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State Aid for Kentucky Units of Local Government: Some Constitutional Problems

By KENNETH E. VANLANDINGHAM*

Statements in certain opinions of the Kentucky Court of Appeals have given rise to the general belief that, due to constitutional restrictions, the state of Kentucky cannot extend financial assistance, except assistance for highways and educational purposes, to its units of local government.1 Yet the state does now in some small measure aid these units; and, if the constitutional provisions thought to prohibit state aid were considered in their proper sense, further assistance could be made available.

State aid for units of local government seems a necessity, inasmuch as the property tax, possibly the only major tax suitable for local administration, does not produce sufficient revenue to enable these units to meet the inflationary costs of rendering existing services, much less to permit them to undertake the task of supplying additional ones.2 Moreover, unless state grants are allocated to units of local government, functions which have been traditionally performed on the local level must, of necessity, be transferred to the state government. With these facts in mind, the constitutional provisions supposedly prohibiting state aid in Kentucky, as well as similar provisions contained in the constitutions of other states, will be considered. But before any rational consideration can be given them, it is necessary to examine the legal relationship existing between the state and its units of local government, for upon this relationship, it seems, depends the constitutionality of state aid.

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1 See Mitchell v. Knox County, 165 Ky. 543, 177 S.W. 279 (1915); Fiscal Court of Scott County v. Davidson, 259 Ky. 498, 82 S.W. 2d 801 (1935); Miller v. Sturgill, 304 Ky. 823, 202, S.W. 2d 632 (1947).

2 Sales taxes cannot be administered effectively by local authorities except perhaps in very large cities. Four Kentucky cities—Louisville, Paducah, Lexington, and Newport—have enacted ordinances levying payroll (income) taxes.
State-Local Legal Relationships

Local self-government is frequently extolled as one of the cardinal virtues of American democracy. But apart from self-government prerogatives exercised under constitutional home-rule charters, the only constitutional right of local self-government enjoyed by local communities is the right of their voters to elect officers to administer the laws, most of which are state in character. Although the case for local self-government may be argued upon historical grounds, the great weight of judicial authority today rejects such an argument entirely.

As stated in a dissenting opinion of the Florida Supreme Court:

"The facts are that there is now hardly an element of what we term local self-government that is not subject to congressional or state regulation or both. No principle of law is more subject to change or modification. Any attempt, therefore, to fasten on it a fixed status or to set it apart as something that cannot be dealt with even by the power that created it is 'sound and fury signifying nothing'".

During the early period under the present Kentucky Constitution the Court of Appeals appears to have given some sanction to the inherent right of local self-government, but now thoroughly discredits it. Speaking in a 1928 case, the court said:

"The theory that the right of local self-government inheres in the municipalities of this state is essentially unsound, and is based upon the now discarded doctrine that the Constitution of this state is a grant or delegation of power by the people of the state to the state government, and is not, as is now generally recognized, a limitation upon a power which, merely by virtue of its sovereignty, would otherwise be absolute".

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4 See Dillon, Municipal Corporations 154 (5th ed. 1911).
3 Amos v. Mathews, 98 Fla. 1, 126 So. 308 (1930).
2 See particularly City of Lexington v. Thompson, 113 Ky. 540, 24 Ky. Law Rep. 884, 68 S.W. 477 (1902). The doctrine that local units enjoy certain inherent rights of local self-government was also followed for a time by the courts of California, Indiana, Iowa, Michigan, Nebraska, and Texas. It was perhaps most ably stated by Judge Cooley in the case of People ex rel. Le Roy v. Hurlbut, 24 Mich. 44 (1871).
" Board of Trustees of Policemen's Pension Fund v. Schupp, 223 Ky. 269, 3 S.W. 2d 606 (1928).
What, then, is the legal relationship existing between the state and its units of local government? This relationship can perhaps best be illustrated by defining a city and a county, the two important units of local government throughout most of the United States. A city is defined as "a legal constitution formed by charter from sovereign power, erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose, and with the authority of subordinate self-government and improvement and local administration of affairs of state".\textsuperscript{7a}

This definition, it seems, is not altogether satisfactory since it does not emphasize fully the governmental character of modern cities. Though it is true that cities perform some corporate or proprietary functions, such functions are few when compared with the number of governmental or state functions they perform. According to the Kentucky Court of Appeals:

"A municipal corporation has a two-fold character, the one governmental and the other proprietary. In the establishment of a municipality, the state, acting through its Legislature, does not divest itself of its right to administer the public affairs of the state in its entirety; it merely constitutes the city its agent for the purpose of government within a limited territory. As such agency, the city executes the functions which would otherwise be performed by the state itself, and in such capacity it is imbued with all the rights and immunities of sovereignty".\textsuperscript{8}

According to Chief Justice Taney, "Counties are nothing more than certain portions of the territory into which the state is divided for the more convenient exercise of the powers of government".\textsuperscript{9} This definition is followed, at least in principle, by the courts of all states. For example, the Kentucky Court of Appeals has said that "a county is a subordinate political subdivision of the state and part of the sovereignty itself, existing and operating under the general laws of the commonwealth, and deriving all its powers of functioning through express legislative enactments,

\textsuperscript{7a} 43 Corpus Juris 65.
\textsuperscript{8} City of Hazard v. Duff, 287 Ky. 427, 154 S.W. 2d 28 (1941).
as contradistinguished from a city with a charter." Counties exist, therefore, primarily as local administrative units for effectuating the will of the state. Although state courts occasionally assert that counties have a private or proprietary character as well as a public or governmental character, when actually faced with the task of determining the nature of specific county functions, they are loath to recognize the private character. Indeed, some courts have gone to the extent of stating that counties perform scarcely any non-governmental functions.

It is clearly evident, therefore, that because of their legal nature, both counties and cities are integral parts of the state government; they are mere agencies through which that government carries out its policies; and as such they cannot be considered apart from the state itself. In other words, they cannot be isolated from the state and considered as self-governing units free to execute state laws according to their own wishes; for, if this were the case, the state would be rendered impotent to carry on its government. Accordingly, the Kentucky Court of Appeals has held that, unless the Constitution forbids, the state has an unquestioned right to utilize these agencies or any other agencies, public or private, to effect its purposes.

If counties and cities are used to perform state functions, does it not follow logically that the state may furnish the funds required for their performance? The answer to this question would seem evident; but due to general prohibitions contained in most state constitutions against state aid to local units, and due also to strong sentiment in favor of local self-government on the part of some state jurists, some state courts, including the Kentucky Court of Appeals, have occasionally held that it cannot. For this reason it seems desirable to examine these constitutional prohibitions, along with their judicial constructions, to ascertain their proper meaning.

