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REFORMS IN THE JUDICIARY

By AMOS H. EBLEN*

With the publication of Vanderbilt's "Minimum Standards of Judicial Administration" in 1949, it became possible for a state to evaluate the organization and operation of its judicial system in the light of generally accepted requirements. Some were amazed to learn that the administration of justice fell miserably short in so many respects in their states. As a result, there has been a considered effort in nearly every one of the states to improve the administration of justice by raising the basic features up to or above the minimum standards.

The program for improvement in Kentucky first began to take form in 1950. The General Assembly in that year created a Code Commission to revise the Code of Civil Procedure and also brought into being a Judicial Council, composed of eleven members, and authorized it to make a continuous study of the judicial system in Kentucky and to recommend changes for improvement. This was a promising beginning and one for which the Governor and members of the General Assembly were due much credit.

From the standpoint of results accomplished, the session of the General Assembly of 1952 was most significant. In addition to the legislation providing for a new civil code, there were measures designed to make improvements in three very important respects. Their effect may not be directly noticeable for some time, but over a period of years they should add materially to a more effective and efficient administration of justice in Kentucky.

The first of these enactments was Senate Bill 81, relating to the jurisdiction of the Court of Appeals. For years the Court of Appeals has been disposing of about twice as many cases on the merits as the average state court of last resort. While this burden has been materially increased in the last thirty-eight years by statutes granting appeals in particular cases, such as the review of orders and decisions of administrative agencies, no change was made be-

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tween 1914 and 1952 in the general statute regulating appeals from the circuit courts. There was an appeal of right if the case involved the title to land, an easement therein or a statutory lien thereon, or if the amount in controversy was as much as five hundred dollars. Where the value in controversy was less than five hundred dollars and as much as two hundred dollars, an appeal might be prayed.

Senate Bill 81 places land title, easement and statutory lien cases on the same footing as other cases, namely the amount involved. Where the judgment when construed in connection with the pleadings does not definitely fix the value in controversy, either party may request the judge to state in the judgment the actual value, and this valuation shall be conclusive for purposes of appeal. The purpose of this change was to relieve the Court from considering land cases where the amount in controversy is trivial. Senate Bill 81 also raises the higher figure in the "pray-appeal" cases to twenty-five hundred dollars. Thus an appeal of right may only be had where the amount in controversy is twenty-five hundred dollars or more. The lower figure, two hundred dollars, remains the same, and an appeal may be prayed where the value in controversy is as much as two hundred dollars and less than twenty-five hundred dollars. The purpose of this change is to relieve the Court of the necessity of writing an opinion in those cases when it is satisfied that the ends of justice do not require a reversal of the judgment and the correct decision can be had without construing a statute or section of the constitution put in issue. Regardless of whether an opinion is or is not written, the record in the "pray-appeal" cases is reviewed just as carefully and thoroughly as in other cases. It will be interesting to note the relative effect the changes made by Senate Bill 81 will have on the work load of the Court.

The compensation of the members of the judiciary has required considerable attention and study within the past six years. With but few exceptions, it is uniformly acknowledged that judicial salaries, on the average, must be increased and adequate provision made for retirement if able and dependable judges are to be attracted and retained. Certainly the absolute minimum compensation of any full-time judge should be sufficient to give financial independence. No smaller recompense can be com-

mensurate with the duties and responsibilities of the position. For these reasons Senate Bill 80, enacted during the 1952 session, is certainly a noteworthy step in the right direction.

This legislation raises the salaries of Justices of the Court of Appeals to twelve thousand dollars per year (the maximum salary payable under the provisions of section 246 of the Kentucky Constitution) starting with the term of each next beginning after the effective date of this enactment. It also increased the compensation of Commissioners of the Court of Appeals to eighty-five hundred dollars per year, effective July 1, 1952, and to ten thousand eight hundred dollars per year when the last of the Justices is entitled to twelve thousand dollars per year.

It is interesting to note that these increased salaries bring Kentucky more nearly in line with the compensation of judges of the courts of last resort in neighboring states. In Tennessee and Missouri the salaries of their highest judicial officers are this same amount while in West Virginia it is twelve thousand five hundred dollars. Illinois has a top salary of eighteen thousand dollars, and only two states, Virginia at ten thousand and Arkansas at nine thousand dollars, have a smaller salary for these officials.

With this beginning, it is hoped that more adequate provision may soon be made for our circuit judges, one feature of which should be a retirement program that gives some degree of financial security after a substantial period of public service.

The state courts of last resort are required to consider cases that are becoming more complex each day. It is not enough that a justice is familiar with the rules of the common law relating to contracts, criminal law, property, constitutional law and the other age-old subjects. Taxation, labor law, corporate reorganizations, and a great mass of social and economic legislation present new and difficult questions that demand a broader and more general analysis and research. About twenty-three states have recognized the need of the justices for some assistance and have made provision for law clerks. In more than half of these states each justice is assigned at least one law clerk.

The Court of Appeals has been using young law graduates as law clerks for several years and with good results. These young men dig into cases with a vigor and thoroughness that is seldom matched. The assistance they render and the consequent load

they take from the justice or commissioner is substantial. The General Assembly in its past session made available for the Court sufficient appropriations to increase the number of law clerks to eleven, one for each justice and commissioner. This is a recognition of the splendid service rendered by these law clerks, and it is safe to predict that the members of the Court will find this assistance of even more value in the future.

The improvements in the administration of justice that should flow from this legislation are major achievements. To a considerable extent they have been secured because of the interest and efforts of the Governor and members of the General Assembly. Much still remains to be done in order that the judiciary in Kentucky may properly meet the demands made upon it today.