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THE FEE SYSTEM IN KENTUCKY COUNTIES

By Kenneth E. Vanlandingham*

THE MEANING OF THE FEE SYSTEM

One of the most important phases of county financial administration is that of collecting and accounting for fees. In general, all payments received by county officers are commonly referred to as fees whether such payments are made by units of government or by individuals. This conception of a fee is an erroneous one, since a fee, strictly defined, is a payment made to a unit of government by an individual in return for authorization to perform some act conferring a special service or privilege. According to this definition, payments made to the county clerk by an individual for recording a deed or mortgage fall in the fee category; whereas payments made to the jailer by the state and county for "dieting" prisoners fall outside this classification. For convenience, however, in this study all payments received by county officers will be referred to as fees.

In some states, county officials are compensated on a straight salary basis, and all fees collected by them are paid into the state or county treasury; in other states, these functionaries are permitted to retain their fees as all or part of their compensation, although some limitation is usually placed on the maximum income which they may receive.

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1 A fee is "a levy made by a governmental unit for a privilege which confers a special benefit upon the individual who voluntarily makes the payment, and which legalizes the act to be performed by him." See M. H. Hunter and H. K. Allen, Principles of Public Finance (New York: Harper and Brothers, 1940), p. 440. According to the Kentucky court of appeals, a fee is "the charge which the state makes for services rendered through its officers." Holland v. Fayette County, 240 Ky. 37, 41 S.W. (2d) 651 (1931).

2 In most states, officials of the more populous and wealthier counties are compensated by salaries.
When county officials are compensated by the latter method, the popularly known fee system is said to obtain. This method of compensation developed in the United States during the colonial period when official duties were simple in character and were performed, for the most part, on a part-time basis. Today, although the duties of county officials have increased both in quantity and complexity, the county fee system is so politically entrenched in some areas as to make its abolition extremely difficult.

THE FEE SYSTEM IN THE UNITED STATES

Generally speaking, the fee system has been confined largely to the states lying east of the Mississippi River and is today most pronounced in Kentucky and in a few southern and mid-western states. The fee system seems to have made but little headway in the western states. California and Kansas, for example, abandoned it many years ago; and in several states of this region it was never adopted. In New England, where the town is the primary unit of local government, county officials are generally compensated by salaries; however, in New Hampshire the sheriff, register of deeds, and clerk of the court derive a considerable portion of their compensation from fees.

Although the fee system seems to be rather firmly entrenched in the areas where it now exists, during recent years it has been subjected to serious criticisms and several states have abolished it altogether. For example, the system

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3 Although, outside of Kentucky, the fee system seems to be most widespread in Alabama, Arkansas, Florida, Georgia, Mississippi, and Tennessee, it is also found to a limited extent in Indiana, Illinois, Minnesota, New Hampshire, North Carolina, Pennsylvania, and South Carolina. Indeed, it appears that there are but few states in which the system is totally absent. Information regarding the methods of compensating county officials in the various states was obtained through questionnaires sent to officials connected with state tax commissions, state legislative research bureaus, and state universities.


5 Information on New Hampshire was supplied by John R. Spring, Chairman, New Hampshire Tax Commission.
has finally been eliminated in New York state; and Virginia now compensates all county officers, except the county clerk, on a salary basis. The recent Missouri constitution requires that all law-enforcement officers be compensated on a salary basis; and, although it leaves the fee system intact, Georgia's new constitution does authorize the legislature to abolish the system.

Some ten years prior to the Missouri and Georgia actions, a constitutional amendment was approved in South Carolina authorizing the legislature to place the compensation of county officials on a salary basis. Today, as a result of that amendment, officials in over one-half of that state's counties are compensated on a salary basis. Another significant development occurred when Texas voters approved in 1948 a constitutional amendment requiring that all law-enforcement officers be compensated on a salary basis and abolishing the fee system in counties with more than 20,000 population. In counties with smaller populations, county boards may direct that officers be compensated either by salaries or by fees. Although little progress has been made toward abolishing the fee system in other areas, at least some interest has been manifest in this direction. For example, studies made by interim commissions appointed recently by the legislatures of Wisconsin and New Hampshire have recommended the abolition of the system. If the progress made during the past 15 years may be taken as an indication of what is to come, it seems likely that the fee system will gradually, though not without considerable difficulty, be eliminated.