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10 Edwards v. Logan County, 244 Ky. 296, 50 S.W. 2d 83 (1932).
11 See for instance, Fox v. Board for Louisville and Jefferson County Children's Home, 244 Ky. 1, 50 S.W. 2d 67 (1932).
CONSTITUTIONAL RESTRICTIONS ON STATE AID

Section 176 of the Kentucky Constitution provides that “the Commonwealth shall not assume the debt of any county, municipal corporation or political subdivision of the state, unless such debt shall have been contracted to defend itself in time of war, to repel invasion or to suppress insurrection”; section 177 provides that “the credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality or political subdivision of the state”; and section 181 provides that “the General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes.”

Each of these sections has a separate history and purpose, but the Court of Appeals has generally construed them to have the same end, namely, to prohibit state aid for units of local government. The court has not been consistent, however, in interpreting them. In some instances, it has held that one or more of them prohibit state aid; but in other instances, it has ignored these same rulings and allowed aid. For example, in a 1915 decision,14 it stated that section 177 was intended to prohibit all aid for a county, but by virtue of a 1909 “Good Roads” amendment state aid for county roads was made possible. In this same decision, it noted that a 5-cent state property tax from which revenues for road aid were derived was designated a state-road tax by the legislature and held, consequently, that its levy and appropriation by the state did not constitute state imposition of taxes for a county purpose in violation of section 181. To sum up, the court first stated that aid for a county would have been impossible without the 1909 amendment, but later it said that the road tax was not imposed for a county, but rather to accomplish a state purpose. Since the levy and appropriation of the tax pertained to a state purpose, it seems that the question of section 177 was scarcely, if at all, involved.

Undoubtedly, much of the confusion concerning the constitutionality of state appropriations for local units stems from the

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14 Mitchell v. Knox County Fiscal Court, 165 Ky. 543, 177 S.W. 279 (1915).
court's not infrequent failure to recognize the distinction between aid for a local unit acting in its private capacity and aid to enable that unit to accomplish a state purpose. It is significant, however, that in 1949 the Court of Appeals, without considering either section 176 or section 177, did uphold state appropriations for the building of hospitals by units of local government, holding that such appropriations accomplished a state purpose and, consequently, did not impose taxes for local purposes. Although sections 176, 177, and 181 have a somewhat common aim and, thus, cannot be considered wholly apart from each other, they will be considered here separately in order that their exact meaning may be made clear.

The Meaning of Section 181

Section 181, as previously noted, stipulates that "the General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may, by general laws, confer upon the proper authorities thereof, respectively, the power to assess and collect such taxes". The Debates of the Kentucky Constitutional Convention do not reveal the source of this provision; but it is almost identical with a provision contained in the Colorado Constitution of 1876 and was probably copied from that document. Provisions similar to section 181 are found in the constitutions of several states; and according to one writer, their original source was a provision contained in the Tennessee Constitution of 1834 and, incidentally, included as Art. II, Sec. 29 of the present Tennessee Constitution.

For further discussion of this distinction see below, "The Meaning of Section 177".


ART. X, sec. 10.

Concerning these provisions see 46 A.L.R. 612; 106 A.L.R. 908.


ART. II, sec. 29, "The General Assembly shall have the power to authorize the several counties and incorporated towns in this State to impose taxes for county and corporate purposes respectively, in such manner as shall be prescribed by law". This provision, on its face, appeared harmless, and was, in fact, actually superfluous, for according to the rule of construing state legislative powers, i.e., a state legislature possesses all powers not forbidden it by the state or federal constitutions, it really did not grant or take away power from the legislature; but in at least one case, Nicol v. The Mayor of Nashville, 9 Humph. (Tenn.) 252 (1848), it was held to limit legislative control over local government.
These provisions were undoubtedly intended to free local governments from unwarranted legislative abuses; but the fact that they would, in some instances, be interpreted to prevent state appropriations for these units probably never occurred to constitution framers of the Nineteenth Century.21 In this connection, it seems noteworthy that, though the recent Missouri Constitution retains the pertinent provision contained in the preceding one, it adds the following provision: "Nothing in this constitution shall prevent the enactment of general laws directing the payment of funds collected for state purposes to counties or other political subdivisions as state aid for local purposes".22 It would seem that, in view of their original aim—to guarantee local governments some measure of home rule—section 181 and comparable provisions of other state constitutions would not necessarily prohibit state aid to local units even for local purposes. But the Kentucky Court of Appeals, as well as the courts of other states, assumes that they do. State appropriations for such units are usually upheld on the ground that they are intended to accomplish a state purpose.

It should be noted that in some states the courts take the view that the constitutional prohibition against state imposition of taxes for local purposes applies only to property taxes;23 and, thus, in these states, state grants to local units may be made from non-property tax revenues. On the other hand, in other states the courts hold the prohibition applicable to all types of revenue.24 Although the Kentucky Court of Appeals has never passed directly upon this question, some of its decisions seem to indicate that it regards section 181 as being applicable to all revenue sources.25

The Kentucky Court of Appeals has never under section 181 disallowed a state appropriation designed to assist a local agency to achieve a state purpose. This is likewise the situation in California, a state whose Constitution contains a provision very similar

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21 At this time, apart from state aid for education and internal improvements, state aid for units of local governments was scarcely considered.
22 Mo. Const. of 1945 Art. X, sec. 10.
24 City of Los Angeles v. Riley, 6 Cal. 2d 621, 59 P. 2d 137 (1936); Walker v. Bedford, 93 Colo. 400, 26 P. 2d 1051 (1933).
to section 181.26. The Colorado and Idaho supreme courts, under similar constitutional provisions, have also upheld state grants to counties for the purpose of carrying out state functions.27 Furthermore, the California Supreme Court has upheld a state appropriation for counties under a statute which did not specify that the appropriated moneys should be applied for state purposes.28 In upholding this grant, the court considered that counties exist primarily as agents of the state, and consequently held that the presumption was that such moneys would be spent to effect state purposes. It pointed out that in case the moneys were misapplied the courts stood ready to afford proper remedies. In contrast to the California holding, the Montana Supreme Court has invalidated a statute authorizing a state grant of funds to counties, because the statute did not specify how such funds should be used.29 There was in this case, however, a strong dissent, urging that the grant should have been upheld on the grounds advanced in the California decision.

In a 1915 decision,30 already noted, the Kentucky Court of Appeals stated that as originally written section 177 (the section forbidding the state to lend its credit to its political subdivisions) prohibited altogether any state aid for local government; but that as a result of a 1909 "Good Roads" Amendment state aid for road purposes was rendered possible. In this same decision the court upheld a state appropriation for road aid, stating that the tax therefor was to accomplish a state purpose and, thus, its levy and subsequent appropriation did not constitute an imposition of taxes for county purposes in violation of section 181. Since this decision state appropriations designed to assist local agencies to accomplish state purposes have been upheld by the Court of Appeals under section 181, sometimes without the question of section 177 even being raised.

