Comprehensive Planning Legislation: The Kentucky Experience

John E. Kennedy
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Administrative Law Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol59/iss4/6
Comprehensive Planning Legislation: The Kentucky Experience

JOHN E. KENNEDY

I. INTRODUCTION

On March 16, 1970, the Kentucky General Assembly authorized a new entity called the "Kentucky Program Development Office" [hereinafter KPDO]. This new office was created as part of a national strategy to revamp systems of providing federal aid to state development. Central to this strategy is the creation of one agency in each state to coordinate local, state and federal development programs by using modern comprehensive planning devices. As the designated agency, the new Kentucky Program Development Office is responsible for coordinating all Kentucky programs for grants-in-aid under applicable federal acts to achieve the maximum and most effective use of federal programs.

The history of this development is long. However, the latest federal impetus came in the Intergovernmental Cooperation Act of 1968, and, with the arrival of Nixon federalism, the Bureau of the Budget Circular A-95. These legislative and executive regulations provide that certain federal fund applications have to be cleared through one central state agency before the applications will be considered by the federal agency. Immediately

---

* LL.B., Notre Dame; LL.M., J.S.D., Yale; Visiting Professor of Law, Southern Methodist University. The author wishes to acknowledge that a substantial portion of this comment was drawn from extensive research by Charmaine Marlowe for a seminar in Government Contracts at the University of Kentucky.
upon taking office in 1968, Governor Nunn of Kentucky issued an executive order establishing the new Kentucky Program Development Office and implementing the boundaries of the Kentucky Area Development Districts [hereinafter ADD], in accord with the state clearing house system as required by the new federal provisions. Kentucky Attorney General Breckinridge, then issued a series of opinions sustaining various powers of this new office under the executive order. The opinions, however, required that the Kentucky legislature would have to sanction the office in the next legislative meeting in January, 1970.

In the 1970 legislative session, the governor's bills were presented to the General Assembly, and with some amount of modification, one bill was enacted to create a permanent Kentucky Program Development Office. Although the new law did not specifically treat the subject, the governor's original executive order designated the boundaries and organizational requirements for the Kentucky Area Development Districts. Basically, these provide for organization of the Districts as non-profit corporations. However, since the Districts also share some governmental functions they appear to have an interesting hybrid status. This comment will discuss the background and general nature of the Office, the Development Districts and will explore several specific issues: 1) whether the composition of the District Boards are subject to the Baker v. Carr rule of one man, one vote; 2) whether the Districts will constitutionally be able to issue revenue bonds for development; 3) whether Kentucky competitive bid statutes will apply to the Development Districts; and 4) whether existing conflict of interest statutes will apply to the members of the District Boards.

II. THE KENTUCKY PROGRAM DEVELOPMENT OFFICE

A central idea of the Intergovernmental Cooperation Act and the A-95 Circular is for the states to establish a single planning clearinghouse. In Kentucky, the Governor issued executive orders to establish the Development Office and the Development Dis-

---

tricts\textsuperscript{4} under his statutory power to distribute and reorganize certain departments and agencies. The statute provides, however, that an executive order is to be an interim provision and that the Governor must submit the reorganization to the General Assembly at the next session.\textsuperscript{5}

The creation of the KPDO and the fifteen ADDs by the executive orders necessitated a number of rulings from the Kentucky Attorney General's office. These opinions validated the legal authority of the arrangement as an interim order, but emphasized that failure of the General Assembly to confirm the plan, would terminate the authority of KPDO.\textsuperscript{6} Contracts originally made with another department of state government could be shifted to the KPDO and back again in the event of the failure of legislative ratification, since the real contracting party was the Commonwealth of Kentucky.\textsuperscript{7} Under the legislation, the Governor was under an absolute obligation to recommend confirming legislation to the General Assembly, the theory of this legislation being to prevent usurpation of legislative power by the executive branch of state government: "By reserving the right to approve or reject reorganization orders, the General Assembly avoids an unconstitutional total surrender of its legislative powers."\textsuperscript{8}

According to the Attorney General opinions, when the Governor recommended legislation to the Legislature, it could 1) enact the legislation; 2) reject the legislation; 3) enact the legislation in some modified form; 4) enact other legislation making express provision for the functions under the executive order; or, 5) take no action at all. The legislative action in the first four options would clearly be binding on the Governor and, he could not

\textsuperscript{4} Exec. Order No. 68-489, issued in June, 1968, set out the reason for the new Development Office and Development Districts, and designated its Administrator as Special Assistant to the Governor for Program Development.