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10 S. C. Const., Art. III, sec. 34, as amended.
11 Letter from Robert H. Stoudemire, Bureau of Public Administration, University of South Carolina, February 16, 1951.
12 Tex. Const., Art. XVI, sec. 61, as amended.
THE FEE SYSTEM IN KENTUCKY

Since the earliest period of its history, Kentucky has compensated all or at least most of its county officials on a fee basis. Today, practically all officers whose offices date from the adoption of the present constitution (1891) receive their compensation wholly or in part from fees. Officers, such as the county road engineer, auditor, purchasing agent, and treasurer, whose offices are of more recent origin, are compensated on a salary basis fixed by the fiscal court (county board).

CLASSIFICATION OF FEES

County officials receive fees from two sources: (1) from the state and county treasuries for services rendered to these jurisdictions, and (2) from individuals for whom services are rendered. It should be pointed out, however, that the are permitted to retain a portion of such fees as their compensation for collecting them, as, for example, in the case of the motor vehicle operator's license. In other instances, they are required to pay the total amount of such fees into the state treasury and permitted to demand from licensees sums for their issuing services, as in the case of the motor vehicle registration fee. Lack of uniformity in the manner legislature has not adopted any uniform policy with regard to the manner in which officers' fees are to be paid. This lack of uniformity is perhaps best illustrated in instances where county officials are required to issue state licenses and to collect fees thereon. In some instances, these officials of paying officers' fees is illustrated further by the methods used to compensate the sheriff for collecting taxes and the tax commissioner for assessing property. Although both the

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14 Clerks, sheriffs, and jailers in counties with 75,000 or more inhabitants are required by section 106 of the constitution to pay their fees into the state treasury and are compensated on a salary basis. During the period 1940 to 1950, only three counties—Harlan, Jefferson, and Kenton—had populations in excess of 75,000. However, the 1950 U. S. Census population figures indicate that officials in a few other counties may have to comply with the constitutional provision.
15 KRS, sec. 186.410.
16 Ibid., secs. 186.040, 186.050.
sheriff and tax commissioner receive commissions based on property tax collections and assessments respectively, the compensation of the former official is deducted from tax moneys collected by him; whereas the compensation of the latter officer is drawn from state appropriations.\textsuperscript{17}

**AUTHORITY TO COLLECT FEES**

County officers in Kentucky may legally collect only those fees which are authorized by statute. They may not charge higher fees for their services than the laws prescribe.\textsuperscript{18} Occasionally, these officials are required to perform duties for which no compensation has been authorized by law. For example, the sheriff is not authorized to demand any compensation for summoning either grand or petit jurors. Nor is he compensated for attending fiscal and quarterly court sessions. Needless to say, county officials sometimes assess and collect fees which have no statutory authorization. For example, although it is illegal for them to do so, some counties compensate county clerks for delivering ballot boxes to voting precincts; and quite a few counties pay the office expenses of fee officers, although legally such expenses should be borne by the officers themselves. Again, some counties compensate the jailer for attending fiscal court sessions, a duty he is not even required by law to perform.\textsuperscript{19} In this connection, one important fact deserves special emphasis: in reality, most county officials, generally untrained in legal matters, are more creatures of custom than of law and in many counties, a determination of what fees shall be charged, as well as the amounts, depends more upon the rule of custom than upon the rule of law.\textsuperscript{20} For example.

\textsuperscript{17}Ibid., sec. 134.290; 1950 Legislative Supplement to the Kentucky Revised Statutes (Hereafter referred to as 1950 Supp. to KRS), sec. 132.590.

\textsuperscript{18}KRS, 1948, sec. 64.410; Owen County v. Walker, 141 Ky. 516, 133 S.W. 236 (1911); Smothers v. Washington County, 294 Ky. 35, 170 S.W. (2d) 867 (1943); Goodlett v. Anderson County, 267 Ky. 166, 101 S.W. (2d) 421 (1936).