In the 1931 case of Holland v. Fayette County,31 the court held that in the absence of a statute designating the units of govern-

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26 Los Angeles County v. Riley, 6 Cal. 2d 625, 59 P. 2d 139 (1936).
27 In re Hunter's Estate; Hughes v. State, 97 Colo. 279, 49 P. 2d 1009 (1935); Ada County v. Wright, 60 Ida. 394, 92 P. 2d 134 (1939).
28 Los Angeles County v. Riley, 6 Cal. 2d 625, 59 P. 2d 139 (1936).
30 Mitchell v. Knox County Fiscal Court, 165 Ky. 543, 177 S.W. 279 (1915).
31 240 Ky. 46, 41 S.W. 2d 651 (1931).
ment entitled to receive the surplus fees of the county jailer such fees must revert to the county. In this decision, however, there was a dissenting opinion which urged that unless that portion of surplus fees derived from performing state services were returned to the state treasury a state grant of funds was being made to the county in violation of sections 176, 177, and 181. The majority seems to have based its holding, however, on the fact that, generally speaking, the county acts not with a will of its own but as an agency of the state. The court said, "The county is but an arm of the state government; it is merely a subdivision of the state formed for administrative convenience; it is required by the state to erect and maintain a jail. It has no choice in the matter."

Following this decision, the court held that a legislative appropriation of funds to compensate the sheriff for performing duties vested in him by the County Highway Patrol Act did not constitute either state assumption of county indebtedness (section 176) or state imposition of taxes for county purposes. This act, enacted upon the basis of the police power, required the sheriff to patrol the highways for the protection of the traveling public generally. The court admitted that if the duties performed by the sheriff were purely local in character his compensation would be illegal. But it noted that he was performing a state as well as a county service. It noted also that certain other county officers, such as circuit and county court clerks, jailers, and coroners received state compensation for performing state duties. The court's decision in this case seems to warrant the conclusion that appropriations of state moneys designed to enable county officers to perform state duties required by statutes enacted upon the basis of the police power do not violate section 181, section 176, or, for that matter, any other section of the Constitution.

The most recent and perhaps most significant decision interpreting section 181 in its application to state grants-in-aid was rendered in 1948 when the Court of Appeals upheld an act authorizing the State Building Commission to grant state moneys to counties, cities, and other municipal corporations for the purpose of constructing hospitals under terms of the Federal Hospital

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\[\text{KENTUCKY ACTS OF 1936 (Fourth Special Session), chap. 13.}\]
\[\text{Miller v. Harrod, 275 Ky. 597, 122 S.W. 2d 148 (1938).}\]
\[\text{Miller v. State Building Commission, 308 Ky. 249, 214 S.W. 2d 265 (1948).}\]
\[\text{KENTUCKY ACTS OF 1948, chap. 237.}\]
Survey and Construction Act. The grant was upheld on the ground that it was intended to enable local units to accomplish a state purpose, namely, the promotion of health; and though the question of section 176 or section 177 was not raised in the case, the court said, "We are of the opinion that neither section 181 nor any other section of the Constitution forbids this allocation of state funds as the state's contribution to this public purpose of state-wide interest and concern..."

Apart from its 1915 decision, holding that state funds could be appropriated for building county roads, this is the only instance in which the Court of Appeals has passed upon the question of whether the state legislature could, out of state funds, make appropriations to enable local units to perform specific functions. Moreover, in this decision the court appears to have made clear the extent to which the Constitution permits the making of state grants to local units. In answering the question of whether section 181 constitutes a barrier to state aid, it said:

"We think that must depend upon the nature of the purpose for which the money is appropriated or the fund is allocated. If such fund is to be used for a purely local purpose affecting only the inhabitants of the particular municipality, clearly it could not be done. On the other hand if it is one in which the general public and the State at large are concerned, it may be done. In the latter case the State is but appropriating or allocating to a county, city or other municipal agency funds to assist it in carrying out the purposes which, but for the action of the local unit, the State itself might have to provide."

This decision, along with the other decisions noted, seems to establish the fact that section 181 does not bar state appropriations designed to assist local accomplishment of state purposes. When such appropriations are made, however, certain safeguards must be followed; otherwise they are likely to meet with unhappy fate before the courts. In the first place, the legislature should in unmistakable language make it clear that the function to be

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36 Mitchell v. Knox County Fiscal Court, 165 Ky. 543, 177 S.W. 279 (1915).
37 The state cooperates with its local units in the establishment and operation of local health departments. The constitutionality of appropriations for this purpose has never been tested in the courts, but it seems that such appropriations are legal inasmuch as health is a state function.
aided is state or at least partly state in character. Though, as will be subsequently noted, a legislative declaration of purpose is not conclusive upon the courts, due consideration for a coordinate branch of the government requires that they give it great respect; and they will likely accept it unless it is wholly out of keeping with actual facts. Secondly, the legislature should establish some state agency to supervise in one manner or another performance of the aided function. Failure of some state legislatures to observe these two requirements has on occasion been at least partly the reason for judicial disallowance of state grants-in-aid.38

State and Local Functions Contrasted—State courts are of almost unanimous agreement that state constitutional provisions forbidding state imposition of taxes for local purposes do not preclude state aid for local performance of state functions, but that they do forbid absolutely any assistance for performance of purely local functions.40 A determination of what constitutes a state purpose and what constitutes a local purpose is an extremely difficult task, since as between the two purposes there is frequently no clear line of demarcation. As noted by the California Supreme Court, “There are some functions performed by cities that are both state and local in nature.”41 This statement applies likewise to all other units of local government. Most judicial definitions of state and local functions have arisen from cases in which the courts have attempted to determine whether duties and obligations, financial or otherwise, imposed upon local governments by state legislatures have been state or local in character. Since the decisions rendered in such cases have been influenced by arguments of opposing counsel, some little confusion exists among the courts of the various states as to what functions are state and what functions are local in character.42

When considering whether a particular function has a state

38 Marbury v. Madison, 1 Cranch 137 (1803); District Board of Tuberculosis Sanitorium Trustees for Fayette County v. City of Lexington, 227 Ky. 7, 12 S.W. 2d 548 (1928); Whitaker v. Green River Coal Co. 276 Ky. 43, 122 S.W. 2d 1012 (1938).
41 City of Los Angeles v. Riley, 6 Cal. 2d 621, 59 P 2d 137 (1936).
42 See 51 Am. Jur. 388.
or local purpose, courts generally concern themselves with determining whether the function's performance accrues to the benefit of the state at large or to a single locality. Thus, according to the Colorado Supreme Court, "The test as to county purposes is: Is it for strictly county uses, for which the county or its inhabitants alone would benefit, or is it for a purpose in which the entire state is concerned or will benefit?" In 1950, this criterion, as quoted in another Colorado decision, was quoted with apparent approval by the Kentucky Court of Appeals. This criterion, though seemingly sound in theory, is difficult to apply in practice, inasmuch as state and local functions frequently overlap. State aid for local governments is generally possible, however, by virtue of the fact that state courts allow aid for functions in which there is at least some element of state interest. In this regard, the Kentucky Court of Appeals has said, "... even though the local community may benefit to a greater extent than the public in general, yet if the service inures to the benefit of the State at large to any appreciable extent, its control rests with the Legislature. ..." Similarly, in upholding state grants to units of local government for construction of local public works, the California Supreme Court stated, "It is well settled ... that where the project has a state purpose, it is immaterial that in other respects it is local in nature."