\textsuperscript{5} "[t]he Governor may: a) establish, abolish, or alter the organization of any agency or statutory administrative department to explain more clearly the functions performed by it. . . . The Governor shall recommend legislation to the next following session of the General Assembly to confirm reorganizations effected under the provisions of this section."


\textsuperscript{7} Op. Atty. Gen. 69-51. This opinion discusses the effect on contracts made with the Department of Commerce under the Housing and Development Act. The Opinion held that the contracts are legally binding on the successor agency, the Kentucky Program Development Office.

legitimately issue an executive order identical to the previous one. Presumably, then, where the legislature, as here, took option (3) by enacting legislation in a modified form, the Governor must abide by the legislative decision although he may disagree with it.

In commenting upon the fifth alternative (no action), the opinions held that the preferred definition of the statutory requirements of “confirm” contemplates formal, positive action to ratify and validate what is proposed. Consequently, if the General Assembly had taken no action on the recommended bill, theoretically it would have been equivalent to rejection by failure of passage. However, it was noted that a ratification of the performance of a function of state government by a state agency, may be accomplished by legislative appropriation of funds for that purpose. This “loophole” was perhaps a distinct possibility, should the General Assembly balk at the proposal, since the availability of much of the federal program money was conditioned upon state appropriations of money for comprehensive planning. In any event, the subsequent adoption of the legislation in modified form, apparently ratified the various attorney general's opinions validating the authority of the KPDO to participate as the planning agency in the various federal programs.

Two bills were sponsored by the administration, House Bill 176, authorizing the Program Development Office, and House Bill 175, authorizing the Area Development Districts. The first, as modified, was enacted; the second was not. Political opposition generally could be expected to develop from three groups:

---

9 In *Martin v. Chandler*, 318 S.W.2d 40 (Ky. 1958), it was held that when the legislature has appropriated funds for the performance of a particular function, this constitutes a valid legislative election that the state engage in that function.

10 Various newspaper articles note that the 1970 legislature had already appropriated funds for KPDO, even before passing the legislation authorizing the Office, see notes 12-14 infra.

11 In regard to whether the Kentucky Program Development Office may accept federal funds under a specific act such as Title IX of the Demonstration Cities and Metropolitan Development Act of 1966, OAG 68-189 holds that the Kentucky Program Development Office clearly has such power. In OAG 68-190 the same decision was made in reference to the authority of KPDO to administer a training and research program for Kentucky under Title VIII of the Housing Act of 1964 which requires that:

"No grants may be made to a State under this part unless the Administrator has approved a plan for the State which designates an officer or agency of the State Government who has responsibility and authority for the administration of a statewide research and training program."
those on the national level who wanted to avoid state, i.e. Governor's, control in the flow of federal money to local projects; those on the state level in other agencies who wanted the planning and approval power under their own jurisdiction; and those in local political units who would lose power of approval to the development districts and the Governor. The opposition had some impact, but could not override the main thrust of the federal demand for state comprehensive planning nor the governor's press for the plan as one of his key legislative proposals. After some politicking, the proposals were trimmed to a streamlined version and the Second Committee Substitute for House Bill 176 was enacted on Monday, March 16, 1970.