\textsuperscript{20}It should be understood that here and throughout this study the writer is speaking in a general sense. Undoubtedly the conditions described above apply generally to the average rural county. In some counties, however, administration is well-ordered, particularly in those counties having auditors and purchasing agents.
some years ago the legislature amended the law relating to jailers fees. But the legislature's action made no impression on some jailers, who continued to charge the fees provided by the old fee schedule.21 Unless some official trained in county management is placed on the county level, government by custom is likely to continue.

COUNTY OFFICERS AND THEIR COMPENSATION

The principal county officers who derive their compensation wholly or in part from fees are the county judge, county court clerk, circuit court clerk,22 county attorney, commonwealth's attorney, sheriff, jailer, county tax commissioner, justice of the peace, coroner, and constable.23 The constitution formerly provided that no county officer should receive a sum in excess of $5,000 as his annual compensation.24 In 1949, however, the voters of the state approved a constitutional amendment authorizing the legislature to fix the annual compensation of these officers at sums not exceeding $7,200. In its 1950 session, the legislature passed a law authorizing fiscal courts to fix the annual compensation of all county officers and employees (for purposes of this legislation circuit court clerks were deemed to be county officers), except clerks, sheriffs, and jailers in counties with 75,000 or more population25 and tax commissioners in all counties,26 at sums not to exceed $7,200, the compensation

21 Stephenson, op. cit., p. 272.
22 Although the circuit court clerk is classified by statute as a county officer for compensation purposes, in a recent case involving the question of the clerk's qualification for federal social security benefits, the court of appeals held that all circuit clerks in Kentucky are state officers. See The Louisville Courier-Journal, August 28, 1951.
23 The coroner and constable are insignificant county officers, at least in the matter of compensation, and will not be discussed in this study. The coroner's principal fee is a $12 fee for holding an inquest on a dead body. The constable receives minor fees for services performed in connection with the lower courts. See KRS, 1948, secs. 64.180, 64.060, 64.190.
24 Sec. 246.
25 In these counties, clerks, sheriffs, and jailers receive annual salaries of $7,200. See 1950 Supp. to KRS, sec. 64.345.
26 County tax commissioners derive their compensation from commissions based on their assessments, their maximum compensation being prescribed by statute. In counties containing cities of the first class (Louisville), the sum is $7,200; in counties containing cities of the second class (Lexington, for example), $6,000; and in all other counties, $5,000. Ibid., sec. 182.590.
fixed by the court to include both salaries and fees. Until fiscal courts take action, however, the compensation of county officials may not exceed that fixed by statutory law at the time the constitution was amended, and in no event may it exceed $5,000. The principal sources from which each county officer derives his compensation will be discussed in subsequent sections.

County Judge. The county judge is remunerated on both a salary and fee basis, but his fees constitute a negligible portion of his total income. He receives fees for holding preliminary investigations in criminal proceedings; for conducting sanity inquests; for conducting civil cases in the quarterly court; and for settling estates of deceased persons. Oddly enough, the statutes prescribe that, for the latter duty he is to receive $1.50 per day; yet anyone having even a cursory acquaintance with county government is aware that the judge's day is occupied with many other tasks. Actually, he may, and usually does, spend portions of several days in settling an estate; and he does not always follow the statute in assessing this fee. Some judges charge a flat fee for every estate, while others charge a fee based either on the amount of the estate or on the time consumed in making the settlement. Since county judges derive only a small portion of their total compensation from fees, it seems that they would offer little opposition to enactment of a law placing their compensation on a straight salary basis. Although the County Judges' Association has made no public statement in this regard, there is reason to believe that it

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27 Ibid., sec. 64.530. 28 Ibid., sec. 64.700.
29 KRS, 1948, sec. 25.150. The county judge is the presiding officer of the fiscal court, the chief governing body of the county. See Constitution of Kentucky, sec. 142. He also serves as judge of the county and Quarterly courts. Concerning these courts and their jurisdiction, see KRS, 1948, secs. 25.010-25.610.
32 Ibid., secs. 25.110, 25.170, 25.220. The judge may appoint a special commissioner to act for him in settling estates. Commissioners in counties with cities of the second class are authorized to charge for their services fees depending on the amount of the estate. Ibid., sec. 25.230. The statutes are silent with regard to compensation of commissioners in other matters.
would prefer that judges be compensated by adequate salaries.