In some states, the problem of ascertaining what is a state and what is a local purpose insofar as it relates to determining the manner and extent to which state aid may be made available to units of local government is mitigated considerably by the fact that the courts hold that, unless the constitution provides otherwise, power to classify such purposes lies with the legislature. This position is succinctly stated by the Colorado Supreme Court:

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45 Hogge v. Rowan County Fiscal Court, 313 Ky. 387, 231 S.W. 2d 8 (1950).
46 Board of Trustees, Newport Public Library v. City of Newport, 300 Ky. 125, 187 S.W. 2d 806 (1945).
48 Walker v. Bedford, 93 Colo. 400, 26 P. 2d 1051 (1933); State ex. rel. Gibbs v. Gordon, 138 Fla. 312, 189 So. 437 (1939); Jordon v. Duval County, 68 Fla. 48, 66 So. 298 (1914); State v. City of Tallahassee, 142 Fla. 476, 195 So. 402 (1940).
"The whole people, by their Constitution, say to their Legislature, You shall not impose taxes for county purposes. That is definite and final. What are county purposes? The Constitution does not say and does not forbid the Legislature to say. Hence the Legislature within all reasonable limits (of course it cannot, by mere fiat, make black white), has the power." 49

As this statement implies, a legislature cannot act arbitrarily in classifying functions; and, of course, in the final analysis, ultimate authority to declare the character of functions lies with the courts, for if a legislature had such authority, the constitutional limitation upon its powers would have no meaning. 50 It should be emphasized, however, that, in the absence of constitutional restrictions, the legislature has wide latitude in classifying functions (particularly functions concerning whose character reasonable men would likely hold different opinions), and that the courts, out of due deference to the judgment of that body, a coordinate and equal branch of the government, must accord its classifications great respect.

Though at one time most functions performed by units of local government were almost entirely of local concern, most functions which they now perform partake of a state or governmental character. Only on rare occasions do state courts hold functions performed by local units to be purely local in character. Though the Kentucky Court of Appeals has never defined state functions in detail, one may conclude from its interpretation of section 181 that it regards but few of the functions performed by local units as being purely local in character. Among the matters or objects which the Kentucky court has held to be wholly or at least partly of state-wide interest and concern are education, 51 highways, 52 criminal-law enforcement, 53 coroners, 54 vital statistics, 55 public libraries, 56 hospitals and health, 57 county farm bureaus, 58 tubercular

49 Walker v. Bedford, 93 Colo. 400, 26 P. 2d 1051 (1933).
50 See 46 A.L.R. 671, 672.
51 City of Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411 (1909).
53 Duke v. Boyd County, 225 Ky. 12, 7 S.W. 2d 839 (1923).
54 Whittenberg v. City of Louisville, 238 Ky. 117, 36 S.W. 2d 853 (1931).
56 Board of Trustees, Newport Public Library v. City of Newport, 300 Ky. 125, 187 S.W. 2d 808 (1945).
sanitoriums, municipal police departments, county highway patrol duties, and junior colleges. It might here be observed that if the state gave its financial support to local performance of even all of these functions (some of which already receive such support in part), such assistance, by releasing for other uses locally-raised moneys now being applied to them, would greatly benefit local governments.

The court has always taken the position that the legislature has power to require a local unit from its own financial resources to perform any function of government. Moreover, in only rare instances (all involving matters which it considered purely local in character) has the court ever held that the legislature could not impose duties entailing financial obligations upon local units. It seems apparent, therefore, that the court considers governmental functions as state or quasi-state functions; for though all powers, including purely local or quasi-private powers exercised by local governments, are derived from state legislative enactments, the court has always held that the legislature cannot force local financial support of functions in which there is no state interest or concern. Nor can it force local performance of purely local functions. This being the case, it would seem to follow logically that the state could lawfully subsidize any function or duty the performance of which it could impose upon local governments. Although the court has never explicitly stated such doctrine, it appears to have given it strong support when, in a recent decision, it stated in effect that the legislature could aid local performance of any function which the state itself could perform.

In summary, the Kentucky Courts of Appeals, as well as the

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59 Hendrickson v. Taylor County Farm Bureau, 196 Ky. 75, 244 S.W. 82 (1922).
60 District Board of Tuberculosis Sanitorium Trustees for Fayette County v. Lexington, 227 Ky. 7, 12 S.W. 2d 348 (1929).
61 Board of Trustees of Policemen's Pension Fund v. Schupp, 223 Ky. 269, 3 S.W. 2d 606 (1928).
62 Milliken v. Harrod, 275 Ky. 597, 123 S.W. 2d 148 (1938).
64 See Duke v. Boyd County, 225 Ky. 12, 7 S.W. 2d 839 (1928).
65 See MacDonald v. City of Louisville, 113 Ky. 425, 68 S.W. 413 (1902); Kenton County Water Co. v. City of Covington, 156 Ky. 569, 161 S.W. 983 (1914).
66 Fox v. Board for Louisville and Jefferson County Children's Home, 244 Ky. 1, 50 S.W. 2d 67 (1932).
highest courts of other states, holds that the state government may offer financial assistance for local performances of state functions, but that such aid may not be extended for performance of purely local functions. Although state courts have difficulty in distinguishing between strictly state and strictly local functions, the functional classification problem does not present an insurmountable barrier to extension of state aid to local units, inasmuch as several state courts hold that such aid may be given even though the local units receive greater benefits than the state. But in making state aid available for local performance of a particular function, a legislature should specify clearly its intention that the aid shall be used to accomplish a state purpose; and it should vest in some state agency supervision of the aided function. Unless such steps are taken, the courts may hold the legislative grant of aid unconstitutional. Finally, an examination of pertinent decisions of the Kentucky Court of Appeals seems to warrant the conclusion that state aid allocated under the conditions outlined is not prevented by section 181 of the Constitution.

The Meaning of Section 177

Section 177 of the Kentucky Constitution states that "the credit of the Commonwealth shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality or political subdivision of the state." Since 1915, the Court of Appeals has in one case specifically held and in two other cases stated by way of dicta that, with the exception of expenditures for educational and road purposes, this section prohibits use of state funds for aid of a county.