As enacted into new Chapter 147A of the Kentucky Revised Statutes [hereinafter KRS], the law created the Kentucky Program Development Office within the Office of the Governor. The administrator of this office is the Special Assistant to the Governor for Program Development and is Secretary to the State Planning Committee. He is responsible for liaison with the appropriate state and federal agencies with respect to the 1) Economic Development Act, 2) Appalachian Regional Development Act, 3) Housing and Urban Development Act of 1954, 4) Demonstration Cities and Metropolitan Development Act of 1966, 5) Land and Water Resources Act, and 6) Comprehensive Health Planning Act. The most significant federal program omitted from the old executive order was the Economic Opportunity Act.

The Act designates the Kentucky Program Development Office as the official state planning office to administer the Commonwealth's development planning funds. Significantly, the Office is given statutory power to designate various development areas, and development organizations and to approve area

---

13 House Bills 175 and 176 were first rewritten to remove poverty war and education programs from the development districts, and to decentralize the authority of the Governor over the Districts by establishing a commission on area development composed of the governor, lieutenant governor, and the attorney general.
14 The editorial "A New Routine For Federal-Money Users," Louisville Courier-Journal, Mar. 1, 1970, § F, at 2, col. 1 points out that the KPDO approach through regional planning—physical facilities—growth centers is basically at odds with the OEO—grass roots—people involvement approach. Education funds were also apparently excluded from the jurisdiction of the KPDO although it is not entirely clear what role KPDO and the ADD's will play in planning educational facilities.
development programs. The Office is also given authority to provide the state's approval for proposals to federal agencies when state approval is provided for in federal law. There is, however, a puzzling modification of the original bill. The new Act carries the provision: “however, final determination and certification of proposals to federal agencies shall be at the discretion of the unit submitting the proposal.” This provision appears, at first sight, to remove all real authority from the Kentucky Program Development Office, if an agency wants to proceed on its own without KPDO approval. However, realistically the only threat to the power of the Kentucky Program Development Office would be the possibility of an approval by the federal agency of the proposed application. This possibility is rather remote in light of the Intergovernmental Cooperation Act of 1968 and the A-95 Circular. The Congressional intent behind these provisions is to provide for one central state clearinghouse to review all possible applications. If the federal agency were to receive an application for federal funds which was not approved by the KPDO as the clearinghouse, it seems that this disapproval would provide an excellent excuse for rejection of the application. Since there are certainly more applications than available funds, the federal agency would not need much excuse to reject it. On the other hand, it could be argued that the application might be approved by the federal agency, despite the clearinghouse disapproval, because the federal agency may wish to rely upon the Kentucky statute to ignore the clearinghouse disapproval. In any case the ambiguity of this provision has potential for causing trouble, but was no doubt necessary in order to effect a political compromise necessary to passage of the legislation.

III. THE KENTUCKY AREA DEVELOPMENT DISTRICTS

A. IN GENERAL

House Bill 175 proposed the creation of the fifteen Area Development Districts as they had been set up in E.O. 68-653. Since H.B. 175 was not enacted by the General Assembly, it might be argued that the legal authority for the development

\[15\text{KRS ch. 147A § 2(4).} \]
Districts ceased to exist. However, it is more plausible to conclude that since KRS Ch. 147A as enacted gave the authority to the KPDO to designate development areas and organizations, the legislature could not make up its mind on the details and delegated this authority to the KPDO so as not to freeze the whole set up into the legislation.

Under H.B. 175 and the executive order the Development District Boards are to draw up comprehensive plans for their districts, including plans for health, education, transportation, community service, environment and human resources. The District has the power to review every plan made by any political subdivision within its jurisdiction where federal money is concerned. The work of these Boards would be coordinated by having them supervised and assisted by the KPDO which would act as a clearinghouse to funnel District requests to Washington after making sure there are no duplications.\(^\text{16}\)

Each Development District is set up as a non-profit public corporation and is registered with the Secretary of State. The Development District is to adopt a charter and enact by-laws setting forth the purposes and operating procedures under KPDO guidelines.\(^\text{17}\) Procedures include the method by which representatives on the Area Development Board are selected.

According to the administration theory, the KPDO is not a regulatory office since it is designated to carry out the review of state agency, local government, and District programs. Similarly, the Area Development District itself in official theory is not another level of local government, nor is it an agency with any directive power within itself. It is a public agency to serve as an adjunct to local governments and organizations and to be utilized by them as a mechanism to achieve together in an orderly and responsible way those things they cannot accomplish.

