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Consolidation—Complete or Functional—of City and County Governments in Kentucky

By THOMAS P. LEWIS,* JAMES S. KOSTAS** and CHARLES N. CARNES***

In these days of rapidly rising living costs and high taxes it becomes increasingly necessary to examine the framework and structure of local government in order to ascertain what, if anything, can be done to permit these units of government to continue furnishing vital services in the face of these increasing costs without a concomitant increase in the now burdensome tax load. Federal and state governments have monopolized practically all of the lucrative sources of taxation with the result that local governmental units find themselves searching almost hopelessly for new means of raising funds to meet increasing costs of services demanded by their citizens. Added to this is a further loss of revenue to municipalities caused by the centrifugal migration of large segments of the population to the so-called "unincorporated fringe areas." The municipalities find themselves in the position of having to maintain many of the same services for this group, who normally work in the city, without being able to assess them for these services. Correspondingly, the county units of government have been forced into the business of supplying the normally "municipal" services to the unincorporated fringe areas. The end result has been a duplication and overlapping of effort on the part of cities and counties—both must maintain the same basic services.

The elimination of this duplication of effort is especially desirable today, for it has proven rather difficult for some cities and counties, especially those with large populations, to remain within their constitutional tax and debt limits and still render optimum services to their citizens. In times of recession or depression it

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would be even more desirable for cities and counties to provide the best possible services for the lowest tax dollar.

The most obvious solution to the problem of duplication on the municipal-county level is consolidation, either of governments or of specific functions. Lest consolidation be considered too radical a solution, it should be pointed out that this has been accomplished in various sections of the country.

Interest in the possibilities of city-county consolidation in Kentucky has been of rather recent origin, but a great deal of interest has now been generated, particularly in Louisville and Lexington, in proposals to solve the duplication problem. It should be noted, however, that there are many other metropolitan areas of the state which, if not now faced with the problem, could conceivably find themselves in the same situation in the very near future.

Whether or not any type of consolidation will be effective in a given area of the state can be determined only by an exhaustive study undertaken by specialists in the administration of government and persons familiar with the problems peculiar to that locality. Thus, it is beyond the scope of this survey to draw any conclusions as to the feasibility of consolidation or to attempt to outline the detailed legislative changes which might be found necessary to effect any particular type of consolidation. This article will, rather, be concerned only with a discussion of the legal possibilities of effectuating some type of consolidation without drastic change in the basic law of the state. The following questions will be considered:

1. Is complete consolidation of the city and county governments by transferring all city functions to the county possible, and if so, could it be successful?
2. Is complete consolidation of the city and county governments by transferring all county functions to the city possible, and if so, could it be successful?
3. What could be accomplished within the existing constitutional framework by way of consolidation of specific functions?

It is not the purpose of this survey to advocate the adoption of any particular form of consolidation but rather to explore the constitutional and legal background against which any consideration of the various possible forms of consolidation must be made.
PART I

TRANSFER OF CITY FUNCTIONS TO COUNTY

Assuming that the people of a city desired their county to take over the reins of local government completely, the first question that would arise would be whether and how the city government could be abolished.

Nothing in the Kentucky Constitution would appear to prevent the abolition of a city. The Constitution provides for the division of cities and towns into six classes, and vests in the General Assembly the power to enact laws for the government and organization of each class. Pursuant to this authority a statute was passed which provides for a judgment of incorporation by the circuit court upon the proper presentation of a petition meeting the requirements of this statute, provided the judgment is warranted upon the facts as determined at a hearing on the petition.

Thus, it takes affirmative acts to create a city. Other statutes provide for the annexation of smaller cities by larger cities upon a vote of the people of the smaller cities. Upon annexation by a larger city the smaller city is abolished. Another statute provides for the forfeiture of the charter of any incorporated city which fails for one year to maintain a city government by the election or appointment of city officers and the levying and collection of taxes for the maintenance of the streets and alleys of the city. This would indicate that the power to abolish a city, as a political subdivision of the state, is an inherent power of the Legislature.

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1 Ky. Const. sec. 156.
3 See for example, Ky. Rev. Stat. 81.120, 81.150, and 81.160. To the effect that the larger city annexing the smaller city will be bound for debts and liabilities of the latter, but shall own all of its corporate property, franchises and rights, see Ky. Rev. Stat. 81.130 (1st class cities), 81.170 (2nd class cities).
4 See generally as to annexation, Matz v. City of Newport, Campbell County, 265 Ky. 156, 95 S.W. 2d 1071 (1936); Golightly v. Bailey, Mayor et al., 218 Ky. 794, 293 S.W. 320 (1927); Village of Cote Brilliante v. City of Newport, 195 Ky. 317, 242 S.W. 2 (1922); Gibson v. Wood, 105 Ky. 740, 49 S.W. 768 (1899).
6 Inasmuch as the powers of cities are granted and controlled by the Legislature, it stands to reason that the Legislature can demand the forfeiture of a city's charter if the city's government fails to assume its obligations as a subdivision of the state. The Constitutional framers agreed with this. See Debates, Constitutional Convention, Vol. 1, pp. 328-355 (1890), where it is indicated that short of constitutional mandate withdrawing the power of the Legislature to abolish
And if the General Assembly constitutionally has this power it should be permissible for the citizens of a city to end their city government and allow the county to govern them. For one thing the city residents could simply abandon their city government, thus forfeiting their charter under the above statute. If the General Assembly can thus call for the forfeiture of a city's charter, it certainly should be able to make the same forfeiture conditional upon a vote of the city residents expressing their desire to end their city government. By analogy to the result when a small city is annexed by a large city, the assets and liabilities of the abolished city would presumably be transferred automatically to the one remaining government—the county.

The people of a city would not take such a drastic step, of course, unless they were convinced that the county could assume control of local government effectively and efficiently. Whether a county could do so is the big question. County government as it now exists in Kentucky is obviously in no condition to assume city affairs. For one thing, under the present statutes Kentucky counties as compared to cities have been given very limited police power. Such power traditionally has been delegated to cities and towns in Kentucky; the main purpose of counties has been to function as administrative subdivisions of the state. This is not to say, however, that counties cannot be given many more powers than they presently exercise. Many and detailed legislative changes would be necessary to empower counties adequately to assume the functions of local government. Without doubt, the most important questions concerning consolidation will center around determining what powers should be given and the constitutional ability of the General Assembly to grant these powers to the county in which consolidation is to be effected.

political subdivisions, the power to do so is inherent in that body. See also Ky. Const. sec. 3, which expressly provides that every grant of a franchise, privilege or exemption shall remain subject to revocation or amendment.

7 Through constitutional amendment of course the counties could be empowered to assume control in most anyway the people would desire. But the concern of the present discussion is how much could be done within the existing Constitution.

8 It will be seen later, however, that counties are gaining more power in this respect as the decentralization of people from the cities forces the counties into the “local service” business.

9 To the extent the necessary changes could be effected by the General Assembly, they could be enacted along with the statutory procedure for abolishing the city government. The changes would go into effect in the county upon an affirmative vote for consolidation by the citizens involved.
A constitutional provision that deserves brief mention in respect to such possible legislation is Section 59 which enumerates specific instances in which the General Assembly cannot specially legislate, then closes with the provision: "In all other cases where a general law can be made applicable, no special law shall be enacted." Under this section a valid statute authorizing a particular city to dissolve itself and merge with its county probably could not be enacted (with the obvious exception of Louisville, as the sole member of its class). However, nothing would appear to prevent making a consolidation statute applicable to all cities of a given class, and affording an option to any city within the class, with exercise of the option being effected through a vote for consolidation by the people of the city.\(^{10}\)

Another constitutional provision that immediately will affect transfer of city functions to a county is Section 143 which creates the Police Court and defines its jurisdiction as criminal within the city limits to the same extent as Justices Courts in the county. Since the court is strictly an adjunct of the city, abolition of the latter will at the same time abrogate the court, which cannot be replaced because the Constitution prohibits any but constitutional courts.\(^{11}\) This provision need not be catastrophic, however, for the Constitution provides also for Justices Courts.\(^{12}\) In addition, Quarterly Courts are established by the Constitution (one for each county), their jurisdiction being left to the General Assembly with the one limitation that the jurisdiction be uniform through-

\(^{10}\) Section 59 of the Constitution means only that a person or thing cannot alone be the object of legislation when there are other persons or things in the same class, i.e., similarly situated. Legislation affecting cities or counties is valid, provided it applies to all cities or counties within a class, Planter's Bank and Trust Co. of Hopkinsville v. City of Hopkinsville, 298 Ky. 451, 159 S.W. 2d 25 (1942), and provided further that there is some valid reason for the classification. Somsen v. Sanitation District No. 1 of Jefferson County, 303 Ky. 284, 197 S.W. 2d 410 (1946) presents a good illustration. There certain Sanitation District Laws were challenged as "special legislation" because they applied to cities of the first three classes only. After finding that cities of the first three classes have special sewage problems, the court held that Section 59 was not violated. Although the legislation applied to a given group, the classification was not unreasonable or arbitrary. Local option laws concerning sale of alcoholic beverages provide an example of the option type general law. See Ky. Rev. Stat. 242.210.

