as early as 1944 for the 1947

³⁰ 3 KY. SENATE JOUR. (1936) 3053.

³¹ 2 KY HOUSE JOUR. (1946) 1749.

³² 2 KY. SENATE JOUR. (1946) 2526.

Democratic gubernatorial primary, for which the speaker was already clearly in the running. His principal legislative following was in the house. In contrast, the followers of his chief rival, especially strong in the senate where his opponent had been leader, were opposed to what they deemed to be a device to enable the speaker to enhance his political reputation and to provide him with political ammunition through a ready-made research staff under his control. It was unfortunate that his name was incorporated in the 1946 bill, although an examination of attitudes in the 1946 legislature leads the student of Kentucky politics to conclude that it would probably have been defeated in any event, for political factors dominated the decision in both houses.

THE ROLE OF THE COUNCIL IN THEORY AND PRACTICE

Three functions were outlined for the Legislative Council in the 1936 statute which created it. They were (1) preparation of a legislative program to present to the General Assembly based upon collection of data respecting the government and general welfare of the state, examination of previously enacted statutes and recommendations of amendments, and study of important issues of public policy and questions of statewide interest, (2) oversight of administration through consideration of the reports of the Auditor of Public Accounts in order to report to the General Assembly what could be learned respecting the handling of public funds by state administrative agencies, and (3) promotion of interstate cooperation through encouragement and arrangement of conferences with officials of other states and other units of government as well as encouragement of the state's participation in the work of the Council of State Governments.

Therefore, upon the Legislative Council devolved the responsibility for developing a positive leadership for the legislature. This it was to do in the field of policy formulation in devising a legislative program to lay before the General Assembly each biennium. Likewise the law made it responsible for fostering interstate cooperation, another area requiring positive leadership. In addition, it was to act as a means of effectuating ad-

administrative responsibility by strengthening legislative control over administration through a study of the Auditor's reports.

But without a full-time research staff or regularity of Council meetings, the Legislative Council was forced to emphasize its role of checking the executive branch, at the expense of neglecting its responsibilities for positive leadership in the field of legislative policy and interstate cooperation. More and more it defaulted on policy formulation until in 1945 it actually usurped the function of the appropriations committees by holding extensive, full-fledged budget hearings lasting over a period of a month. The program it submitted to the 1946 legislature was essentially a fiscal program recommending various items of expenditure to the legislature.³³ This program was unsupported by evidence other than that obtained through adversary procedure in the hearings, and was not preceded or followed by research. Various department heads and administrators had appeared at the hearings as advocates for their estimates and pleaders of causes.

The role of "watchdog" was especially suited to the political complexion of the legislature at the time because of its opposition to the governor and executive officers. No such intensive scrutiny of the executive budget had prevailed when party harmony characterized relations between the legislative and executive branches. It is true that the Council had reduced Governor Johnson's budget in 1940, but the scope and character of the Council budget hearings of 1945 were unparalleled. Nevertheless no useful purpose seems to have been served by duplicating legislative examination of the budget. Every legislative body has standing appropriations committees in each house to make the budgetary investigation. If those committees are competent to perform their duties, they should be permitted to do so without invasion into their field by a legislative council. Further, the senate appropriations committee differed in certain significant respects in the action it took on appropriations urged by the Legislative Council and the House.

The General Assembly opened the 1948 session without benefit of any program of the Legislative Council, budgetary or

³³ *Report of the Legislative Council to the Regular Session of the General Assembly, 1946* (mimeographed).

otherwise. When the Council met on September 8, 1947, for its regular statutory meeting, it faced the fact that seven of the eight house members were "lame ducks," either by virtue of voluntary retirement or defeat in the August primary. Therefore, it immediately adjourned until November 17, by which time the election clarified the new membership of the house and the speaker was able to appoint persons elected to the 1948 General Assembly. When the Council met in November, the only item on the agenda was the selection of a representative to the convention of the Council of State Governments. It adjourned within less than one hour of convening to meet again at the call of the new lieutenant governor, chairman of the Council, in the event Governor Clements desired to use it as a "sounding board" for his own program. The Governor did not choose to make this use of the Council, and no call was issued. It had, indeed, plumbed the depths of ineffectuality by 1948.