\(^{16}\) Kentucky Area Development Districts, pp. 4, 10 (Kentucky Program Development Office, Frankfort, Ky., 1970).

\(^{17}\) A reading of the Kentucky River Area Development District Charter reveals that the typical District Appears to have all the powers and capacities of a private corporation, such as to contract, hold realty, receive grants, incur debts, to be exercised within a large number of "doing good" purposes, which, in sum, add up to acting for the general welfare. The potential of the ADD's beyond mere planning is indicated in the report Tandy Industries Cancel Plans for Letcher County, Whitesburg Mountain Eagle, April 30, 1970, Vol. 62, No. 51, which describes a plan to have the KRAD purchase a plant site and to make available $450,000 for the construction of a home building factory.
by themselves.\textsuperscript{18} However, despite the official theory the power of disapproval of a plan or an application for funds realistically accomplish an indirect form of regulation in KPDO and another level of local government in the ADD.

B. IS THE COMPOSITION OF THE DISTRICT BOARD SUBJECT TO BAKER v. CARR?

The KPDO Theory of the District Board composition is to respect political reality by giving local politicians control of the Board but to provide additional membership in the organization to various existing community groups. According to the guidelines set down by KPDO, the Board of Directors of each District will consist of all County Judges, and one Mayor for each County, plus a number of lay members to be selected to the Board. Existing interest group organizations may be permitted to designate representatives to serve as members of the organization. They must represent Commerce, Industry, Labor, Agriculture, Law, Medicine, Finance, Education, Civic Organizations, Social, Religious, and Ethnic Groups. The number of these members selected to the Board should not exceed 49\%. It is recommended that at least two lay members should be from low income or minority groups and preferably elected through the community action process.

When the theory of this organizational strategy is contrasted to the “grass roots” approach of the Community Action Councils under the OEO, it could be forecast that a persistent political dispute would arise over the sufficiency of designating only two positions for the low income or racial minority groups. The theory of the poor people’s approach is that since their problems are the cause for the federal money flow, it is not fair to let the the “main-street crowd” control the money for projects which will allegedly serve the rich and not the poor.\textsuperscript{19}

It is difficult to assess the weight of voting strength proportionate to the share of population represented by a specific District Board of Directors. In fact it may be impossible to

\textsuperscript{18} Comments to Draft Legislation Creating Kentucky Program Development Office (KPDO, 1970).

\textsuperscript{19} The Sap of Militancy: Long After The Battle Has Been Won Elsewhere, Kentucky Poor Must Still Fight State, Whitesburg Mountain Eagle, April 9, 1970, at 3, col. 2-4.
figure out. However, it is argued that the most important thing is that the representatives of various groups have a “voice” with which to express interest, as district programs are planned, and to advise as to the nature of district programs approved, so they may choose to participate as is appropriate. On the other hand, this pragmatic approach of mixing political representation with interest group representation is not entirely compatible with the idealistic goals of one-man, one-vote theory.

In Hadley v. Junior College District of Metropolitan Kansas City, Mo., the Kansas City School District fixed the apportionment plan which resulted in the election of three trustees, or 50% of the total number from that district. Since that district contained approximately 60% of the total school enumeration in the junior college district, appellants brought suit claiming their right to vote for trustees was being unconstitutionally diluted in violation of the Equal Protection Clause of the Fourteenth Amendment. The Court held that since the trustees can levy and collect taxes, issue bonds with certain restriction, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation and manage the operations of the junior college, the trustees perform important governmental functions within the districts. Therefore, the representation was invalid since according to Avery v. Midland Co., a qualified voter in a local election has a constitutional right to have his vote counted with substantially the same weight as that of any other voter where the elected officials exercised general governmental powers over the entire geographic area served by the body. The Court in Hadley points out that the purpose of a particular election is not a determinative factor since it is too difficult to distinguish between elections for legislative officials and those for administrative officials. Therefore, the rule applies to all elections where equal numbers of voters can vote for proportionately equal numbers of officials.