\(^{11}\) Ky. Const. sec. 135. A possible method of complete consolidation which might allow retention of rights, powers and privileges given cities by the Constitution will be discussed infra, page 308, et seq.

\(^{12}\) Ky. Const. sec. 142. A limitation that the jurisdiction of these courts shall be uniform throughout the state is also contained in Section 142. But since Police Court jurisdiction is governed by the criminal jurisdiction of Justices Courts, this limitation poses no problem.
out the state. It would seem that the flexibility of the jurisdiction of the Justices Courts and Quarterly Courts would allow adequate replacement of the Police Courts, though only a survey of the workloads of these various courts could supply a definitely accurate answer.

Another consideration in transferring city functions to the county is the effect of Section 99 of the Constitution where provision is made for county officers. Enumerated in that section are the offices of county judge, county court clerk, county attorney, sheriff, jailer, coroner, surveyor, assessor and justices of the peace. The mandatory presence of all these offices in a governmental structure designed to administer the affairs of a city and a county could impede a high degree of efficiency, if the present statutory powers of these offices should remain unchanged. This result certainly could be avoided. In the first place the functions of many of these offices would continue to be needed, and at the same time there would be no need to enlarge their duties unless to do so would bring better results than to delegate new functions to other personnel. For that matter, little stands in the way of relegating some of these offices to lesser duties than they now exercise. In the second place, fortunately, the enumeration of officials in the Constitution is not exclusive. Section 107, of great importance to a plan for consolidation, provides: "The General Assembly may provide for election or appointment . . . for a term not exceeding four years, of such other county or district ministerial or executive officers as may, from time to time, be necessary." Laws creating additional offices, to apply only to counties in which the cities have transferred their functions, could thus be enacted. No limitations appear elsewhere in the Constitution which restrict the creation of offices, whose duties would be peculiarly related to urban problems. The administration of an exclusive county govern-

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13 Ky. Const. sec. 189.
16 Of course it is possible that the Court of Appeals might take the attitude that offices contemplated in Section 107 are those only who are necessary to county government in the restricted sense. But the fact that additional offices for the administration of Districts are made possible by the same section would be an argument against such an interpretation since many districts, though ad hoc, are municipal in nature in that they perform "city services" for county people.
ment should not suffer from a lack of executive and ministerial personnel.

Successful consolidation could suffer, however, from a lack of leadership. Criticism was long ago leveled at county government because of the absence of any legally centralized authority. As a matter of politics, the fiscal court under the leadership of the county judge may “run” things, but so also might the sheriff or the county attorney. Legally, however, the officers, being elective, are independent and not legally answerable to a superior executive. The Legislature should be capable of remedying the lack of subordination in the county government—at least any new offices it creates could be made responsible to one executive who in turn would be answerable to the fiscal court. The present statutes allowing cities of the second through sixth classes to adopt a commission form of government might be studied in regard to this problem. In the end, of course, the question, whether or not a given suggestion is feasible, must be left to a body composed of at least semi-experts in local government with the time and resources to conduct a thorough investigation of the practical problems of consolidation.

The best men under the best leadership cannot govern adequately without power; thus the question of power is the most important aspect of the consolidation problem. If consolidation is to succeed, it must be possible to transfer all or most of the power now exercised by the city to the county organization, as revamped by the addition of the offices needed to exercise the new power. Two facets of the problem of power will be discussed: first, does the Constitution contain language which so limits the powers of counties that functions and services now performed by cities could not be performed by counties; second, if the counties can perform such functions and services from a standpoint only of power, can they invoke the processes necessary to finance the governmental operation?

Functions and Services. It has been mentioned that one of the

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38 Ky. Rev. Stat. chap. 89. This form of local government resembles the fiscal court-county government. Provisions are contained in Chap. 89 for the control by the Board of Commissioners of the primary city departments.
39 The City of Louisville has had a special commission studying the possibilities of eliminating overlapping functions for quite sometime.
big differences between the powers exercised by cities and counties is that counties, as compared to cities, are not created to exercise extensive police powers and perform “personal” services. But this is not to say counties cannot exercise such functions, and with the modern trend towards decentralization of population counties are slowly being forced into the “city” business.

The powers of counties are not defined or enumerated in the Constitution, and no language appears which forces the conclusion that the county cannot execute the functions that the city can execute. For the government of counties the Constitution provides:

Counties shall have a Fiscal Court, which may consist of the Judge of the County Court and the Justices of the Peace, in which Court the Judge of the County Court shall preside, if present; or a county may have three commissioners, to be elected from the county at large, who, together with the Judge of the County Court, shall constitute the Fiscal Court. A majority of the members of said Court shall constitute a Court for the transaction of business. . . .

It will be noted that although a county must have a fiscal court, the powers of that body are not touched upon at all. The Kentucky Court of Appeals in interpreting this constitutional provision has said:

[Section 144] merely creates the fiscal court and provides who shall constitute it, but it does not define the jurisdiction of the court. . . . The jurisdiction of the fiscal court is no more fixed by the Constitution than the jurisdiction of other courts created by that instrument. It is all left to the Legislature.

It was recently reiterated by the Court of Appeals:

The Constitution, section 144 of which merely creates the fiscal court, has left to the General Assembly the right to define the powers and duties of that body.

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20 Ky. Const. sec. 144. Under the commission form of city government in second class cities, the legislative, executive, and administrative powers of government are placed in a Board of Commissioners which is composed of two elected commissioners and an elected mayor. Ky. Rev. Stat. 89.050 and 89.130.

21 Cross v. Fiscal Court of Jefferson County, 225 Ky. 641, 643, 9 S.W. 2d 1006 (1928).

22 Hogge, County Attorney v. Rowan County Fiscal Court, 313 Ky. 387, 388, 231 S.W. 2d 8 (1950). See also, Lincoln National Bank Inc. v. County Debt Commission, 294 Ky. 642, 172 S.W. 2d 483 (1943) where the court upheld the County Debt Act, Ky. Rev. Stat. 66.310, which creates a semi-supervisory commission to watch over the fiscal affairs of the counties.
Since the powers of the fiscal court are left to the discretion of the Legislature, no reason appears why the county could not be given the powers now exercised by, say, a second class city. At present, any county can maintain a fire department and a police force. And it will be noted later that counties have been given the power to join with cities to execute many functions jointly. The real problem in regard to this aspect of consolidation lies in determining exactly what changes would be necessary and how to put them into effect.

Proponents of consolidation are fortunate in that the Constitution leaves the powers of cities and counties a flexible matter. But they are unfortunate in respect to the taxing and debt-incurring powers of cities and counties because the framers of the Constitution left little to the General Assembly, making detailed provisions in the Constitution itself. And of course broad powers are useless without the wherewithal to effectuate them. Section 157 of the Constitution provides:

The tax rate of cities, towns, counties, taxing districts and other municipalities, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein, viz.: For all towns or cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all towns or cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all towns or cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars...

Since consolidation is usually thought to be more effective in the more populous counties, in Kentucky probably those counties containing cities of the first two (possibly three) classes, it is important to consider the tax rates of cities of this size. If the city has a population of 15,000 or more, the maximum rate is one dollar and fifty cents per one hundred dollars—three times the fifty cent maximum rate of a county. If the city government is abolished this high tax rate, in the absence of some plan to obviate the loss, would be abrogated. Thus the property in a city containing 15,000 or more people would be subject to a maximum tax of fifty cents
per one hundred dollars valuation as against the existing maximum of two dollars.25

It is obvious that consolidation cannot work if so large a loss in revenues is to be sustained. It is possible that the loss of the ad valorem taxing power might be replaced by a completely different kind of tax which the Constitution does not curtail at all. For example payroll taxes have recently been inaugurated by the cities of Lexington and Louisville. These taxes are from a source apart from the taxable property located within the cities and thus are not within the limiting provisions of Section 157. However, the rate of the payroll tax is necessarily low, because of the high rate of the similar federal income tax and the additional state income tax. It is doubtful that this large loss of revenue from property owners could, from a practical standpoint, be replaced by a tax based primarily on earnings. Tradition would impose at least one large stumbling block.

In addition to the curtailed tax rates, the debt-incurring powers of a consolidated county would be severely limited. The Constitution provides:

No county, city, town, taxing district, or other municipality, shall be authorized or permitted to become indebted, in any manner or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters thereof, voting at an election for that purpose; and any indebtedness contracted in violation of this section shall be void.26

It will be noted that the limitation of debt to the amount of income and revenue provided for the year can be circumvented by a vote of the people. But a further constitutional provision places an absolute limitation beyond which even the voters cannot go. As to cities of the first and second class, and of the third class having a population of over 15,000, debt, including the existing indebtedness, cannot be incurred in excess of ten per cent of the value of taxable property therein. Counties and taxing districts on the other hand are limited to a total debt of only two per cent of the value of the taxable property.27 Except for purposes of road

25 A maximum of more than two dollars is possible through the use of taxing districts which have tax rates of their own. But “maximum” as here used refers only to the city and county tax powers.