It is submitted that these holdings do not represent the proper interpretation of this section; and that it does not, as they suggest, prohibit state aid designed to assist local accomplishment of state purposes. In the first place, the third constitution of Kentucky, that of 1850, contained a provision very similar in import to section 177; and so far as the present writer has been able to discover, the authority of the legislature to appropriate funds to

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68 Mitchell v. Knox County Fiscal Court, 165 Ky. 54, 177 S.W. 279 (1915); Fiscal Court of Scott County v. Davidson, 259 Ky. 498, 82 S.W. 2d 801 (1935).
69 Art. II, sec. 33.
enable any agency, public or private, to perform state functions or duties was never questioned. Secondly, the holdings of the court ignore the primary purpose which the framers of the Constitution intended section 177 to serve, namely, to prohibit state contributions or donations to railroads and internal improvement companies. In the third place, they disregard earlier judicial interpretations which hold that the state may, without violating this section, spend funds to administer its government through agencies of its own selection. In the fourth place, they are at variance with other Court of Appeals’ decisions which hold, usually without the question of section 177 being raised, that the state may provide funds for local accomplishment of state purposes. Finally, with the exception of certain decisions of the West Virginia Supreme Court, they are at variance with decisions of supreme courts of other states.

As previously noted, section 177 was placed in the Constitution for the primary purpose of preventing the state from making grants or donations to railroads and internal improvement companies; and as reported to the constitutional convention from its committee on revenue and taxation, it did not contain any reference to the state’s lending its credit to its political subdivisions, but applied only to corporations and other private businesses. The debates on section 177 seem to indicate that it was made applicable to units of local government to prevent the state from participating in the debt retirement of a few counties which were then heavily indebted as a result of their making subscriptions to railroads and turnpike corporations. Again, it should be noted that, to the framers of the Constitution, the phrase “lending of credit” meant acting as a surety; they did not interpret it to mean direct state payment of a past local indebtedness. That the convention’s real concern was that of preventing any governmental aid being given to internal improvement companies is further evidenced by the fact that it added another section (179), very similar in purpose to section 177, and made it applicable to counties and other political subdivisions of the state.

In its early construction of section 177, the Court of Appeals,

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71 Ibid., pp. 2646-2648.
72 Ibid., p. 2644.
appears to have clearly recognized the meaning which the framers of the Constitution intended it to have. In 1892, only one year following the adoption of the Constitution, the court had before it a case involving the question of whether section 177 prevented the legislature from making an appropriation for the purpose of enabling the Kentucky Board of Managers to display the state’s resources at the World’s Columbian Exposition to be held at Chicago. Here the court decided that the board selected to expend the state’s money was merely acting as the state’s agent; and held, consequently, that the making of an appropriation designed to enable it to perform this duty was, in no sense, lending the credit of the state. Further, the court noted that, throughout previous years, the legislature had appropriated moneys for like purposes, and added its opinion that, had the constitutional convention in tended to discountenance such appropriations for the future, it would have done so in unmistakable terms.

In the 1904 case of Hager v. Kentucky Children’s Home Society, the Court of Appeals had presented to it the question of whether the state could make an annual appropriation to the Kentucky Children’s Home. In deciding this case, the court gave careful consideration to section 177 and held that it did not prevent the legislature from appropriating moneys to assist a state-designated agency, public or private, to perform a function of government. In reaching its decision, the court first stated the purpose of section 177. “There was a time when the state was allowed to subscribe, and did subscribe, to the capital stock of various quasi public improvement companies, and loaned or gave its credit to such. It was to prevent a repetition of that practice by the state that the section was enacted. It was to keep the state out of partnership enterprises, or even the doing on its own behalf of that class of public works—the building of highways and public roads.” As previously noted, the Debates of the Constitutional Convention support the court’s position on this point.

Further, the court noted that section 177 should not be interpreted so narrowly as to prevent the state from exercising its governmental powers through agencies of its own choice. “The

73 Norman v. Kentucky Board of Managers of World’s Columbian Exposition, 93 Ky. 537, 20 S.W. 901 (1892).

74 119 Ky. 235, 83 S.W. 605 (1904).
state cannot now loan or give its credit to any person or corporation for any purpose—public or otherwise. But this does not mean at all that the state cannot buy and pay for what it needs to enable it to discharge its governmental duties. Nor does it mean that the state cannot employ the services of a person or corporation to do a lawful act which it has the right to have done, and to pay for it. . . . When the legislature is authorized to do a thing generally, and no particular method is prescribed, it may pursue its own course in the means adapted to the accomplishment of the purpose."

In support of this conclusion, the court cited decisions of other state supreme courts and noted also one of its own earlier decisions in which it had held that, when the city of Lexington boarded its juvenile offenders in the House of Reform, it did not lend its credit in violation of section 179. In the Lexington case the court had said, "to hold that a branch of government such as a county or city, could not exercise a governmental function required of it by the law by employing the service to be done . . . would be to place a narrow and restricted construction upon the section [179], not warranted by the evils existing at the time of its adoption, and which were manifestly sought to be cured by the convention, as well as to materially hamper municipal subdivisions of the state in the exercise of necessary powers and discretion of government." Finally, the court in its opinion in the Hager case stated, "These authorities clearly settle that the vital point in all appropriations is whether the purpose is public; and that, if it is, it does not matter whether the agency through which it is dispensed is public or not; that the appropriation is not made for the agency, but for the object which it serves; the test is in the end, not in the means." (Italics the writer's.)

This statement merits special emphasis whenever the matter of state aid for local units is being considered, for it points up the distinction between state aid for local units proper and aid for local performance of a state function. It is undoubtedly true that, due to constitutional limitations, many states, including Kentucky, cannot impose taxes for local units, nor can they lend their credit or make outright grants or donations to them. But state

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75 Board of Trustees of House of Reform v. City of Lexington, 112 Ky. 171, 65 S.W. 350 (1901).
financing of local performance of state functions does not fall within the constitutional limitations, for in such instances, it is the state, not the local units, which derives the benefit. Moreover, even though the local units receive greater benefits than the state itself, the constitutional requirement is satisfied. Finally, it should be observed that what section 177 really forbids is the state's making outright grants to local units, grants from which it receives nothing in return. This view is supported by the Hager decision and by decisions of almost all other state supreme courts interpreting constitutional provisions similar to section 177.

Although the Hager decision seems to represent the correct interpretation of section 177 in its application to state grants-in-aid, the Court of Appeals has not followed it in any subsequent decision involving state grants, in some decisions as in the local hospital case, Miller v. State Building Commission,\(^7\)\(^6\) upholding grants while ignoring section 177 altogether, and in other decisions invalidating grants which, it seems, should have been upheld under the principle announced in the Hager decision. For example, in a recent decision,\(^7\)\(^7\) the Court of Appeals invalidated, under section 177 and section 176 (state assumption of local indebtedness), an act which provided for state reimbursement of the county sheriff for his expenses incurred in executing his county-revenue bond, a bond executed to cover his county-tax collections. Though it may be true that county revenues are applied for some purely county functions (such functions are extremely difficult to find), most such revenues are spent for the performance of state or governmental functions. Indeed, some state courts take the view that county functions and officers are so closely tied in with state policy that any state appropriation made for county governments is constitutional.\(^7\)\(^8\)

Although the Court of Appeals has ignored its ruling in the Hager case, it is significant that it has been followed by the Tennessee Supreme Court. When passing upon the constitutionality of state grants for county hospitals to be constructed under terms of the Federal Hospital Survey and Construction Act, the Ten-

\(^{6}\) 308 Ky. 275, 214 S.W. 2d 265 (1948).
\(^{7}\) Miller v. Sturgill, 304 Ky. 823, 202 S.W. 2d 632 (1947).
\(^{6}\) See Los Angeles County v. Riley, 6 Cal. 2d 625, 59 P. 2d 139 (1936); Bexar Co. v. Linden, 110 Tex. 339, 220 S.W. 761 (1920); State v. Lee, 157 Fla. 62, 24 So. 2d 798 (1946).
nessee court compared section 177 with a similar provision contained in the Tennessee Constitution,\textsuperscript{70} and quoted the \textit{Hager} decision with approval.\textsuperscript{80} According to the Tennessee court, the purpose of the Tennessee constitutional prohibition against lending or giving the state's credit to or in aid of any person, corporation, or municipality is to prevent the state from using its credit as a gratuity or donation, not to prevent use of state aid if required to accomplish a state or public purpose or to fulfill a state duty or obligation under the police power.