County Court Clerk. The county court clerk has perhaps a greater variety of duties to perform than any other county officer, and is compensated on both a fee and a salary basis. Indeed, many people believe that he occupies the most lucrative office in the county. This official draws a salary for acting as clerk of the fiscal and county courts (juvenile session of the latter court); and, in addition, for serving as clerk to the county board of supervisors, he receives a per diem of $10 in counties where the board consists of three members and $5 where the board is larger. Apart from the compensation already noted, the clerk's income is derived from fees. These fees arise from many sources and vary considerably in amount; consequently, it is extremely difficult to fit them into any neat classification. For this reason, they will be treated as convenience dictates.

The clerk receives numerous and varying fees for his recording duties. Although it is impractical to list all such fees, a few of the more important ones will be noted. For example, he receives $2 for recording a real estate deed or mortgage of 1,200 words or less and four cents per 20 words additional, and 40 cents for recording a county court order.

He is compensated for issuing state occupational licenses (cigarettes, bowling alleys, pool rooms, etc.) and for collecting the state tax on legal processes and instruments.

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33 *Ibid.*, secs. 67.120, 199.030. The clerk's salary for acting as clerk of the fiscal court is intended to compensate him for preparing claim vouchers (i.e., warrants ordering the treasurer to pay claims against the county). See Nuetzel v. Barr, 180 Ky. 196, 202 S.W. 499 (1918); Goodlett v. Anderson County, 267 Ky. 166, 101 S.W. (2d) 421 (1936). However, in some counties, clerks have collected additional compensation for performing this duty.

34 *1950 Supp. to KRS*, sec. 133.125. The board of supervisors is an appellate body charged with the duty of reviewing assessments made by the county tax commissioner.

35 Inasmuch as the clerk's fees are numerous and court decisions relating thereto are few, it is not known whether the fees charged by the clerk are always proper in amount. In all likelihood the fees assessed, as well as the amounts, show considerable variation as between counties.

36 See *1950 Supp. to KRS*, sec. 64.010. Most of the clerk's fees are enumerated in this statute.
(marriage licenses, court seals, court appeals, et cetera), in each instance at 5 per cent of the sum collected.\(^3\) In addition, he receives 50 cents for registering a motor vehicle (Garrard, a fairly typical county, had 2,956 registrations in 1948);\(^38\) 50 cents for issuing a duplicate registration receipt (these receipts must be kept constantly in the possession of the owners, and farmers are prone to lose theirs), and 50 cents for transferring the registration on a motor vehicle which has been sold.\(^39\) He also collects the state motor vehicle usage tax, for which he receives 2 per cent of the amount collected.\(^40\)

The clerk has several duties to perform in connection with property tax administration. He receives ten cents for computing the amount owed by each taxpayer, and seven cents for preparing each tax bill (50 cents in the case of omitted property).\(^41\) For reporting to the county tax commissioner records of personal indebtedness and real estate conveyances, he receives “reasonable” sums fixed by the fiscal court.\(^42\) For collecting moneys owned on delinquent tax claims owned by the state and county, he receives a sum equal to 5 per cent of the amount collected.\(^43\)

The clerk also derives compensation from his election and voter registration duties. He receives a “reasonable” sum fixed by the fiscal court for acting as clerk of the county board of election commissioners; two cents for each original voter registration; two cents for each name copied on the registration rolls; one cent for each name furnished polling officials at elections; five cents for each name purged from the registration rolls; $1 for each candidate’s declaration filed

\(^{37}\) See KRS, 1948, secs. 137.100, 142.015. The clerk also receives $1 for each occupational license issued.

\(^{38}\) See Appendix to Thirty-First Annual Report of the Kentucky Department of Revenue, 1949, pp. 34-35.

\(^{39}\) KRS, 1948, secs. 186.040, 186.180, 186.190.

\(^{40}\) Ibid., sec. 138.460. This tax, which amounts to 3 per cent of retail price of the vehicle, must be paid when a motor vehicle is registered for the first time in Kentucky.

\(^{41}\) KRS, 1948, secs. 132.550, 133.240.

\(^{42}\) 1950 Supp. to KRS, secs. 132.480, 132.490.