26 KY. CONST. sec. 157.

27 KY. CONST. sec. 158.
building this limitation cannot be exceeded except in the case of an emergency involving the public health or safety. An example of such an "emergency" debt is one incurred for construction of a new waterworks system where the existing plants had failed. Circumstances not considered by the court to create emergencies have been the construction of a new courthouse, the construction of a light plant and the replacement of a school building destroyed by fire. It is evident that the court does not use the word "emergency" loosely.

For practical purposes, the limitation on the county's power to incur indebtedness contained in Section 157 (debt cannot be incurred in any year to an amount exceeding the income and revenue provided for such year) is more important than Section 158 (allowing debt to the extent of 2% of value of taxable property). Even assuming the 2% of Section 158 would be adequate (an absurd assumption) it can be invoked only through a vote of the people of the county, and this procedure is expensive and cumbersome. Thus the county government would generally have to stay within the limitation of Section 157.

It is obvious that a consolidated county, the sole governing body for the people of the county including the people of the abolished city, could not operate on so narrow a margin as the constitutional debt limitations create. Of course the debt and tax limitations could be changed through a constitutional amendment, but past experience in other fields has shown that constitutional amendments are not easily obtained in Kentucky. For this reason other possibilities should be examined with a view to determining the extent to which an efficient consolidated government might be achieved without constitutional amendments. The following

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28 Ky. Const. sec. 157a provides that upon ratification by the voters of the county, debt up to 5 per cent of the value of the taxable property can be incurred for road building purposes.

29 Peake, Constitutional Limitations on County Indebtedness in Kentucky, 28 Ky. L. J. 32, 35-36 (1939).

30 This section has had a more restricted meaning since 1938 than it enjoyed previous to that year. Under an early interpretation, the "income and revenue for the year" was held to mean the maximum possible income and revenue which could be raised, irrespective of whether the city or county made any attempt to raise a maximum amount of income and revenue. City of Providence v. Providence Electric Co., 122 Ky. 937, 91 S.W. 664 (1906). However, it was held in Payne et al. v. City of Covington, 276 Ky. 380, 128 S.W. 2d 1045 (1938), that the standard for measuring the maximum debt which can be incurred, is the income and revenue which it is estimated will be raised during the year.
discussion, however, will contain observations only—no categorical conclusions will be drawn.

**Tax and Debt.** A solution to the fiscal difficulties would be in sight if an adequate method to obtain revenue which would not be circumscribed by Section 157 of the Constitution, and a way to borrow money without its being considered the incurrence of a "debt" within the contemplation of Sections 157 and 158, could be devised. The possibility of obtaining necessary revenue from a different source than that which is limited by Section 157 has already been mentioned. But different sources, such as a payroll tax, thus far have been used to supplement the local government's revenue, not as a primary source of income. If the rates on one of these sources were raised high enough to replace the *ad valorem* tax, the initial reaction probably would be a feeling that the larger financial burden of local government had been shifted from those persons who traditionally have carried it. If that is correct it would be much easier and safer to avoid that reaction by financing the new government under existing concepts of local government taxation. It therefore becomes important to know the interpretation of "tax" and "debt" within the meaning of Sections 157 and 158 in order to determine whether some constitutional arrangement for providing adequate revenue might be utilized which would, at the same time, leave traditional concepts substantially intact.

The Court of Appeals has held that a local assessment on property specially benefited by a local improvement is not an *ad valorem* tax within the meaning of the Constitution. The assessment is considered to be a charge for the improvement.31 And the Constitution provides that a tax sufficient to pay a valid debt within forty years of the contracting of the debt must be levied.32 Under this provision it has been held that so long as the debt is a valid one a tax sufficient to amortize the debt within forty years must be levied even though it exceeds the tax limitations of Section 157.33 Important also is the holding that the tax rate limitations in Section 157 apply to taxes levied without the specific

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31 Wickliffe v. City of Greenville, 170 Ky. 528, 186 S.W. 476 (1916); See Williams v. Wedding, 165 Ky. 361, 176 S.W. 1176 (1915); Grosnell v. City of Louisville, 104 Ky. 201, 46 S.W. 722 (1898).
32 Ky. Const. sec. 159.
33 Gardner v. Magoffin County, 310 Ky. 125, 220 S.W. 2d 96 (1949).
assent of the voters, so that where the creation of a debt is authorized by a vote of the people, the tax necessary to retire the debt is considered specifically to be authorized too, and thus is not included as a tax within the limitation.\(^4\)

Since the tax limitations to some extent are geared to the amount of valid debt a county can incur, the debt provisions perhaps are more important. Indebtedness within the meaning of Section 157 or 158 is only that which is created by contract; therefore, debt incurred by operation of law is not included.\(^5\) Generally, an obligation for which an appropriation is made at the time of its creation from funds already in existence or prospective and subject to appropriation is not within the operation of the indebtedness limitations.\(^6\) Another debt which is not considered to constitute indebtedness within the Constitution is that incurred for essential governmental purposes.\(^7\) A county cannot, however, expend all its revenues for non-governmental purposes and then pass on its indispensable government obligations as a floating debt for future generations.\(^8\)

Before an obligation will be considered a debt of a city or county, the respective government's credit must be pledged. For this reason bonds issued to pay street improvements create a debt within the Constitution if the city's or county's credit is pledged, but do not create a debt if the bonds are to be paid solely from assessments against the property benefited.\(^9\) For this same reason, the General Assembly has been able to enact laws empowering cities and counties to construct public projects, issuing revenue bonds to pay the cost and providing that the bonds shall not con-

\(^{4}\) City of Winchester v. Nelson, 175 Ky. 63, 193 S.W. 1040 (1917).
\(^{5}\) City of Frankfort v. Fuss, 235 Ky. 143, 29 S.W. 2d 603 (1930).
\(^{6}\) Estill County v. Noland, 295 Ky. 753, 175 S.W. 2d 341 (1943).
\(^{7}\) Fulton County Fiscal Court v. So. Bell T. and T. Co., 285 Ky. 17, 146 S.W. 2d 15 (1940); Russell Co. Fiscal Court v. Russell Co., 246 Ky. 529, 55 S.W. 2d 337 (1933). Fees and salaries of officers of the county, Breathitt County v. Cockrell, 250 Ky. 743, 63 S.W. 2d 920 (1933), and claims for pauper idiots' support and operation of county poor farms, First National Bank of Manchester v. Hays, 288 Ky. 297, 156 S.W. 2d 191 (1941), are essential governmental expenses. The salary of a county farm agent is not. Adair County Farm Bureau v. Fiscal Court of Adair County, 263 Ky. 23, 91 S.W. 2d 537 (1938).
\(^{8}\) Ballard v. Adair County, 268 Ky. 347, 104 S.W. 2d 1100 (1937). Evidently, the system by which counties are prevented from doing this is to add the estimated necessary expenses to the valid floating indebtedness, and if these items equal or exceed the limitations, indebtedness for non-governmental expenses cannot be incurred.
\(^{9}\) German National Bank of Covington v. City of Covington, 164 Ky. 292, 175 S.W. 330 (1915).
stitute a debt of the city or county so long as they are to be paid solely from the revenue received from the project.\textsuperscript{40}

It is significant that before the above cases could have arisen various county or city governments must have found it fiscally necessary to attempt to skirt the constitutional limitations. Therefore, as a practical matter, it is extremely doubtful that any of these methods would alleviate the existing limitations on county debt and tax to such an extent as to make it fiscally possible for a county to expand its operations and furnish city services to city residents. And even if all the above arrangements (assessments, revenue bonds, etc.) could be utilized in such a way as to allow the abolition of one government, the complicated financial structure necessary to make the remaining government work would, in all likelihood, more than offset the advantages gained through the abolition. Hence, it seems more desirable to find sources of revenue other than through the above arrangements.

**Taxing Districts.** The same sections of the Constitution which set the limits of debt and tax in cities and counties impose limits on taxing districts, thereby authorizing the creation of taxing districts by implication. The maximum tax rate of such a district is the same as a county's—fifty cents per one hundred dollars valuation.\textsuperscript{41} And the limitation on the incurrence of debt by taxing districts also is the same as applies to counties.\textsuperscript{42}

Taxing districts offer at least a possible solution to the constitutional restraints upon city and county financing. For example, suppose one or more taxing districts could be created to have as their boundaries the border of the abolished city. They could levy independent taxes in return for certain services. This would not be a simple solution because by their nature taxing districts are ad hoc,\textsuperscript{43} and with limitations the same as the county's, it would take three districts having a maximum tax rate of fifty cents to equal the one-dollar and fifty cent tax rate of the city. The addition of these districts quite possibly would over-complicate the

\begin{footnotes}
\item[40] Ky. Rev. Stat. chap. 58. Also, under Ky. Rev. Stat. 103.320, a county can construct county buildings and issue revenue bonds for the cost so that the bonds will not constitute a county debt if the bonds are to be retired solely through revenue derived from use of the buildings.
\item[41] Ky. Const. sec. 157.
\item[42] Ky. Const. secs. 157 and 158. See notes 26 and 27 supra.
\item[43] Some districts are considered to be municipalities with general powers somewhat like the powers given the governing body of a city or town. See Gleason v. Weber, 155 Ky. 431, 159 S.W. 976 (1913).
\end{footnotes}
governmental structure too, since some taxing districts presently exist. For example, counties have been held to be taxing districts for school purposes.\textsuperscript{44} And to raise funds for the support of tuberculosis sanatoria, counties can become tubercular districts with an independent taxing power.\textsuperscript{45} Among others there are also fire protection districts,\textsuperscript{46} water districts\textsuperscript{47} and sewer districts.\textsuperscript{48} In addition to this problem, there would be the danger that the Court of Appeals might hold the creation of taxing districts to circumvent the loss of the city's taxing power a violation of the spirit of the Constitution. There would be a valid need for these districts in the absence of a city government and this need would seem to answer any contention that the spirit of the Constitution had been violated.\textsuperscript{49} However, there seems to be no answer to the danger of over-complication resulting from a multiplicity of independent districts within the same territory.