When the Council included executive officers in its membership up to 1944, it served primarily as an arm of government to coordinate the executive and legislative branches in support of a legislative program. True, the Council did not prepare a program of its own except during the brief period when it had staff assistance. Even then the program prepared was only a partial one. But the governor and his department heads sought and received support for their program from the leaders of the General Assembly represented in the Council. Thus the Council was an instrument for liaison in the promotion of a better understanding among the legislators of the only legislative program available, namely, that of the executive branch. Most legislators seemed satisfied that leadership had proposed a program, irrespective of the fact that the leadership was not from their own branch of government.

Hence the existence of the Council up to 1944, weak as it was, could be justified on the ground that it helped to bridge the chasm universally existent between the executive and legislative branches. But this use did not serve the primary purpose of legislative councils, namely, the development of legislative leadership for policy formulation from among legislators. Bridging the chasm was merely a possible and desirable ancillary purpose.

American legislatures, from Congress down through city councils, have because of the increasing complexity of our civilization proved themselves incapable of developing positive leadership spontaneously. Unless they buttress themselves with tools for research equal to those in the executive branch and compel their stronger members to meet regularly to consider policy, either through legislative councils or party policy committees, they are at the mercy of a strong executive with a well-planned program. About all they can do without these tools and devices is obstruct, defeat or amend the executive program. That course of action is negative and frustrating in the long run, for it means that all they have left is a veto power.

Among the states the experience of Kansas and Illinois points to a correlation between the ability of the legislature to originate a program and the existence of a legislative council which meets regularly and has an adequately financed research staff. Kansas created a legislative steering committee to see that its council's bills are assigned to the proper standing committees and that the committees have council studies.³⁴ The steering committee, thus has something concrete to implement its proposals. Not only is a program developed, but it is followed through to enactment. The Illinois legislative council made seven major studies for the 1945 session in such important fields as reapportionment of Congressional districts, long a vexing problem in that state, refunds of inheritance taxes, suability of the state, control of tuberculosis, Illinois and Michigan canal, billboard control, and motor vehicle license plates.³⁵ In 1945 the council completed studies on pensions for policemen and firemen, taxation of hospitals, adoption laws, assessment ratios, sterilization laws, and adult education in Illinois.³⁶ The Kansas Council presented studies on forty-six subjects which had been requested by members of the legislature, varying from a survey of psychiatric facilities in Kansas to the feasibility of publication of administrative rules and regulations for which a bill was proposed.³⁷

³⁴ *Your Government*, supra note 20.

³⁵ Illinois Legislative Council, *Annual Report for 1944*.

³⁶ Illinois Legislative Council, *Annual Report for 1945*.

³⁷ Kansas Legislative Council, *Sixth Biennial Report*, December 9, 1944.

The scope of the work and the source of requests of the Illinois and Kansas councils indicate that the rank and file of members of the legislature have learned to turn to their councils for help in the analysis of state needs and state problems. The council members themselves have not acted as a "third house" superimposing a program upon the legislature but rather as a channel for information. Out of the mass of proposals from council members and other legislators, after the facts have been gathered and analyzed, areas are disclosed for legislative action. The proposals and studies act as a frame of reference for the councils in the development of that program. The governor still has an opportunity to lay his program before the legislature, as before. But today the Kansas and Illinois legislatures have alternatives to the executive proposals in many instances, alternatives based upon fact and not upon emotion or mere obstructionism.

THE 1948 PROPOSALS FOR LEGISLATIVE RESEARCH

Governor Clements opened the drive for effective legislative research by calling upon the General Assembly in his first message to create a Legislative Research Commission. An administration-backed measure, House Bill 64, was introduced January 15, 1948, by the majority floor leader, Representative John C. Watts, to create a Legislative Research Commission. This bill proposes a seven member body consisting of the governor, president pro tempore of the senate, speaker of the house, and both the majority and minority floor leaders of the two houses. The governor is to act as chairman *ex officio* but may name the lieutenant governor to membership on the Commission to serve as chairman in his stead.

House Bill 64 provides that the Commission shall appoint a director who has had graduate training in government in a recognized university or practical experience in governmental administration. The director is empowered to select other employees to help him in the legislative research function. A salary of \$5,000 per year is provided for the director. Further, in order to broaden the facilities for research the Commission may enter into contracts with public or private agencies or educational institutions to obtain research services.

The Commission is made responsible for the maintenance of a legislative reference room and library in the Capitol. It is empowered to make investigations into "statute law, legislation, governmental agencies and institutions, and matters of public policy." Priority is to be given to the subjects for investigation requested by the General Assembly. Moreover, any member of the General Assembly may request information and legal assistance in the preparation of bills and other measures which the Commission is obliged to render insofar as practicable.