\(^{43}\) KRS, 1948, sec. 134.480.
with him; and 25 cents for each name on the candidate roll which he publishes prior to each election.\(^4\)

**Circuit Court Clerk.** For compensation purposes, the legislature has classified all circuit court clerks, except clerks in counties with more than 75,000 population, as county officers.\(^4\) Indeed, for all practical purposes these functionaries are county officers, mas much as they are elected by county voters and their duties are similar to those performed by county clerks.

The circuit clerk is compensated entirely on the basis of fees derived from many sources. As is true of the fees of the county clerk, the fees of the circuit clerk do not admit of orderly classification; and consequently they will be treated as convenience dictates. In the first place, the clerk receives numerous small fees for specific acts or duties performed in connection with circuit court sessions.\(^4\) Secondly, besides these small fees, he receives a flat fee of $5 for his services in a felony prosecution; and if the state loses the judgment and chooses to appeal, he receives an additional fee of $5 for preparing and certifying the appeal transcript. Furthermore, when a fine is levied and collected in the circuit court, he is entitled to receive 10 per cent of the amount.\(^4\)

Thirdly, the circuit clerk acts as a collecting and disbursing agent for the state. In this connection, he receives a sum equal to 5 per cent of the total amount of state funds disbursed by him to grand and petit jurors and a sum equal to 5 per cent of the total amount of fines and forfeitures collected in the circuit and inferior courts and paid by him into the state treasury.\(^4\) Finally, he is compensated for performing duties not connected with the circuit court. He receives $20 per month for acting ex officio as county law librarian.\(^4\) He also issues motor vehicle and motor carrier

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\(^4\) *1950 Supp. to KRS*, sec. 64.530. See n. 22 above.

\(^4\) See *Ibid.*, sec. 64.010; *KRS, 1948*, sec. 64.020.

\(^4\) *KRS, 1948*, sec. 64.020.

\(^4\) *Ibid.*, secs. 28.170, 28.180. In other words, the circuit court clerk receives 15 per cent of all fines levied in the circuit court.

operators' licenses for which he receives ten cents for each of the former licenses issued and 25 cents for each of the latter.50

**County Attorney.** Each county has a county attorney whose primary duty is that of prosecuting all criminal and penal cases in his county before courts inferior to the circuit court. He must also assist the commonwealth's attorney in prosecuting cases before the circuit court; and in cases where the commonwealth's attorney is absent and no pro tem commonwealth's attorney has been appointed, he must conduct the prosecutions himself. He serves also as legal adviser to county officers and agencies and has the duty of opposing all "unjust" and illegal claims against the county.51

In addition to numerous fees and commissions, the county attorney receives a salary fixed by the fiscal court.52 He receives 40 per cent of all fines collected in prosecutions before the county judge and justices of the peace; 25 per cent of all fines collected in cases which he has assisted in prosecuting before the circuit court (in some counties, such assistance amounts to advising the grand jury and drawing up indictments), and 30 per cent of all fines collected in cases which he has prosecuted before a police court. Furthermore, when a police court imposes a fine of less than $10, or when a circuit, county, quarterly, or justice court imposes a fine of less than $25, the attorney is entitled to collect a $5 fee which is taxed as costs against the defendant.53 All fines, except the $5 fee, are paid into the state treasury from which the county attorney, as well as the commonwealth's attorney and the circuit clerk, are compensated.54

In addition to the compensation already noted, if the county attorney actually prosecutes, he receives 15 per cent

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53 Unless this fee is taxed by the presiding judge at the time of conviction, it cannot be collected. See Bell County v. Minton, 239 Ky. 840, 40 S.W. (2d) 379 (1931).