Incidentally, the creation of taxing districts would not obviate the loss of the Police Court since that court can exist only in a city or town, and it has been held that a taxing district, although a municipality, is not a city or town within the meaning of the Constitution.\textsuperscript{50}

The City-County Government. Another means of escaping the loss of taxing and debt-incurring powers which deserves mention (although it is a bare possibility only) is a consolidation of governments into one city-county government. That is, the remaining governmental unit after the abolition of the city or the county could be called the city and county of \ldots \ldots . \textsuperscript{44} Farson v. County Board of Education of Perry County, Ky., 100 F. 2d 974 (6th Cir. 1939). \textsuperscript{45} KY. REV. STAT. 68.090. \textsuperscript{46} KY. REV. STAT. chap. 75. These districts have a taxing power, KY. REV. STAT. 75.040. \textsuperscript{47} KY. REV. STAT. chap. 74. These districts have no taxing power, but operate on assessments, KY. REV. STAT. 74.130, and on rates, KY. REV. STAT. 74.080. \textsuperscript{48} KY. REV. STAT. 76.010. By recent legislation these districts can be created in second class cities instead of only in first class cities, KY. REV. STAT. 76.230. These districts have no taxing power but operate on rents, KY. REV. STAT. 76.090; charges, KY. REV. STAT. 76.080; and assessments, KY. REV. STAT. 76.172. \textsuperscript{49} In a proposed constitutional amendment to the Florida Constitution to effect the consolidation of Dade County and certain cities therein, specific provision was made to permit the creation of boroughs and ad hoc districts to have the ex-city boundaries as their borders, in case certain functions could be administered better by a centralized agency on the old city level. See Willmott, The Truth About City-County Consolidation, 2 MIAMI L. Q. 127-79 (1947). \textsuperscript{50} Gleason v. Weber, 155 Ky. 431, 159 S.W. 976 (1913).
examples of this arrangement are the City and County of Philadelphia and the City and County of Denver. If the Court of Appeals would recognize a city and a county notwithstanding the fact that all or most of the powers of the two were combined in one government, the one government might be allowed the combined tax and debt powers of the two governments.

However, the Constitution provides that in each county there "shall" be a fiscal court and makes provision for officers of city governments. In addition, the Constitution makes many other provisions relating to cities and counties separately so that the arrangement, even if constitutional (of which there may be little chance), would probably be so constitutionally entangled as to be impractical. A city-county government may nevertheless be a good solution if constitutional amendments are, in the end, found to be the only workable method for effecting complete consolidation.

PART II

TRANSFER OF COUNTY FUNCTIONS TO THE CITY

Any plan to transfer the county functions to the largest city therein will meet with an immediate constitutional objection. It is true that Section 63 provides that: "Nothing . . . shall prevent the General Assembly from abolishing any county." However, Section 64 of the Constitution provides:

No county shall be divided, or have any part stricken therefrom, except in the formation of new counties, without submitting the question to a vote of the people of the county . . .

It is hard to read these sections as meaning anything other than that a county can be abolished or have a part stricken for any pur-

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51 The city and county of Philadelphia is theoretically headed by a mayor, and county officials are subordinate to him. The fact that some county officials are still elective, however, has created an administrative weakness, in that elective officials are usually coordinate instead of subordinate. See Gruenberg, Philadelphia's City-County Dilemma, 29 Nat. Mun. Rev. 385 (1940). The consolidation of Denver with its county was effected by a constitutional amendment (1902) which gave the city home rule and combined the city with the county. The city and county of Denver have coterminous boundaries and the administrative officers of each are combined under the leadership of a strong mayor. See Fesler, Denver Consolidation a Shining Light, 29 Nat. Mun. Rev. 360 (1940).

52 Ky. Const. sec. 144.

53 Ky. Const. sec. 160.

54 See Note 51 supra.
pose, but if done for any purpose other than to form a new county, then such abolition will be constitutional only if submitted to and approved by the voters of the county. It would follow from this interpretation that if the part stricken from the county were to be a part of a new county, no vote would be necessary at all. Nevertheless, that this is not the result intended by the framers of the Constitution is indicated by a statute, passed less than two years after the adoption of the Constitution, which provides the procedure for the striking of part of a county. The statute calls for a petition and vote by the people of the county as prerequisites to the legality of the striking. All through the statute it is presumed that any portion so stricken shall be added to another county. Thus, provision is made for taking away part of a county only where the part taken is to be attached to another county, and a vote is necessary to do this. Since the legislators were in a good position to know the intention of the framers, the statute should receive considerable weight in any interpretation of the Constitution.

It would thus appear that anytime a county is abolished the territory must become a new county or part of an adjacent county. Section 65 of the Constitution adds weight to this conclusion by assuming in its language that any territory stricken from a county will be added to another. The history of Section 63, quoted in part above, indicates that its purpose was only to insure that Section 64 was not so interpreted as to take away the power of the Legislature to abolish a county as a disciplinary measure. It must be assumed that the abolished county would either be abolished temporarily, added to an adjacent county, or made into a new county.

Beyond the sections discussed above, others indirectly but effectively prohibit consolidation through abolition of the county.

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56 Information from Debates, Constitutional Convention Vol. 1, pp. 328-360 (1890), shows that the legislators correctly interpreted Section 64. The whole purpose of the section was to prevent gerrymandering and politically motivated creation of new counties. If Section 64 were interpreted to mean a vote of the people would be necessary only if the part stricken were not to be added to a new county, the whole purpose of the section would be defeated.
57 Most of the framers of the Constitution believed this power was inherent in the Legislature anyway, but wanted to take no chances. Debates, Constitutional Convention, Vol. 1, pp. 328-360 (1890).
58 No cases were found which interpret this section, except those arising from an attempt by the General Assembly to create new counties.
For example the creation of a Quarterly Court is based on the county. So also is the creation of county courts. Of possibly less importance is the provision in Section 142 for Justices of the Peace. Under a strict interpretation, abolition of a county would result in abolition of all these judicial bodies. And as has been noted, the Constitution prohibits any but constitutional courts, so the General Assembly cannot remedy any resultant lack of courts. Thus the territory, unless interpreted by the Court of Appeals to be a “county” for purposes of the court sections, would be left with a police court and the circuit courts, and many of the provisions for the creation of circuit courts are geared to the county.

There is one extremely important item in favor of consolidation through shifting the county functions to the city. Assuming a constitutional amendment to correct the above prohibitions could be obtained (and it would probably be simpler than obtaining one to correct the debt and tax provisions which may obstruct the abolition of a city), the city government would be more able to carry on for all the county than the county would be. This is because the city’s tax and debt limitations are more liberal than the county’s. Thus, through the extension of the city’s jurisdiction to the remainder of the county, instead of losing taxing power, the city might gain power. For example, in a county in which there is a second class city, there is a fifty cent maximum tax on the county residents and a two dollar maximum tax on the city residents (fifty cents county tax and one-dollar and fifty cents city tax). If the city were allowed to replace the county, the one-dollar and fifty cent tax rate would be extended to all the residents of the entire county while as to the city residents only the county tax of fifty cents would be lost. This would result in an overall gain if a substantial part of the county’s property value lay outside the old city limits. Of course, some plan of tax equalization would have to be worked out because all the county residents could not be given the services that city residents receive. And without some equalization the county residents would never vote for consolidation. Whether any plan of equalization could be

59 Ky. Const. sec. 139.
60 Ky. Const. sec. 140.
61 Ky. Const. sec. 135.
62 See Ky. Const. secs. 125, 137 and 138. But see also secs. 128 and 132.
63 See the discussion of sections 157 and 158 supra notes 26 and 27.
worked out would depend upon the interpretation of the follow-
ing language in Section 171: "Taxes ... shall be uniform upon all
property of the same class subject to taxation within the territorial
limits of the authority levying the tax. . . ."

Application of the debt provisions is equally favorable. A
county's or a city's power to incur debt is limited to the amount
of income and revenue provided for the year.\textsuperscript{64} Thus, if through
consolidation no substantial amount of income and revenue were
lost, this debt limitation could be no more restrictive than it is
when two governments exist. Another debt provision allows this
indebtedness (an amount equal to the income and revenue pro-
vided for the year) to be exceeded by a vote of the people, but
places an absolute maximum beyond which even the voters can-
not go. As to counties, this overall limit is \textit{two per cent} of the
value of the taxable property,\textsuperscript{65} except for debts incurred for
public road purposes, in which case debt up to an amount equal
to five per cent of the taxable property can be incurred.\textsuperscript{66} Cities
of the first and second class, and of the third class having a popu-
lation exceeding 15,000, on the other hand, can become indebted
in an amount not exceeding \textit{ten per cent} of the taxable property.\textsuperscript{67}
Since the city's taxable property would include property formerly
outside the city borders, there could well be an overall gain in the
amount of allowable indebtedness.