For the first time, financing of legislative research will be adequately provided for by an appropriation of \$50,000 for the fiscal year ending July 1, 1949, and \$75,000 for the fiscal year ending July 1, 1950.

Certain defects in the bill were pointed out immediately by critics in the house. For one thing, legislative members of the Commission were to be paid \$15.00 per day and expenses for each day spent in the performance of Commission duties, thus doubling their pay when they might meet during General Assembly sessions. Moreover, the bill failed to provide for any regular meetings. Thus, the bill was returned to committee for further consideration and redrafting. A substitute bill eliminated the double pay provision and established as a system for filling vacancies the election of new members by those remaining on the Commission. The only limitation is that house members are to be elected to any vacancy among house members, senators to any vacancy in the senate membership. The substitute bill also grants specifically the power to subpoena witnesses and records, enforceable in the Franklin Circuit Court, and authority to compel testimony on any matter under study by the Commission.

Inclusion of the governor in the membership of the Legislative Research Commission raises a debatable point. The governor as chairman is in a position to dominate both the research program and the policy recommendations of the Commission. Legislative research may thus become in actual fact executive research. The latter is, of course, needed but is in essence quite a different thing from true legislative research and legislative policy planning, as Congress pointed out in its studies on its own reorganization in 1945 and 1946. Proponents

of the bill counter with the defense that inclusion of the governor in the membership will insure better financial support and liaison between the executive and legislative branches. After all, the Legislative Council failed more from lack of funds for research than from any other single cause.

The proposed measure moreover fails to provide any regular meeting time, leaving that matter to the discretion of the Commission to determine. The chairman may call meetings on his own initiative or on the written request of any three members. Perhaps in the light of the early history of the Legislative Council, when meetings were to be held quarterly under the original statute but were in practice held most irregularly, it would be futile to place any compulsion for regular meetings in the law. Nevertheless, successful legislative councils elsewhere meet at regular intervals to consider reports by the research director and to give instructions respecting the subjects to be investigated.

The provision in the old Legislative Council statute, Chapter 7 of the Kentucky Revised Statutes, which is to be repealed by the current legislation, for the Council to exercise a surveillance over administration is not included in House Bill 64. Only by indirection from the power to investigate any department or agency can one infer such a function for the new Commission. Certainly the Council did not avail itself of its powers to hold administrators responsible to the legislative body except through sporadic budget hearings. Perhaps this omission was intentional on the part of the drafters who may have preferred to leave oversight of administration in the hands of legislative committees, where it probably belongs.

CONCLUSIONS

Plus ça change, plus c'est la même chose may well be said of the history of the Legislative Council and current developments in Kentucky. A full circle has been run since 1936 when the Council was launched with high hopes and little cash. As time passed, it slipped from possession of an ephemeral staff making a few studies to no staff, it held virtually no meetings, and functions atrophied. Discredited, it is now abolished to rise

again like the phoenix but under a new name. Just as vigorous executive leadership demanded it in 1936, executive pressure has recreated it in 1948. The first Legislative Council included executive membership with the governor serving *ex officio* while the new Commission makes the governor a dominant member as *ex officio* chairman.

The significant point of departure in 1948 is the willingness of the General Assembly to appropriate generously to build up legislative research. Thoughtful legislators are one in agreeing on their need both for research and for interpretation of the results of research in simple comprehensible reports. After all, legislators are busy men and women, devoting but part-time to the business of statute law-making. Information must be digested and presented in such form that "he who runs may read."

The best hope for the future of the legislative process in Kentucky lies in the provisions of House Bill 64 for a qualified research staff to guide the legislator in getting the facts on which to act. The twelve years of futility with the old Legislative Council will not have been in vain if this one lesson has been learned—that in an age of increasing complexity with more and more problems crowding in upon state government for solution the lawmaker needs light and ever more light, in the form of facts in order to legislate intelligently. Without facts we are in the hands of the blind leading the blind.

The future of state government rests upon the ability of our state legislatures and executive officers to grapple with the baffling issues of our day. Legislators are pulled in all directions by importunate lobbyists and pressure groups which simply confuse them further. The financial resources of the states are being strained by new demands for services and regulation welling up from the voters. The ability of administrators is taxed by limited funds and competition for qualified personnel. Informed, intelligent men and women in our legislative bodies are the key to better laws as well as improved public administration. In turn, better laws and improved administration are essential to the preservation of states' rights in these United States today.