54 KRS, 1948, secs. 69.260, 431.100.

55 *Ibid.*, sec. 406.050. If the defendant stands trial and is convicted, the attorney receives a "reasonable" sum fixed by the court, the sum being taxed as costs against the defendant. See *Ibid.*, sec. 406.120.
of any bail bond forfeited in bastardy cases;\textsuperscript{55} 40 per cent of fines imposed for violations of fish and game laws;\textsuperscript{56} 20 per cent of the amount collected on a delinquent tax claim owned by the state and county;\textsuperscript{57} half of the penalty collected on an "uncollectible" tax bill;\textsuperscript{58} $10 in cases where dogs have injured livestock;\textsuperscript{59} and 15 per cent of property escheated to the state.\textsuperscript{60} Quite frequently the county attorney neglects to perform the duties required in these cases, feeling that the fees involved are too small to warrant the use of his time. Particularly is this true with regard to his failure to institute actions to collect moneys owed on small tax claims owned by the state and county. Since it is economically impractical for the state department of revenue\textsuperscript{61} to collect such claims, they remain uncollected; and their collection is outlawed eventually by the five-year statute of limitations.

In regard to the method of compensating the county attorney, suffice it to say that any system of compensation giving law-enforcement officers financial interest in court convictions is alien to English common law.\textsuperscript{62} Indeed, such system is contrary to elementary principles of justice.

\textit{Commonwealth's Attorney}. The commonwealth's attorney is a state rather than a local officer; but because a large portion of his compensation is derived from fines levied in the lower courts, it is proper to discuss his compensation along with that of county officers. The statutes provide that the maximum annual state compensation of the commonwealth's attorney may not exceed $6,000. Such compen-

\textsuperscript{55} \textit{Ibid.}, sec. 150.160.
\textsuperscript{56} \textit{Ibid.}, sec. 134.500.
\textsuperscript{57} \textit{Ibid.}, sec. 135.040. An uncollectible tax bill is a tax bill of a delinquent who owns no real property. See \textit{Ibid.}, sec. 134.010.
\textsuperscript{58} \textit{Ibid.}, secs. 258.040, 258.050.
\textsuperscript{59} The compensation of the attorney for recovering intangible personal property is limited to 5 per cent on any sum recovered in excess of $1,000 See \textit{Ibid.}, sec. 393.200.
\textsuperscript{60} The department of revenue may bring actions to collect such claims provided the county attorney fails to take action within one year after the right of action accrues. See \textit{Ibid.}, sec. 134.500.
tion consists of a salary of $500 and a percentage of fines collected in the circuit and inferior courts. However, counties may supplement the state compensation up to the constitutional maximum of $7,200. From the state treasury the commonwealth's attorney is paid the following sums: (a) 40 per cent of all fines collected by county judges and justices of the peace of his judicial district; and (b) all fines and forfeitures collected in the circuit court except those portions paid to the county attorney and circuit court clerks.

Sheriff The sheriff in Kentucky has the usual court and law-enforcement duties; and, in addition, he acts as chairman of the county board of election commissioners, issues dog licenses, impounds dogs, and serves ex officio as tax collector. He is compensated almost entirely by fees with a large portion of his income derived from his tax collection work. As his compensation for collecting current state and county taxes, he receives 10 per cent of the first $5,000 collected for the state and county respectively and 4 per cent of the remainder collected for each jurisdiction. Al-
though the statutes prescribe that the sheriff shall receive 4 per cent of all school tax collections, the court of appeals has ruled in two instances that he cannot charge more than actual collection costs. The court has taken the view that, if greater compensation were permitted, school moneys would be diverted to the sheriff in violation of the constitution.\(^{68}\) Thus, it has held that in Jefferson and Madison counties the sheriff may receive no more than 1 per cent of school tax moneys as his compensation for collecting them. In view of these rulings, it appears that further court decisions will be necessitated to determine the sums which sheriffs in other counties may charge.\(^{69}\)

Revenue accruing to the sheriff from his court and law-enforcement duties alone is scarcely sufficient to compensate him for the cost of maintaining his office. From reports filed in the state auditor's office it appears that in the average rural county his annual income from these duties will not greatly exceed $600. There are several reasons why this income is so low. In the first place, the fees which he earns for performing his court and law-enforcement duties are very small in amount and in some instances are insufficient to cover the cost of their performance. For example, he receives 60 cents for executing and returning a court process—a duty that may require an automobile trip of 20 miles.\(^{70}\) Again, he is entitled to receive a $2 fee for making an arrest; but, as will be shown later, this fee is collectible only under certain circumstances. Secondly, he is required to perform duties for which he does not receive any compensation. For example, he is not paid for summoning grand or petit jurors or for attending quarterly or fiscal court sessions. Finally, he does not receive any compensation for duties performed.