Nothing in the Constitution appears to fix the possible powers
of a city at a level so low that the administration of county func-
tions (except for the function of the courts already mentioned)
could not be handed over to the city. But one section does pos-
sibly so restrict the General Assembly that it would be incapable
of giving to a particular city powers not enjoyed by other cities
of the same class:

> The cities and towns of this Commonwealth for the pur-
oses of their organization and government, shall be divided
into six classes. The organization and powers of each class
shall be defined and provided for by general laws, so that
all municipal corporations of the same class shall possess
the same powers and be subject to the same restrictions.\textsuperscript{68}

\textsuperscript{64} Ky. Const. sec. 157.
\textsuperscript{65} Ky. Const. sec. 158.
\textsuperscript{66} Ky. Const. sec. 157a.
\textsuperscript{67} Ky. Const. sec. 158.
\textsuperscript{68} Ky. Const. sec. 156.
Since all cities must be in a given class and all cities of that class must have the same powers, it would appear to be unconstitutional for the Legislature to allow one second class city to administer county functions. No problem would exist as to Louisville since it is the only first class city, and possibly an optional type general law, applicable to any second class city in a county in which the people voted for consolidation, would comply with the section above.69

Conclusion. The foregoing discussion has as its main purpose the stimulation of thought by Kentucky citizens concerning consolidation of governmental effort. Realistically viewed, the present Constitution probably hamstrings any workable complete consolidation which would be a major improvement over the existing governmental structure. Beyond this it is extremely doubtful that a drive for complete consolidation could overcome politics and red tape—if it could, the drive would probably be strong enough to obtain basic constitutional changes and do the job right. Therefore, the only practical purpose Parts I and II of this article can achieve is to start the ball rolling. Obviously consolidation of any sort can be realized only after much thought and investigation.

Part III of this article, however, discusses a kind of consolidation which not only will work, but which has to some extent already been accepted in Kentucky.

PART III

WHAT COULD BE ACCOMPLISHED WITHIN THE EXISTING CONSTITUTIONAL FRAMEWORK BY WAY OF CONSOLIDATION OF SPECIFIC FUNCTIONS?

Of course, almost any change in government is theoretically "possible." Section four of the present Kentucky Constitution, like most other constitutions, provides that the people shall have "... an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may deem

69 Ky. Rev. Stat. 76.230 authorizes the creation of metropolitan sewer districts in second class cities. Like many laws relating to cities, a given power can be exercised but does not have to be exercised. However, a law authorizing consolidated cities extra powers would have to be conditioned upon the vote of all the people of the county and to this extent is different since other powers given cities depend upon adoption by the city, not by the people of the county.
proper." However, such sweeping changes in traditional concepts of local government as would be entailed in any scheme of complete consolidation of city and county governments might well fail to meet with the immediate approval of the voters of the area involved. Indeed, from 1916, when the City and County of Denver were carved out of Arapahoe County, Colorado, until January 1, 1949, not a single city-county consolidation took effect anywhere in the United States. In view of the fact that complete consolidation may not be desirable as yet in a given area, or, although desirable, could not receive the requisite voter approval, an examination will now be made of the various possibilities, short of complete consolidation, which may be employed either permanently or as transitional devices designed to demonstrate to the voters the economic advantages inherent in complete consolidation. In this connection various plans enacted elsewhere will be discussed against the background of the Kentucky Constitution, followed by a detailed investigation of the feasibility of specific plans in the light of existing constitutional, statutory and case law in Kentucky.

The Kentucky Constitution, of course, outlines the general framework of government for the Commonwealth, and any system devised for cooperation between city and county governments must not be in conflict with it. The legislative power is vested in the General Assembly. Since the counties and cities are considered arms and agents of the state government these local units must look to the General Assembly for their powers, authority and jurisdiction. Accordingly, the General Assembly can enact any plan for city-county cooperation it desires, so long as such enactment is not in contravention of the Constitution. It is the function of the courts, in this respect, to determine whether any such grant of authority given local units by the General Assembly

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70 See Reed, Progress in Metropolitan Integration, 9 Pub. Admin. Rev. 1, 3 (1949), where the author, in writing of the difficulty inherent in obtaining voter approval of consolidation, says: "Here [Pittsburgh, in 1929] was the mildest of consolidation measures, giving to the central government of the city-county not much more than county powers. It did little but tack the name of Pittsburgh over that of Allegheny [County] on the map. It had powerful support with barrels of money. A very intelligent educational campaign was waged in its behalf over many months. Yet the charter lost." More recently a very progressive plan for consolidation of the City of Miami with Dade County, Florida, was rejected by the voters.

71 Id. at p. 2.
is permissible under the constitutional framework and whether the action of any local unit of government has been sanctioned either under the Constitution or a valid statutory enactment.

As already noted this section of the survey is limited to improvements in local relations within the existing basic framework of government. The following pages contain a discussion of some constitutional sections mentioned earlier, but a certain amount of repetition is necessary for clarity. Here, the emphasis will be placed upon the relation of these sections to problems involving functional consolidation rather than complete consolidation of cities and counties.

**Pertinent Constitutional Provisions Relating to Counties.** Certain county offices are established by Section 99 of the Kentucky Constitution. They are as follows: County Judge, County Court Clerk, County Attorney, Sheriff, Jailer, Coroner, Surveyor and Assessor, and a Justice of the Peace and Constable for each district created within the county. None of these offices may be abolished by the General Assembly, except that of the Assessor. The latter office has been abolished and the duties thereof transferred to another office. Also, the General Assembly may "... consolidate the offices of Jailor and Sheriff in any county or counties, as it shall deem most expedient; but in the event such consolidation be made, the office of Sheriff shall be retained. . . ."

While the Constitution does not establish the duties and functions of each office in any detail, they are to be found in the statutes and the common law. The Constitution provides:

The General Assembly may provide for the election or appointment, for a term not exceeding four years, of such other county or district ministerial and executive officers as may, from time to time, be necessary.

It should be pointed out that under this provision it may be pos-

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72 Supra note 14.
73 Ky. Const. sec. 105.
74 Ky. Const. sec. 107.
75 The General Assembly has from time to time created additional offices. For a few examples, and the legal problems arising from their creation, see the following cases: City of Lexington v. Thompson, 250 Ky. 96, 61 S.W. 2d 1092 (1933) and City of Owensboro v. Hazel, 229 Ky. 752, 17 S.W. 2d 1031 (1929) (City Managers); Shaw v. Fox, 246 Ky. 342, 55 S.W. 2d 11 (1932) (Clerical assistants to justices in counties over 250,000 population); C. N. O. & T. P. Ry. Co. v. Cundiff, 166 Ky. 594, 79 S.W. 615 (1915) (Railroad Policemen); Roberts v. Cain, 97 Ky. 722, 31 S.W. 729 (1895) (Office of Indexer).
sible to create offices of county-wide jurisdiction to perform a particular service now exercised by a county and its municipalities. The creation of such an additional county office, while permitting abolition of one or more city offices, would not result in any overall economic saving to the taxpayers (except that the service might be performed more efficiently), because the county offices established by the Constitution could not be abolished. For example, if a new department were created to enforce the law and operate a centralized penal institution on a county-wide level, the offices of sheriff and jailer (or at least sheriff) would have to be retained even though the new department would be performing, in effect, all functions relating to law enforcement.

Other sections of the Constitution, as already noted, provide for Quarterly Courts, County Courts, Justices Courts and Fiscal Courts.

**Pertinent Constitutional Provisions Relating To Municipalities.** Under the Constitution cities and towns are to be divided into six classes and general laws for each class may be enacted by the General Assembly, which shall also provide by general law for their organization. The Constitution also provides for the maximum permissible tax rates and debt limitations of cities, counties and taxing districts. Since the provisions of these sections have already been mentioned in detail, they will not be repeated here. The important thing is that these limits to the fiscal operations of cities and counties may be exceeded to some extent
through creation of independent taxing districts,\textsuperscript{83} for the performance of particular services necessary to the government of the area involved (e.g., fire protection districts, sewage disposal districts, etc.).\textsuperscript{84} The differential in tax and debt limitations between a city and the county in which it is located is significant enough to create financing problems of serious magnitude in any consolidation scheme. The problem has been discussed at length earlier\textsuperscript{85} and is mentioned again only to emphasize that it will have to be considered in determining the proportion of cost to each unit of government where one or the other performs a particular service for both.\textsuperscript{86}

It should be pointed out that nowhere in the Kentucky Constitution is there found any express prohibition of consolidation of functions between cities and counties. Nor have there been found any indirect prohibitions, except such as may be implied from the creation of county constitutional offices which could not be abolished. Fortunately, however, the functions of most of these offices are already county-wide in nature.