In the case of the Area Development Districts, it can be argued the Board of Directors will be exercising general governmental powers similar to these trustees. They have the power

---

to issue bonds, make contracts and acquire property. Further, development and planning are vital functions similar to education. In Hadley, the voters in large school districts frequently had less effective voting power than the residents of small districts. Similarly, in our Development Districts, the larger county has the same vote as a smaller county and the representative of a few people in the health field has the same vote as that of organized labor.

On the other hand, it is also pointed out in Hadley that where a State chooses to select members of an official body by appointment rather than by election, that choice does not offend the Constitution. The fact that each official does not represent the same number of people does not deny those people equal protection. Therefore, in the Development Districts, the designation of the county officials to the Board and the Board’s selection of organizations that designate a representative are not constitutionally invalid under existing legal precedent. Whether the composition of the Boards is wise policy is another question.

Justice Harlan’s dissent in Hadley v. Junior College District of Kansas City, points out the need to preserve flexibility in the design of local governmental units that serve specialized functions and the need to meet peculiar local conditions. These needs furnish a powerful reason for refusing to extend one man-one vote requirements to Development Districts where the purpose of the organization is to plan for peculiar local conditions on a regional basis. On the other hand, it is doubtful whether the theory of Justice Harlan’s dissent is fully applicable because in Hadley the districts could choose to avoid alliance with a highly populated neighbor but in the case of the Development Districts, the Counties have previously been grouped together and they and their residents have no choice in the matter.

C. DOES THE DISTRICT HAVE AUTHORITY TO ISSUE REVENUE BONDS?

Under their charters, the Development Districts are apparently authorized to issue revenue bonds. However, the question

22 Under the charter of the Kentucky River Area Development District Charter, for example, the corporation may invest or borrow money and secure the same by (Continued on next page)
can be raised whether the use of state or federal funds to underwrite bonds to encourage private industry would be a violation of the Kentucky Constitution, Section 177 which provides:

"[T]he credit of the Commonwealth shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality or political subdivision of the state; nor shall the Commonwealth become an owner or stockholder in, nor make donations to any company, association, or corporation."

In *Industrial Development Authority v. Eastern Kentucky Regional Planning Commission*, the Kentucky Court of Appeals held that when the underlying and activating purpose of the transaction and the financial obligation incurred are for the State's benefit, there is no lending of its credit even though it may have expended its funds or incurred an obligation that benefits another. Merely because private parties may incidentally profit does not bring the transaction within the letter or spirit of the 'credit clause' prohibition. In this case, it was shown that the investment of state funds in an industrial project would not violate the Constitution because the Authority would not be giving, pledging, or lending the credit of the State and it would not become a surety or guarantor because the rents from the property would be the security. The court had previously held in *Dyche v. City of London*, that relief of unemployment in the City of London and the surrounding area was a "public purpose" within the purview of the taxing power of that city, and that the city could lawfully incur a bonded indebtedness to construct an industrial building in an effort to attract new industry and thereby reduce unemployment.

D. ARE THE DISTRICTS REQUIRED TO EMPLOY COMPETITIVE BIDS?

Another question that may be posed in reference to the various powers of the Development District is whether any competitive bid statutes would apply to contracts executed by

(Footnote continued from preceding page)

pledging any or all of its assets or by executing mortgages and may execute notes or other indebtedness.

23 332 S.W.2d 274 (Ky. 1970).
24 288 S.W.2d 648 (Ky. 1956).
the Development District. The basic purpose behind competitive bid statutes is to enable the government to secure work or supplies at the lowest price possible and to guard against favoritism or corruption. One statute which might have application to the Development District, requires competitive bids in the purchase of “the combined requirements of all spending agencies of the state.” It is doubtful however that a District could be termed a “spending agency of the state” in light of Court of Appeals opinions, which narrowly interpret the statute.