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\(^{68}\) See Dickson v. Jefferson County Board of Education, 311 Ky. 781, 225 S.W. (2d) 672 (1949); Board of Education of Madison County v. Wagers, 239 S. W. (2d) 48 (Ky 1951).

\(^{69}\) The attorney general's office has recently ruled that, until this matter has been clarified either by legislative or judicial action, a sheriff and school board may enter into an agreement concerning the proper sum to be charged. See The Louisville Courier-Journal, March 16, 1951.

\(^{70}\) Ordinarily the sheriff receives a mileage allowance when traveling on official business outside his county. See KRS, 1948, secs. 64.070, 202.260, 440.090, 198.110, 441.040, 439.190, 441.050.
in misdemeanor cases unless the defendants involved are convicted and are willing to pay the costs (i.e., trial expenses) assessed against them. Moreover, before such costs can be collected, they must have been properly taxed by the presiding judge.\textsuperscript{71} Thus, if a defendant is freed; or if he elects to serve a jail sentence in lieu of paying costs, the sheriff receives nothing.\textsuperscript{72} In fact, he will actually lose money masmuch as his duties connected with the case will have occasioned some expense. Again, the sheriff may not collect from the state treasury the $2 fee for making a felony arrest until the grand jury has returned an indictment.\textsuperscript{73} In view of these facts, one can understand why the sheriff often neglects the performance of his law-enforcement duties. Moreover, the practice of requiring the convicted to pay the expenses arising from his trial violates the common law doctrine of justice.\textsuperscript{74} By way of contrast, in the vast majority of states the sheriff is compensated on a salary basis for performing his law-enforcement duties. There seems to be no substantial reason why this practice could not be followed in Kentucky.

\textit{Jailer} The office of jailer exists in every county of Kentucky, except Jefferson where the jailer's duties are performed by the sheriff. In every county, it is the jailer's duty to keep and "diet" state and county prisoners (occasionally municipal and federal prisoners also), in each county having a population of less than 75,000 inhabitants and not having a city of the second class or a circuit court of continuous session, he serves as superintendent of the courthouse and certain other county buildings; and in every county, except certain counties with cities of the second class, he performs services for the courts.\textsuperscript{75}

According to the court of appeals, the fiscal court may allow the jailer a reasonable sum for his duties as super-

\begin{itemize}
\item[\textsuperscript{71}] Bell County v. Minton, 239 Ky. 840, 40 S.W (2d) 379 (1931).
\item[\textsuperscript{72}] In civil cases, on the other hand, the sheriff may legally refuse to perform services unless he is paid in advance. \textit{KRS, 1948}, sec. 64.080.
\item[\textsuperscript{73}] \textit{Ibid.}, sec. 64.060.
\item[\textsuperscript{74}] See Tumey v. Ohio, 273 U. S. 510, 71 L. Ed. 749, 47 Sup. Ct. 437 (1927).
\item[\textsuperscript{75}] \textit{KRS, 1948}, secs. 71.022, 67.130.
\end{itemize}
intendent of county property for performing his other duties, the jailer receives statutory fees paid by the state in cases involving felonies and by the county in cases involving misdemeanors. In every county, except Jefferson, the jailer is paid $1.25 per day for keeping and "dieting" each prisoner; and, in addition, he receives 30 cents for confining and 30 cents for releasing each prisoner. Furthermore, he is entitled to daily compensation for dieting a prisoner regardless of the number of meals which a prisoner receives. He is also authorized to collect a sum not exceeding $2 per day for each day he furnishes heat and light to circuit, county, and quarterly courts. Of course, he does not literally furnish these utilities; nevertheless, the court of appeals has held that he is entitled to collect this fee as much as it is his duty to make them available. Finally, he is entitled to receive $2 for each day he attends circuit court sessions and a sum not exceeding $2 for each day he attends regular sessions of county and quarterly courts. The court of appeals has ruled that the amount of the latter fee is to be determined by the extent of the services which the jailer renders. In other words, he is not entitled to full compensation unless he has worked an entire day. In order to promote economy, as well as to make current expenditure control possible, it would seem that the jailer should be compensated on a salary basis. But if this method of compensation were adopted, it would be necessary for some agency to regulate strictly the amount which the jailer could spend for food to "diet" prisoners.