The supreme courts of Idaho, Texas and California have construed constitutional provisions very similar to section 177 and, like the Tennessee court, have reached the conclusion that they do not preclude state grants to local units for the accomplishment of a state purpose.\textsuperscript{81} Fairly typical of the position taken by these courts is a statement made by the Texas Supreme Court in interpreting section 51 of the Texas Constitution, which prohibits the state from making grants to units of local government:

"It [section 51] does not forbid every appropriation of state funds for use by counties. It merely forbids the bestowing of gratuities on counties. Counties are agents of the State through which the State performs a part of its governmental functions. Consequently an apportionment of State funds to counties to be used by them in carrying out a part of the duties or governmental functions which properly rest on the State is not a gratuity within the meaning of the above constitutional provision. . . . Consequently public funds may be apportioned by the Legislature to counties for the purpose of constructing public roads or for other governmental purposes."\textsuperscript{82}

Among the various state supreme courts, the West Virginia Supreme Court alone, unless the Kentucky Court of Appeals be included, takes the position that the constitutional prohibition

\textsuperscript{70} \textsc{Tennessee Const. of 1870}, \textsc{Art. II}, sec. 31.
\textsuperscript{80} Bedford County Hospital v. Browning, 189 Tenn. 227, 225 S.W. 2d 41 (1949).
\textsuperscript{81} Ada County v. Wright, 60 Ida. 394, 92 P. 2d 134 (1939); Jefferson County v. Board of County and District Road Indebtedness, 143 Tex. 99, 182 S.W. 2d 908 (1944); City of Los Angeles v. Post War Public Works Review Board, 26 Cal. 2d 101, 156 P. 2d 746 (1945).
\textsuperscript{82} Jefferson County v. Board of County and District Road Indebtedness, 143 Tex. 99, 182 S.W. 2d 908 (1944).
against lending the state's credit prevents the state from financing performance of state functions; and, at one time, it appears that the court interpreted the prohibition to apply to all local units. The West Virginia court has, however, in a few instances upheld state aid for state functions performed by counties, although the Constitution itself makes no distinction in this regard between counties and cities. It merely provides that "the credit of the State shall not be granted to, or in aid of any county, city, township, corporation or person." In a 1934 case involving the question of whether the state, upon its assumption of responsibility for education and roads, could reimburse local units for local expenditures made previously for these purposes, the court stated that, although the Debates of the Constitutional Convention on this section were confined entirely to the question of state aid for corporations, unless plain and simple words had lost their meaning, this section forbade all state aid. Following this decision, however, the court upheld state grants to counties for public relief purposes and for airport construction, taking the view that the moneys granted were for state purposes. Further, it has stated that, without violating this section, the legislature can always appropriate moneys for public purposes in aid of one of its own enterprises, such as schools, roads, and modern facilities for air traffic.

But in 1949, the court invalidated a legislative act appropriating moneys for the purpose of reimbursing municipalities for their expenses incurred in enforcing state law. (Such allocations had been made since 1941.) Here the court said, "We do not believe that the framers of our state Constitution ever contemplated that aid, in any form, would or could be extended by the State to municipalities out of State funds." The court noted the absence of any provision for state supervision of local law-enforce-

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85 Berry v. Fox, 114 W. Va. 513, 172 S.W. 896 (1934).
86 Kenney v. County Court of Webster County, 124 W. Va. 519, 21 S.E. 2d 385 (1942).
ment officers, and called attention to the fact that, for several cities, the sums allotted did not bear any substantial relation to the extent of law-enforcement problems. It recognized the fact that the legislature had specified that the funds should be applied for a state purpose, namely, law enforcement and admitted that such designation was proper. However, it substituted its wisdom for that of the legislature, holding that the legislature did not really intend that the funds should be applied solely for law enforcement, but that it intended them to cover or compensate for municipal revenue losses sustained as a result of the adoption of the 1982 Tax Limitation Amendment. The court could have—and it would seem should have—upheld the grant out of deference to the legislature's judgment. In case the appropriated moneys were illegally applied, the courts stood available to offer proper remedies. Such position has been taken by the California Supreme Court.

It is interesting to compare the West Virginia court's decision upholding grants to counties for general public relief with its decision invalidating grants to municipalities for law enforcement. In enacting the law providing for state aid for general public relief, the legislature stated, "the support of public assistance is hereby declared to be the responsibility of the State. The support of general relief is hereby declared to be the responsibility of the county. To the extent that a county is unable because of constitutional restrictions to meet reasonable costs of general relief as required by this Article, the responsibility of the State is hereby recognized." When it passed upon the constitutionality of state aid under this law, the court said,

"The mere fact that in carrying out this responsibility, the State, through its legislature, requires contributions thereto by counties, does not prohibit the state from exercising its own prerogatives and from using the county courts as agencies in carrying out its purposes, and the amount it contributes to the county general relief, by way of state aid, is not lending the credit of the state to the county."

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51 See above, "State and Local Functions Contrasted."
52 See Los Angeles County v. Riley, 6 Cal. 2d 625, 59 P. 2d 139 (1936).
But in its decision invalidating state aid for law enforcement by municipal authorities, the court did not follow the reasoning announced in the general public relief case, although it appears that the principles involved in the two cases were the same. Law enforcement was declared by statute to be a state function; and such designation was admitted as being correct by the court. But the court substituted its judgment for that of the legislature, holding that, even though such aid was designated for a state purpose, it still could not be given, since the court believed that the framers of the Constitution did not contemplate that state aid would ever be extended to cities. As previously noted, however, the Debates of the Constitutional Convention are silent upon this matter. The following statement, taken from the majority opinion of the court, illustrates further the court's untenable position: "The State can well take care of the enforcement of its own laws, and can require cooperation and assistance of municipal authorities without being called upon to make a contribution, based on some idea of reimbursement for services which the municipalities are under statutory and moral duty to perform in any event." Here the court has said, in effect, that the legislature can if it desires extend aid for law enforcement, but in its decision it actually holds that it can not.94 It is submitted that this decision is not in harmony with other recent decisions of the West Virginia court, nor with the decisions of the supreme courts of other states, and, thus, does not represent the interpretation ordinarily accorded state constitutional provisions comparable to section 177 of the Kentucky Constitution. In summary, section 177 seems to prohibit state grants to units of local government for purely local purposes; its prohibits the state from granting to local units funds from which it receives nothing in return; but it does not prevent the state from allocating funds to local units to enable them to perform state or governmental functions.