Another example shows judicial reluctance to require competitive bids unless the statute expressly covers the case. In Commonwealth v. Nunn, where in addition to the competitive bid statute, KRS 18.440 also provided “The Commissioner of Finance is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance under KRS §§ 18.410 to 18.440,” the court held that no competitive bidding was required as to group life insurance policies for state employees. It reasoned that if the legislature had intended the kind of insurance policies provided for to be subject to competitive bidding it would have so specified.

An examination of authorizing legislation, the executive orders and the various powers of the development district as provided in a typical charter shows that no competitive bid requirement is mentioned. Thus it would probably be concluded that if the legislature intended the competitive bid statute to apply, it would have done something more than reject H.B. 175 and authorize power in KPDO to approve development organizations.

However, in light of the unique nature of the Districts, they might be construed to fall within another competitive bid statute applicable to any “city, county or district, or board or commis-

---

25 KRS § 45.360.
26 Gregory v. Lewisport, 369 S.W.2d 133 (Ky. 1963), construed the competitive bid statute as “aimed primarily at the construction of buildings for public use and where a building is being acquired for use of private industry the courts should not search for possible motives of evasion in the plan for acquisition of the building if the plan does not literally violate the statutes.” Here the plan for a private use had a legitimate purpose: to insure that the building would conform to the requirements of the lessee for whose use the building was designed.
27 Commonwealth v. Nunn, 452 S.W.2d 381 (Ky. 1970).
28 Even if the statute were applicable, most of the District’s spending could probably escape under exemption (f) “for professional, technical, or artistic services.”
sion or a city or county.” An attorney general opinion interprets this statute where the question arose whether the Ohio County Buildings Commission was required to advertise for bids upon the materials and equipment to be installed in the Ohio County Nursing and Convalescent Home. Under the Hill-Burton Act, a federal grant-in-aid program designed to assist local governmental units in acquiring adequate hospital and nursing facilities for the citizens of the community, the federal government provided a percentage of the cost of the facilities. The public money, here that of Ohio County, was obtained through the issuance of revenue bonds designed to be retired out of rentals accruing from the operation of the convalescent home.

The thrust of this opinion is toward applying KRS 424.260 to the Development District, since the Development District will be commingling and spending local, state and federal funds. However, by its own terms KRS 424.260 only includes “contractual services other than professional,” which exception might exclude much of the ADDs’ routine spending. Further, if the theory of the recent Nunn case is literally carried to its logical conclusion, the spending of an ADD would require express legislative designation to include it under competitive bid statutes.

E. ARE DISTRICT MEMBERS SUBJECT TO CONFLICT OF INTEREST STATUTES?

The modern blending of public and private resources to execute tasks which traditionally seemed more appropriate for government employees raises great potential for conflict of interest. These problems on the federal level, have been handled by standards of conduct for regular government employees. Agencies may also impose additional requirements such as financial disclosure requirements. In the case of special government employees such as consultants, advisors, and others on occasional attachment to the government, relaxed standards are imposed in order to assure their availability to the government.

---

29 KRS § 424.260.
31 Note 27, supra.
34 See P.L. 87-349 (1962).
Special problems arise in attempting to regulate both profit and non-profit corporations under consulting contracts in order to maintain substantial performance and objectivity, and to guard against the temptation to use the contract for subsequent personal or organizational gain. In any given case, where federal development money is being expended through state channels, it may be that a federal statute or regulation on conflicts of interest could be applicable. Assuming however, the non-applicability of federal statutes, what statutes could be looked to on the state level?

In the absence of a specific statute governing the ADDs, it is doubtful from the decided cases, that the Kentucky courts would use liberal interpretation or devise common law rules to cover the Districts. However, a typical district charter may provide that "no person, persons, or firms shall obtain any personal or pecuniary profit from the transactions of the corporation, other than to enjoy the public improvements and developments created by the corporation solely for the public." This type of provision, or KPDO regulations, might be given the same effect as a conflict of interest statute. In Norvell v. Judd, the defendant was an employee and officer of the Housing Commission, and was also paid a fixed fee for the performance of his duties as director of a non-profit corporation furnishing television cable service to housing development tenants. The Court held his duties as director of the non-profit corporation, which consisted of providing new subscribers for the television corporation would bring his "interest" within the prohibitions of KRS 80.080.