Finally, it is significant to note that the Constitution directs that the General Assembly "... shall, by appropriate legislation, provide for an efficient system of common schools throughout the State."\textsuperscript{87} Sections 184 through 188 deal with the financing of the school system. Section 189 provides that school funds shall not be used for denominational, church or sectarian schools, and Section 187 provides for separate white and negro school facilities. With these latter exceptions it would seem that the General Assembly is left with wide latitude in the creation of an "efficient" school system. This would certainly include the power to permit cities and counties to pool their efforts in providing school facilities

\textsuperscript{83} Certain "assessments" for street, sewer or other improvements are not taxes and are not to be considered in determining tax rate or indebtedness limitations of Section 157 of the Ky. Constitution. See: Shaver v. Rice, 209 Ky. 467, 273 S.W. 48 (1925); Shaw v. City of Mayfield, 204 Ky. 618, 265 S.W. 13 (1924); Wickliffe v. City of Greenville, 170 Ky. 528, 186 S.W. 476 (1916); Vogt v. City of Oakdale, 166 Ky. 810, 179 S.W. 1037 (1915); Williams v. Wedding, 165 Ky. 361, 176 S.W. 1176 (1915); Gonsnell v. City of Louisville, 104 Ky. 201, 46 S.W. 722 (1898).

\textsuperscript{84} Ky. Rev. Stat. chaps. 74, 75 and 76.

\textsuperscript{85} See p. 303, et seq.

\textsuperscript{86} This problem becomes increasingly important where the city involved has a population of 15,000 or more, because of the marked disproportion in rates between the city and county.

\textsuperscript{87} Ky. Const. sec. 183.
and thereby avoid wasteful dual systems. Indeed, there are express statutory enactments allowing such consolidation.\textsuperscript{88}

\textit{Possible Devices For Effecting Limited Consolidation}

Before discussing separately the various city and county governmental services which have been or which may be consolidated, attention should be directed toward the various methods or devices which might be considered by Kentucky municipalities and counties interested in avoiding waste through duplication of effort.

The most important of these devices (examples and discussion of which will be given in greater detail below) are (1) functional consolidation, (2) intergovernmental contracts and (3) single purpose districts. Although these devices are very closely related, and attempt to accomplish primarily the same results, certain distinctions should be noted.

Functional consolidation will normally occur in those situations where a city and the county in which it is located are currently operating, independently, a certain function, or performing a particular service. The service or function, by mutual agreement, will be consolidated in one government or the other. Thus, one government withdraws entirely from that field and the other assumes performance of the service for the entire area.

The intergovernmental contract device may be thought of as being merely one method of several by which the withdrawing government pays the "assuming" government for performance of the service, and in a good many cases it amounts to just that. Quite often, however, the device is brought into play at an earlier stage, that is, before the government to be furnished the service has entered into the business of furnishing that service itself. For instance, a rather extensive fringe area may develop beyond the boundary of a certain city. The county will be faced with the problem of furnishing fire protection, among other services, to the residents of that unincorporated area. Rather than furnish the service itself, the county could contract with the city to have the latter furnish fire protection to the unincorporated area.

Single purpose districts, as the term implies, ordinarily are created (assuming, of course, that there is constitutional or statu-

tory authority in the given state for their creation) for the performance of one service. In the hypothetical situation just referred to, the county government might wish to create a fire protection district whose boundaries would be co-extensive with those of the unincorporated area sought to be protected, rather than contract with the adjacent city for fire protection services. Generally, the property owners within the district are assessed or taxed in order to defray the expense of the service furnished.

It should be apparent that the needs of the particular area, its size, population, financial resources, development, etc., all will have to be considered in ascertaining which device would be better suited and most economical for that area.

1. Functional Consolidation. Many areas of the country have, either voluntarily or under express statutory authority or direction, effected consolidation of functions or services through transfer of those functions or services from one unit of local government to the other. This "functional consolidation" has been utilized perhaps more in the Atlanta-Fulton County, Georgia, area than anywhere else in the nation. It was found there that complete consolidation was impossible. Although the Georgia Constitution permits city-county consolidation with majority approval of the voters of the county and each incorporated municipality, it specifically forbids consolidation where one of the cities seeking it lies in two different counties. Since parts of Atlanta lie in DeKalb County as well as Fulton County it was found necessary to resort to functional consolidation. The gist of the plan, which went into effect on January 1, 1952, was the annexation of densely populated areas adjacent to Atlanta, the re-allocation of functions between city and county, and the exclusion of the county from properly municipal functions. The most important feature of the plan concerns the re-allocation of services. Fulton County is now forbidden to furnish those services allocated to the city, which include water, sewage, police protection, fire protection, parks, recreation and garbage disposal. It is interesting to note how the

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89 Darmstadter, Metropolitan Atlanta, 30 NAT. MUN. REV. 258-263 (1941). It should be noted that the plan finally adopted for Atlanta and Fulton County in 1952 is not, strictly speaking, functional consolidation, but rather a combination of intergovernmental contracts in regard to certain functions, and actual consolidation as to others.
city of Atlanta is reimbursed for furnishing these services to residents of the county:

Water—Residents of the unincorporated areas of the county pay a double fee.

Sewage—The county entered into a contract with the city to pay for sewage disposal out of county revenues.

Police—The county must make contracts with the city. The county then establishes “police districts” and makes assessments therein.

Fire—The county is authorized to create “fire districts” and assess the cost to property owners and turn over the proceeds to the city.

Parks and Recreation—The county enters into contracts with the city. If the county does not pay the city for these services the city is authorized to levy and collect taxes.

Garbage Collection—The county creates garbage collection districts and assesses the cost to the property owners.

At least three advantages have been cited as accruing from this re-organizational plan. First, it has brought fringe areas into the city of Atlanta, which now has the burden of providing the strictly municipal services. Second, the reallocation of services has resulted in encouraging residents of the fringe areas to accept annexation. While assuming their share of city taxes they can expect a corresponding reduction in county taxes. Third, by not tampering with existing forms of government, and by making careful provision for every employee of the transferring government, the objection that many persons would lose their jobs or offices was eliminated.

Although 210 pages of legislation were required to effect the necessary changes for functional consolidation in Atlanta, it should be stressed that the situation was much worse there than it now is in Kentucky because of the lack of practically any pre-existing consolidation effort in Georgia, and also certain constitutional roadblocks which had to be hurdled. Certain consolidations have been effected already in Kentucky, and, as has been pointed out, there are few constitutional restrictions.

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90 For the detailed statutory plan for the transfer of employees see Ga. Laws 1951, p. 3050.
91 The foregoing discussion of the Atlanta-Fulton County plan was culled from an article in 34 Pub. Admin. 26-30 (1952).
92 These examples will be discussed later.
The new Missouri Constitution has several unique provisions permitting cooperation among local units of government. All political subdivisions, including counties, are authorized to contract and in general cooperate with each other; cities, towns or villages, not in a county having a charter for its own government, are authorized to consolidate, in whole or in part with the county; and as many as ten counties may consolidate for the performance of some common function. It should be noted that detailed provisions such as these for cooperation among local units of government, due to their very nature, could probably be realized only with the adoption of an entirely new state constitution—an event which does not appear likely to occur in Kentucky, at least in the immediate future.

Other interesting examples of consolidation, complete or functional, have occurred in Baton Rouge, Louisiana; Philadelphia, Pennsylvania; Boston, Massachusetts; and San Francisco, California. Many other consolidations on a very limited basis, too numerous to mention here, have also been effected.

2. Intergovernmental Contracts. The intergovernmental contract device has received wide-spread use in California, especially in the city and county of Los Angeles. As previously mentioned, this cooperative device is especially useful in counties in which extensive fringe areas have been built up around a major city (as in Los Angeles), or where there are several rather well-populated unincorporated areas near a large city. Rather than the county going into the business of furnishing municipal services and thereby bringing into existence a large and expensive operation paralleling that already being maintained by the city, it has been found to be more economical and efficient merely to contract with the city to have the latter furnish the services. This enables the city to increase greatly its facilities (through receipt of addi-

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93 Adopted February 27, 1945.  
94 Mo. Const. Art. VI, sec. 16.  
95 Mo. Const. Art. VI, sec. 17.  
97 See Reed, Progress In Metropolitan Integration, 9 Pub. Admin. Rev. 1, 7-10 (1949).  
99 Atkins, The First Hundred Years, 80 Nat. Mun. Rev. 90-95 (1941).  
100 Id. at 152-156.  
101 Some examples of limited consolidation in Kentucky will be discussed, infra, in the detailed examination of specific functions.
tional revenue from the county residents to whom the services are furnished) without a concomitant increase in over-all cost since the basic "overhead" expenses remain practically static. At the same time the county avoids the expense and bother of initial establishment and day to day overhead of the particular service department. The county residents benefit by reason of having to pay less for the service furnished by the city and at the same time are likely to receive more efficient service than they would if they relied on the county government.

Intergovernmental contracts have also been used widely in situations where an area for the first time incorporates and adopts a charter for its own government. If it is situated in a county already maintaining a well-organized and efficient fire department, for example, it may find it economical to contract with the county to have the latter furnish fire protection. Or, if situated in close proximity to another city, the newly-organized city may find it expedient to have the other city furnish fire protection on a contractual basis.