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The Meaning of Section 176

Section 176 of the Kentucky Constitution provides that "the Commonwealth shall not assume the debt of any county, municipal corporation or political subdivision of the state, unless such debt shall have been contracted to defend itself in time of war, to repel invasion or to suppress insurrection." The Debates of the Constitutional Convention reveal that the particular type of indebtedness which the convention had in mind when it adopted this section was a local indebtedness acquired through contributions made to railroads and internal improvement companies; and though the question was not raised, it is extremely doubtful whether the convention intended to prevent the legislature from making grants to local agencies to enable them to perform state functions. It is logical to assume, moreover, that this section was intended to apply to an indebtedness incurred in the past, not to current state appropriations intended to assist local units in effecting state policies.

Section 176 has never been fully construed by the Court of Appeals; it has been involved in only four cases before the court; and it has never been considered by itself, but always in connection with section 177 or section 181, or both. It was first mentioned in a dissenting opinion in a 1931 case, this opinion urging that the section along with sections 177 and 181 prevented county governments from receiving that portion of the surplus income of county officers earned from state fees. In a 1932 decision, the court held that section 176, along with section 177, did not prevent the state highway commission from bearing one-half the cost of building a city street. Here the court ruled that neither section 176 nor section 177 had application since the city itself was not involved, the responsibility for maintaining the street being that of the abutting property owners. In 1938, the court had before it a case involving, among other things, the question of whether sections 176 and 181 prevented the state government

96 Holland v. Fayette County, 240 Ky. 46, 41 S.W. 2d 651 (1931).
97 State Highway Commission of Kentucky v. Board of Councilmen of City of Frankfort, 245 Ky. 800, 54 S.W. 2d 316 (1932).
98 Shannon v. Combs, 273 Ky. 517, 117 S.W. 2d 221 (1938).
from compensating the sheriff for performing highway patrol duties, but the court decided the case on other grounds, leaving this question unanswered. Finally, in a 1947 case, the court did hold that sections 176 and 177 prevented the state from reimbursing the sheriff for his expense incurred in executing his county-revenue bond, a bond executed to cover his county-tax collections. The court merely mentioned these sections together; and, consequently, there is no means of ascertaining what emphasis it intended to place upon section 176. As mentioned previously, it seems that the court should have upheld the appropriation, inasmuch as a very large proportion of county revenues is employed to carry on state functions.

Although section 176 has never been fully construed by the Court of Appeals, it appears that, when it is considered in its proper historical sense, it does not prohibit the state government from making grants to local agencies to enable them to perform state functions. Indeed, state grants have been upheld by the court without the question of section 176 even being raised. Finally, the mere fact that the section has been involved in so few cases before the court would seem to justify the conclusion that it is of little importance, at least insofar as it concerns the constitutionality of state aid for units of local government.

SUMMARY

Kentucky is one of the few states which does not offer a substantial amount of financial assistance to its units of local government; and statements contained in certain decisions of the Court of Appeals have created the general belief that, due to constitutional restrictions, aid cannot be extended except for highway and educational purposes. Nevertheless, the state's General Assembly has in isolated instances passed legislation appropriating funds for use by local officers and agencies; and such legislation, when challenged before the courts, usually has been upheld. Indeed, no state appropriation designed to assist local performance of a state or governmental function has even been judicially disallowed.

Miller v. Sturgill, 304 Ky. 823, 202 S.W. 2d 632 (1947).
The Kentucky Constitution contains three provisions which upon superficial examination would seem to prohibit state aid for local government: (a) section 176, which prohibits state assumption of local indebtedness; (b) section 177, which prohibits the state's pledging or lending its credit to its political subdivisions; and (c) section 181 which prohibits state imposition of taxes for local purposes. Yet, when the purposes which the framers of the Constitution intended these provisions to serve are considered, and when the legal relation between the state and its local units is properly understood, it seems that they do not constitute an absolute barrier to state aid, but prevent only allowance of aid for performance of purely local functions, which functions in this modern and complex age are exceedingly difficult to discover.

When Kentucky's present Constitution was written (1890), state aid for local performance of governmental functions was not considered, because, in the first place, the cost of local government was not great and property-tax revenues were sufficient to finance it, and, secondly, since most functions performed on the local level were considered local in nature—education was an exception—, it was felt that financial responsibility should rest there also. But today conditions are greatly altered. Functions which in 1890 were purely local in character are now clearly state or at least partly state in character; and property-tax revenues, sufficient to finance local governmental activities in that day, are no longer adequate. Hence, arises the need for state aid. Such aid—if local units are to retain their traditional importance—seems absolutely necessary, because property-tax yields cannot be greatly increased—though assessments could and should be made more equitable as between property owners—and because newer forms of local taxation, such as sales and income taxes, cannot in most instances be effectively and justly administered on the local level. Unless local revenues are supplemented by state grants, at least some of the functions which local governments traditionally perform must be transferred to the state government.

Before considering whether the constitutional provisions referred to earlier prohibit state aid, it is necessary to examine the legal relationship existing between the state and its units of local government. Certain passages from the Debates of the Constitutional Convention seem to indicate that at least some of the mem-
bers of the constitutional convention regarded local units as being totally detached from the state government, a conception which can have no foundation when the legal relation between the state and these units is considered. Indeed, the Court of Appeals in some of its early decisions interpreting Kentucky's present Constitution seems to have regarded local units as possessing inherent powers, and supreme courts of a few other states did likewise. But this doctrine is now wholly repudiated by all state supreme courts, these agencies taking the view that, in the absence of constitutional restrictions, the state legislature possesses plenary authority over local units. Counties are considered as portions of territory into which the state is divided for the more convenient exercise of its powers; they have no will of their own and exist primarily to carry out state policy. State courts not infrequently assert that counties have both a governmental (state) and a corporate (local) capacity; but, generally speaking, their corporate functions are few in number as compared with the number of their governmental functions, some courts even holding that these units perform scarcely any corporate functions. Although municipalities are generally regarded as existing to satisfy local needs, they nevertheless perform many governmental functions, and, consequently, when they do so, they occupy much the same legal status as counties.