Note 33, supra.

Although fairly elaborate provisions were available, (see Part XI, §§ 1101-1103 of an Introduction to an Area Planning and Development Act,) we do not find conflict of interest provisions in original H.B. 175 or 176, or in the final legislation. See also conflict of interest provisions contained in the Kentucky Urban Renewal and Community Development Act, KRS § 99.350(7).

E.g., In Sims v. Bradley, 18 S.W.2d 641 (Ky. 1949), the major and ex-officio member of the zoning commission was not disqualified from sitting as a member of the Commission, where his wife was the owner of part of the property being considered during zoning of the block, and he had a financial interest. The Court pointed out that Section 57 of the Kentucky Constitution referred only to members of the General Assembly and was not controlling. Since the statutes KRS §§ 100.380 and § 100.400) did not require a unanimous vote if a quorum was present and since the Resolution of the Zoning Commission was passed by a vote of three members, exclusive of the Major with a quorum present, it was proper that he sat on the Commission.

Kentucky River Area Development District Charter.

38 374 S.W.2d 192 (Ky. 1963).
Norvell also routinely held that a state taxpayer clearly has standing to challenge the validity of the agreement, and thus it is conceivable that contracts let by an ADD could be subject to judicial review for violations of the conflict of interest provisions in their charters.

IV. CONCLUSION

Who knows what the future holds for the Kentucky Program Development Office and the Area Development Districts? Since their essential activity is controlling the expenditure of federal money at the local level, they will be tied to politics. Thus any predictions are foolhardy at best. But perhaps a few conditioning trends can be stated. First, the underlying problem will remain since we will probably continue a system of collecting a large amount of revenue through the federal income tax and expending it on local problems. Second, the basic need for rational expenditure of public money will increase and will transcend political changes in administrations at both the federal and state levels; thus the comprehensive systems being devised by professional planners will survive, although the emphasis, the details, and the personnel will change. Third, public interest advocacy will bring to the courts more demands for judicial review of the planning and spending functions of both federal and state governments.

If the description of these trends is accurate, how should the judiciary, the legislature and the bar respond? At least two sets of public interests should be kept in mind. First, the public has a strong interest in the execution of comprehensive planning and efficient spending without delaying, harassing litigation. But the public has a stronger interest in "open standards, open findings, open reasons, and open precedent." In the rush to legislate

---

40 The merging plan for federal revenue sharing does not appear to affect a significant percentage of the flow-back.

41 A parallel historical experience would be the absorption of Keynesian economic theory and New Deal programs into both political parties.

42 See Sierra Club v. Hickel, 433 F.2d 24 (9th Cir. 1970) (Sierra Club did not have standing to challenge Secretaries of Interior and Agriculture decisions granting rights in Mineral King Valley to a Walt Disney development company), cert. granted U.S. - (1970).

43 Davis, Discretionary Justice, 28 J. of LEGAL EDUC. 56, 60 (1971); See also Hanes, Citizen Participation And Its Impact Upon Prompt and Responsive Administrative Action, 24 S.W.L.J. 781 (1970).
the KPDO into being, the Kentucky General Assembly properly served the first set of interests but it did not adequately protect the second. In the next legislative session, the General Assembly should consider amending Chapter 147A to: (1) specifically legislate on the composition of the District Boards, including the possibility of requiring election of the lay representatives to the Boards; (2) require open public access to the records of the District and meetings of the Board; (3) require the Districts to use competitive bid or negotiation practices; and (4) apply conflict of interest statutes to the Board members and District personnel. In the absence of amending legislation, the bar and the judiciary ought to become sympathetic to fashioning equitable remedies to control the possibility of poor decisions in the expenditure of public money. The planning and spending process can probably never be non-political, but it can at least be made to work through a medium channeling it toward an approximation of the public interest.