In speaking of the benefits accruing through the use of intergovernmental contracts in California, and which may apply equally in other areas of the nation, it has been said:

Flexibility and easy conformity are not the only virtues of contracts. Often where annexation, consolidation, or control through special districts is politically inexpedient, contracts serve to promote uniformity of service without depriving smaller jurisdictions of their cherished political prerogatives.102

A skeptic of the device would no doubt point out that success of the inter-governmental contract depends upon a willingness to cooperate on the part of both city and county officials. This is true, and probably represents the most serious practical obstacle to the widespread use of such devices.

3. Single Purpose Districts. The special purpose district ordinarily is created to furnish typically "municipal" services to an unincorporated area.103 The district is normally limited to the

102 Stewart and Ketcham, Intergovernmental Contracts in California, 1 Pub. ADMIN. Rev. 242, 248 (1941).
103 Quite often, however, the special purpose district encompasses a city plus all the unincorporated fringe surrounding it. At least this is a very common situation into which the single purpose district is introduced.
performance of one service and is coterminous with the area to be provided the service. Its maintenance is financed by an assessment against the benefited property, or through a tax levied on the property owners within the district. Sometimes the districts may include incorporated towns and cities, but often they cannot.\textsuperscript{104} The officials of the district may be elective or they may be appointed by the county court, depending upon statutory authorization. The chief value of single purpose districts has been said to consist of:

(1) furnishing a type of governmental organization whose territory coincides with the area needing its service;
(2) providing an agency through which unified, area-wide planning can be conducted;
(3) pooling the resources of the smaller governments; and
(4) acquiring the economies of large operations.\textsuperscript{105}

The most frequent criticism of these districts has been to the effect that they “increase the confusion of independent and semi-independent governmental units which make up the present day chaos of metropolitan government.”\textsuperscript{106} It also has been said of single purpose districts that their creation “removes some of the demand which would exist otherwise for genuine integration.”\textsuperscript{107} This same argument, however, might well be used against any device short of complete consolidation. The “confusion and chaos” of many districts might be lessened somewhat by authorizing one district to become “multi-purpose” and furnish several services on an area-wide basis.\textsuperscript{108}

\textit{Possibilities Under Kentucky Law}

An attempt will be made to describe what has already been authorized by the General Assembly together with a projection of what measures could be adopted, consistent with the Kentucky Constitution, along the lines hereinabove explored. It has been

\textsuperscript{104} For example, Ky. Rev. Stat. 75.010(2) provides: “In no event shall any fire protection district include within its metes and bounds any territory at that time or thereafter included in any city of this Commonwealth.”


\textsuperscript{106} Jones, \textit{Metropolitan Government} 98-99 (1942).


\textsuperscript{108} Supra note 100.
found convenient to discuss, separately, those functions and services performed by local governments which lend themselves most favorably to consolidation.

The basic premise of joint effort seems to have been accepted as constitutional by the Kentucky Court of Appeals, since none of the existing statutes to be discussed has as yet been struck down on the ground that joint effort is proscribed by the Constitution.

A. Tax Collection and Assessment. Any city in Kentucky may by ordinance elect to adopt the annual county property assessment for property situated within the city. Such a city may abolish any office connected with city assessment and equalization, although the incumbent City Assessor shall be allowed to complete his unexpired term. This practice could avoid useless duplication in this field and promote greater uniformity in tax assessment throughout the county.

No statutory provision has been found authorizing consolidation of city tax collection units with those of the county; at the same time no constitutional inhibitions have been noted. It is presently the duty of the sheriff to collect state, district and county taxes; a city officer collects city taxes. As heretofore mentioned both units of government are restricted to certain maximum tax rates established by the Constitution.

B. Police Protection. Any county court may establish a county police force. The jurisdiction of this police force is "co-extensive with the whole county. . . ." Police officers of cities of the first class have the powers of constables, with the exception of service of civil process. Since constables are authorized to operate anywhere within the county limits it is probable that police officers of cities of the first class may do the same. At any rate, the General Assembly may authorize police officers of any city to operate anywhere within the county. The General As-

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100 KY. REV. STAT. 132.235.
101 KY. REV. STAT. 134.140.
102 KY. REV. STAT. 91.110; see also appropriate sections in chapter 92.
103 KY. CONST. secs. 157 and 157(a).
104 KY. REV. STAT. 70.540.
105 KY. REV. STAT. 95.150.
106 KY. REV. STAT. 70.350.
107 A police officer of a city has no authority to make an arrest outside the territorial limits of the city unless such authority is conferred by the General Assembly. Brittain v. United States Fidelity and Guarantee Co., 219 Ky. 465, 293 S.W. 956 (1927).
sembly has done so in the case of police officers of third class cities by extending their jurisdiction one mile beyond the city limits.\textsuperscript{117} This adds further weight to the proposition that the Legislature can give city police officers county-wide jurisdiction. If this is true either a city or county might abolish its police force and permit the other government to furnish protection.\textsuperscript{118} This course of operation may require certain statutory revision permitting a city to decline to furnish police protection to its citizens where this task is to be left to the county government. As pointed out above, it would require an affirmative extension of the operational jurisdiction of city police if police protection were assigned to the city. Sharing the costs of such an operation would also require statutory authorization, but in view of other statutes permitting joint proportional assumption of cost burdens the same should be permissible, under the Constitution, in regard to city-county cooperation in law enforcement.\textsuperscript{119}

C. Fire Protection. There is statutory provision for county fire departments,\textsuperscript{120} and also for independent fire districts.\textsuperscript{121} Such an independent district may not include within it any city, but it may contract with any city or county to give or receive fire protection. “Similar [fire protection] contracts may be made and entered into between any county and an adjoining county, or between any county and any one or more municipalities or districts. . . .”\textsuperscript{122} In accordance with this statute it would appear proper for city and county governments to contract for one or the other to maintain a single fire department to furnish protection for both. The costs of the enterprise could be borne in an equitable ratio under terms of the contract.

D. Public Health. The General Assembly has made elaborate provision for city-county cooperation in the field of public health between a city of the first class and the county in which it is

\textsuperscript{117} Ky. Rev. Stat. 95.510.
\textsuperscript{118} It must be remembered, however, that in the event the county did abolish its police force it still must retain its other law enforcement officials, viz., the sheriff and constables, unless a constitutional amendment was approved giving it the authority to abolish those offices. But the General Assembly could reduce their salaries and duties.
\textsuperscript{119} Ky. Rev. Stat. 105.010(3) and 212.650.
\textsuperscript{120} Ky. Rev. Stat. 67.320.
\textsuperscript{121} Ky. Rev. Stat. chap. 75.
\textsuperscript{122} Ky. Rev. Stat. 75.050.
located;\textsuperscript{123} between second class cities and their counties;\textsuperscript{124} and between two or more counties.\textsuperscript{125} In those instances where consolidation of city-county health functions is permitted it is provided that the new department shall have jurisdiction throughout the county, including all municipalities in said county.\textsuperscript{126} It is also provided that the costs of establishing and maintaining the joint boards of health in first class cities and their counties shall be at the ratio of three to one with the city furnishing the larger figure.\textsuperscript{127} In second class cities and their counties the cost may be borne equally or according to any formula agreed upon by the city legislative body and the county fiscal court.\textsuperscript{128} Although no statutory authorization has been found permitting such joint cooperation in public health matters between cities with less than second class status and the counties in which they are located it has been reported that such a cooperative venture has been effected in at least one locality.\textsuperscript{129} This legislative pattern for cooperation in public health work, especially as it relates to second class cities and their counties, could very well serve as a blueprint for similar cooperative ventures in other fields.

E. Public Welfare. Cities of the first class and the county in which they are located may "... upon their joint action, combine, consolidate, and jointly control, as provided in KRS 98.190 to 98.290, such departments, boards, and other organizations now existing or which in the future shall be created for the purpose of serving either the county or the city, or both, in the administration and supervision of: All forms of public assistance, general relief, and social services to adults and children in homes or eleemosynary and correctional institutions; city and county penal institutions including the establishment of rules and regulations for the custody, government, and parole of inmates; other public welfare activities or services which may be placed within the control of the board."\textsuperscript{130} Provision is also made for creation of a joint

\textsuperscript{125} Ky. Rev. Stat. 212.050.
\textsuperscript{126} Ky. Rev. Stat. 212.350 and 212.700.
\textsuperscript{128} Ky. Rev. Stat. 212.650.
\textsuperscript{129} The city commissioners of Cynthiana, Kentucky, entered into an agreement with the Harrison County Fiscal Court to pay one half the costs of operating a health center. 41 Nat. Mun. Rev. 461 (1952).
city-county Children's Home by a city of the first class and its county, and a joint city-county Board of Welfare. These enabling statutes also could be used as a pattern for similar provisions for second class cities and their counties. The size, population and need of second class cities and their counties undoubtedly justify the classification and extension of such procedures to them.