Since counties and cities alike perform state functions, it would seem to follow logically that the state governments could finance the performance of such functions; and, indeed, most state courts hold that they can. Undoubtedly, some of the confusion concerning the constitutionality of state aid for local units results from judicial failure to recognize the distinction between aid for these units proper and aid for state functions which they perform. When this distinction is made, the constitutionality of such aid can be easily determined. Associated with this problem is, of course, the task of defining state and local functions. Most state courts recognize the fact that it is frequently impossible to distinguish clearly between state and local functions; but they hold that in those instances where a function is at least partly state in character control over it rests with the legislature, the California Supreme Court holding, for example, that the state may finance local performance of functions in which there is state
interest even though local units may derive greater benefits than the state itself. Finally, unless the constitution forbids, the legislature itself may classify state and local functions; and its classification, unless wholly out of keeping with actual facts, will generally be accepted by the courts out of deference to an equal and coordinate branch of the government. But in the final analysis, ultimate authority to decide what functions are state and what functions are local must rest with the courts, for if the legislature had final authority, the constitutional limitations upon its powers would be rendered meaningless.

Although the Debates of the Constitutional Convention do not reveal the reason for the inclusion of section 181 in the Constitution, it was undoubtedly placed there to insure local units protection from state interference in matters purely local. Similar provisions intended for this purpose appear earlier in the constitutions of other states; and though it can not be determined with certainty, the Kentucky provision was probably copied from an almost identical provision contained in the Colorado Constitution of 1876.

Section 181 has never been construed to prevent state aid to a local unit. As early as 1915, the Court of Appeals held that it was not violated when the legislature levied a state-road tax and earmarked its proceeds for use on county roads. In its decision, the court noted the fact that the legislature had declared the tax to be state in character, and held further that the revenues therefrom were devoted to a state not a county purpose. More recently (1948), the court has upheld, under section 181, state grants to local units for hospital construction, such hospitals to be built under terms of the Federal Hospital Survey and Construction Act. The opinion in this case has particular significance since the court states in effect that the state may finance local performance of any function which it itself has authority to undertake. It thus appears that section 181 does not constitute a barrier to state aid for local governments provided such aid is used to effect state purposes. But whenever state aid is allocated for local performance of a particular function, the legislature should make it clear in unmistakable language that the aided function is state in character; and it should vest in some state agency supervisory authority over the function's performance.
State courts, when passing on the legality of state grants, not infrequently look for such provisions; and their inclusion will likely convince these agencies that the legislature really intends that the funds are to be applied for a state purpose.

Section 177 provides that "the credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality or political subdivision of the state." Kentucky's third constitution, that of 1850, contained a similar provision; and so far as the writer has been able to discover that provision was never construed to prevent the state from making grants to any agency, public or private, for the purpose of carrying on its government. As the Debates of the Constitutional Convention clearly reveal, section 177 was placed in the present Constitution for the primary purpose of preventing the state from lending its credit to railroads and private internal improvement companies. Indeed, another section (179), very similar in purpose to section 177, was added and made applicable to units of local government. Anyone familiar with the history of the period at the time the Constitution was written knows that this was the evil which the framers of the Constitution were attempting to correct.

Furthermore, the Court of Appeals in its earliest interpretations of this section clearly recognized this fact and held that the convention did not intend by this provision to hamper the state government in the exercise of its governmental powers. In the 1904 case of Hager v. Kentucky Children's Home\textsuperscript{100} the court sustained the validity of legislation providing an annual appropriation for the Kentucky Children's Home. Here the court said in effect that the constitutionality of such an appropriation did not depend upon the agency selected to expend it, but rather upon the purpose for which it was intended. In other words, the constitutional test is in the end, not in the means; and under this rule, when the state appropriates funds to assist a local officer in performing a state function, it is not lending its credit in violation of section 177; it is merely appropriating money to carry on its own government.

\textsuperscript{100} 119 Ky. 285, 83 S.W. 605.
Although the Court of Appeals, in subsequent decisions interpreting section 177, has not followed the rule announced in the Hager case, the Tennessee Supreme Court, in a decision in which it compared section 177 with a similar provision of the Tennessee Constitution, quoted it with apparent approval. The Tennessee court further held that the Tennessee provision did not prevent use of state aid, if required to accomplish a state or public purpose or to fulfill a state duty or obligation under the police power. Furthermore, with the exception of the West Virginia Supreme Court, supreme courts of other states whose constitutions contain provisions similar to section 177 hold that such provisions do not prevent state aid for local accomplishment of state purposes. Although the West Virginia constitutional provision draws no distinction with regard to the pledging of credit to counties and municipalities, the West Virginia court permits aid for county administration of state functions, but denies it to municipalities when they administer such functions. It is submitted that there is no logic in the West Virginia rule, and that it is out of harmony with court decisions in other states.

Despite the ruling in the Hager case, the Kentucky Court of Appeals has in one case specifically held and in two other cases stated by way of dicta that, with the exception of aid for highway and educational purposes, section 177 forbids state appropriations for aid of a county. In the case disallowing aid, there was raised the question of whether the state could appropriate funds to reimburse the sheriff for his expense incurred in executing his county-revenue bond. Here the court concluded that the county alone benefited from county revenue collections and, consequently, held that for it to uphold the appropriation would be to sanction state aid for a purely county purpose in violation of section 177 and section 176, the latter section forbidding state assumption of local indebtedness. The court appears not to have considered the fact that most such revenue is expended to fulfill performance of state-imposed obligations. When this fact is considered, it seems that the appropriation should have been upheld. If the interpretation of section 177 as announced in the Hager case is correct—and the Debates of the Kentucky Constitutional Convention, as well as supreme court decisions of other states
interpreting similar constitutional provisions, seem to indicate that it is—the section does not prevent allocation of state aid for local accomplishment of state purposes.

As revealed by the Debates of the Constitutional Convention, section 176, like section 177, was placed in the Kentucky Constitution for the primary purpose of preventing the state from paying local indebtedness acquired through grants made to railroads and private internal improvement companies. It is extremely doubtful whether the convention ever intended the section to apply to current state appropriations made to assist local agencies in the performance of state functions. Indeed, if the section were so construed, it would seriously hamper the state in carrying on its government and, moreover, it would negate the legal concept inherent in state-local relations. Since the Constitution's adoption in 1891, section 176 has been involved in only four cases before the Court of Appeals; and in none of these cases has it been interpreted by itself but always in connection with section 181 or section 177, or both. In only one of these cases, the case involving the question of whether the state could reimburse the sheriff for the cost of executing his county-revenue bond, has the court held that it prevented state aid. Since the court in this case did not state what influence section 176 had on its decision (section 177 was also involved), the import of section 176 is not fully known. Nevertheless, it seems not unreasonable to conclude that section 176 is not too important from the standpoint of its being a barrier to state aid; or, otherwise, it would have been construed in more cases than it has. It seems, therefore, that section 176, like section 177, does not prevent state aid for local accomplishment of state purposes.

Finally, though the Kentucky Constitution absolutely prohibits the state government from subsidizing performance of purely local functions, it appears that there is nothing contained in that document which prevents the granting of state aid to enable local officers and agencies to perform state functions; and the performance of such functions, it should be recalled, constitutes the major part of local governmental activity.