F. Public Schools. The Kentucky Constitution clothes the General Assembly with broad powers to maintain an "efficient" school system. We assume "efficient" to include the term "economical." If joint city-county school systems would stretch the tax dollar, thereby promoting economy and at the same time raising the standards, such consolidation should be proper. Statutory provisions bear out this assumption. All school districts embracing cities of the first five classes constitute "independent school districts." Such independent districts will not be included in a county school district. But merger of an independent district into its county district is permitted upon request of the independent district and approval of the county board. Any independent school district is empowered to assume any part of a county district lying adjacent to the independent district, but the annexation must be approved by the voters of the territory to be annexed. Thus statutory procedure for consolidation of school systems is available presently and can be taken advantage of at any time the school board of an independent school district desires. The procedure, however, could be improved upon to facilitate more consolidations.

G. Maintenance of Roads. Statutory provisions now existing do not seem to contemplate city-county cooperation in the matter of construction and maintenance of city and county roads. This does not mean, however, that joint effort could not be allowed. In view of the joint operation permitted by statutes in other fields it would appear that the same could also be extended to the road system. It should be remembered that under the Constitution counties are permitted to make certain tax levies and incur certain

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231 Ky. Rev. Stat. 201.010 through 201.990.
233 Supra note 87.
debts for road purposes\textsuperscript{138} while cities may not. In view of this the most feasible course of action would appear to lie in turning over all road construction and repair work to the county, perhaps on a contractual basis. Since the county normally must maintain rather elaborate construction and repair apparatus, it would seem that it could assume city street construction and repair without too much difficulty.

H. Sewage and Sanitation. The Kentucky statutes permit a city of the first class and its county to join in the construction, maintenance and financing of a sewer system throughout the city and county.\textsuperscript{139} By recent legislation this same opportunity has been made available to second class cities.\textsuperscript{140} Provision is made for a joint city-county Metropolitan Sewer District Board to manage and control its facilities.\textsuperscript{141} It would appear that cities and counties could also be permitted, under appropriate legislative authority, to pool their efforts in performing other sanitation services such as street cleaning, garbage disposal and the like.

I. Courts—Criminal and Civil. The only city courts authorized under the Constitution are Police Courts.\textsuperscript{142} Although they are permissive only, and not made mandatory, the General Assembly has provided for such courts.\textsuperscript{143} These courts have jurisdiction over minor offenses and violations of municipal ordinances and by-laws. Admittedly this court system parallels a portion of the county court structure but can be justified perhaps in the larger cities. A more serious and un-economical duplication of effort is found in the county court system itself. The Quarterly Courts, County Courts and Justices’ Courts in many instances have concurrent jurisdiction for minor offenses. Some also have exclusive functions. Any plan to streamline the lower court system, however, must be prefaced with provision for constitutional amendments, since the provisions creating all of them, with the exception of the city police courts, appear to be mandatory.\textsuperscript{144} In a good many localities the county court system probably could

\textsuperscript{138} Ky. Const. sec. 157(a).
\textsuperscript{139} Ky. Rev. Stat. chap. 76.
\textsuperscript{140} Ky. Rev. Stat. 76:230.
\textsuperscript{141} Ky. Rev. Stat. chap. 76. The city of Louisville and county of Jefferson have been operating a Metropolitan Sewer District for some time now.
\textsuperscript{142} Ky. Const. sec. 143.
\textsuperscript{144} See Ky. Const. secs. 139; 140; 142; 143.
assume the duties of the city police courts. Any really satisfactory plan in regard to the lower court system, however, would seem to call for complete constitutional revision.

J. Recreation. The Kentucky General Assembly has recognized the maintenance and operation of playgrounds and recreation centers as a "proper municipal purpose for all cities and counties." They may jointly establish, maintain and conduct a recreation system. Some cities and counties of the State have taken advantage of this latter provision. It is this sort of statutory language and authorization which offers most hope to those seeking functional consolidation of a variety of other services.

K. Planning and Zoning. Any two or more communities may cooperate and jointly exercise the powers granted to them relating to slum clearance and redevelopment. They may designate an agency of one community to act as agent of each. A first class city and its county may enter into an agreement to regulate planning and zoning of incorporated and unincorporated areas within their respective jurisdictions. They may create a joint Planning and Zoning Commission and a Board of Zoning Adjustment and Appeals. Cities of the second class are to establish a commission to regulate planning and zoning in the city and its "municipal area." These provisions seem to allow adequate city-county cooperation in this field. The same can be said of air planning and zoning. Cities of the second through sixth classes may acquire and operate airports alone or jointly with their respective counties.

L. Utilities. There are no express provisions in the statutes authorizing joint ownership or cooperation in the acquisition of utility plants or for the furnishing of such services one to another. In view of other authorized joint ventures it would seem that this

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147 "Community" is defined as meaning either a city or county. Ky. Rev. Stat. 99.340(4).
type of joint endeavor also could be constitutional if girded with appropriate legislative authority. Such authorization would be of little significance in municipalities served by private utility companies, but would be quite important if both governments desired jointly to purchase a utility.\footnote{See Ky. Rev. Stat. chap. 58, which would appear to authorize such joint activity.}

M. Libraries. Certain cities and counties may cooperate in providing library facilities for their inhabitants.\footnote{Ky. Rev. Stat. chap. 173.} Regional libraries may be established between two or more counties.\footnote{Ky. Rev. Stat. 173.310(3).} Further statutory provisions permit one governmental unit to take advantage of the services of a nearby library on a contractual basis rather than establish an independent library of its own.\footnote{Ky. Rev. Stat. 173.310(4).} This latter provision is important in that it might be feasible for a city or a county to contract for services to be furnished by the other unit rather than furnish them itself. This intergovernmental contract system may also avoid the somewhat cumbersome independent commission system utilized in so many of the statutes authorizing joint efforts. Of course certain functions (such as zoning, planning and the like) of their very nature require use of an independent commission or single purpose unit.

N. Public Buildings and Public Projects. A city of the first class and its county may erect, purchase, lease, condemn or otherwise acquire and keep in repair a joint city-county building.\footnote{Ky. Rev. Stat. chap. 173.340.} Such building may be used for any governmental purpose in which either or both are engaged. This provision of course is permissive only and will not prevent separate establishments. Extension of a similar provision to second class cities and their counties would no doubt result in very noticeable monetary savings as well as enable the citizens of the entire county to conduct their business with both governments in the same building.

A governmental agency, acting separately or jointly with one or more of any other such agencies, may acquire, construct, maintain or add to any "public project," and may borrow or issue bonds therefor.\footnote{Ky. Rev. Stat. 58.020.} "Public project" is defined as: "... any lands, buildings or structures, works or facilities suitable for ... public
health, public welfare or conservation of natural resources.}\textsuperscript{160} "Governmental agency" includes the Commonwealth, or any city or county or any agency thereof.\textsuperscript{161} This statute appears to have a very broad scope and intention. Its full scope and significance as yet have not been fully determined.\textsuperscript{162}

A city and county have also been authorized to enter into compacts for the establishment of a single purchasing unit or a single merit system.\textsuperscript{163}

\textit{Summary}

From the number of statutes presently existing it would seem that cooperation between cities and counties to eliminate duplication of effort is permissible under the Kentucky Constitution. Many of them have been passed for the benefit of Kentucky's first class city and the county in which it is situated,\textsuperscript{164} but the necessity for reducing expenses of government is existent in other cities and counties as well. It is probable, therefore, that any of the statutes heretofore considered which apply to first class cities and their counties could be modified so that second class cities and their counties also could benefit.

It will be noted that the General Assembly has at times utilized each of the three chief means of effecting consolidation which were discussed earlier, namely, functional consolidation, intergovernmental contracts and single purpose districts. This lends weight to the proposition stated earlier that the needs of the particular area will dictate which method would be most advantageous to it.

While the foregoing discussion has been limited to a survey of what has been accomplished or could be accomplished in cities of the first and second class, it should be pointed out that there are many situations wherein cities with less population would find it very advantageous to cooperate in some ways with the county

\textsuperscript{160} Ky. Rev. Stat. 58.010(1).
\textsuperscript{161} Ky. Rev. Stat. 58.010(2).
\textsuperscript{162} Most of the judicial interpretation of this chapter has been concerned with what is properly a "public project." The decisions appear to give wide latitude to local governments in the use of the provisions of this chapter.
\textsuperscript{163} Ky. Rev. Stat. 79.010.
\textsuperscript{164} It has been assumed throughout that it is a well known fact that Louisville is the only municipality in Kentucky at the present time qualifying as a first class city.
in which they are located. No serious constitutional or statutory obstacles have been discovered which would prevent these communities from seeking contractual bases of cooperation in a good many areas with their county governments. So long as they do not exceed any positive constitutional or statutory prohibition\textsuperscript{165} no valid objections to such cooperation can be discovered.

\textbf{Addendum}

The 1954 General Assembly, which adjourned March 19, 1954, enacted a statute (S.B. 125) providing sweeping powers to cities of all classes and their counties to enter into intergovernmental contracts for the performance of any governmental function or functions. Any office, even an elective office, rendered unnecessary as a result of such a contract would be declared vacant upon the expiration of the incumbent's term.

The same General Assembly also directed, by joint resolution (S.R. 52), a complete study, by the Legislative Research Commission, of the court system of the Commonwealth, from top to bottom. The Constitution Review Commission of Kentucky, in its Report to the 1954 General Assembly, has indicated that it is also working on such a study.

\textsuperscript{165} Such as the constitutional tax and debt limitations.