County Tax Commissioner Each county has a county tax commissioner whose primary duty is that of assessing prop-

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76 Cross v. Clinton County, 186 Ky. 505, 217 S.W 362 (1920); Perkins v. Cumberland County, 294 Ky. 737, 172 S.W (2d) 651 (1943).
77 In Jefferson County, the fee for keeping and "dieting" prisoners is $1.75.
78 1950 Supp. to KRS, sec. 64.150.
79 Talbott v. Caudill, 248 Ky. 146, 58 S.W (2d) 385 (1933).
80 1950 Supp. to KRS, sec. 64.150; Talbott v. Caudill, 248 Ky. 146, 58 S. W (2d) 385 (1933).
81 1950 Supp. to KRS, sec. 64.150.
82 Laurel County Fiscal Court v. Steele, 285 Ky. 407, 148 S.W (2d) 283 (1941); Hickman County v. Jackson, 153 Ky. 551, 156 S.W 391 (1918).
Although this functionary has been classified by the court of appeals as a divisional officer of the state department of revenue and, hence, a state officer, he is, for all practical purposes, a county officer since his election by county voters makes him amenable to local control. As compensation for performing his duties, the tax commissioner receives from state funds a commission of ten cents on each $100 of the first $1 million and two cents on each $100 in excess of $1 million of his annual assessment. However, should the annual compensation derived from the commission fall below $2,400, the difference is paid from state funds. In its practical operation, this method of remuneration tends to make tax commissioners salaried officials in a considerable number of counties.

Justice of the Peace. In each of Kentucky's 120 counties the voters elect from three to eight justices of the peace. In all but 12 counties, these officials, in addition to their judicial duties, serve as members of the fiscal court, the chief governing body of the county. As their compensation for serving on the fiscal court, justices are entitled to receive a per diem fixed by the court itself.

Justices are empowered to hear both minor civil and criminal cases, their civil jurisdiction extending to all cases in which the value in controversy, exclusive of interest and fees, does not exceed $100, and their criminal jurisdiction extending to all cases in which the punishment is limited to a fine not exceeding $500 or imprisonment for one year or both. As will be noted later, fees which these officials may receive for conducting minor criminal or misdemeanor

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83 Jefferson County Fiscal Court v. Trager, 302 Ky. 361, 194 S.W. (2d) 582 (1946).
84 1950 Supp. to KRS, sec. 132.590.
85 Ky. Const., sec. 142.
86 In 12 counties, the fiscal court is composed of commissioners elected from districts by the county at large. In every county, the county judge is a member and presiding officer of the court. See Ibid., sec. 144; footnote 29, supra.
87 KRS, 1948, sec. 67.110; 1950 Supp. to KRS, sec. 64.530. The per diem may not exceed $15.
88 KRS, 1948, secs. 25.010, 25.610.
cases, when added together, amount to substantial sums. On the other hand, fees which they receive for conducting civil cases are very small, individual fees rarely exceeding 50 cents in amount.\(^8\) It is no wonder, then, that justices prefer misdemeanor to civil cases.

Although a relatively large majority of justices are inactive as judicial officers, quite a few of them, particularly those in county-seat towns, do conduct a considerable number of misdemeanor cases; and, for this reason, attention will be directed to the method by which they are compensated. By way of preface, it should be stated that, according to Kentucky law as interpreted by the court of appeals, a justice may collect fees only in those cases in which the defendant is convicted.\(^9\) He may not try an individual who “seasonably” objects to trial on the ground that the justice’s financial interest in the trial’s outcome will prejudice rights guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.\(^9\) Actually, the fees which a justice may charge in a misdemeanor case are sufficient in amount to give him an interest in its outcome.\(^9\) A justice receives 10 per cent of the fine assessed in his court in any case in which his court has concurrent jurisdiction with the circuit court (i.e., cases in which a fine between $20 and $500 may be levied), plus minor fees for duties performed therein, as well as $1.50 for presiding at the trial.\(^3\) Although legally justices may levy only these fees, one cannot determine the actual total sums assessed by them. For example, one justice, when interviewed, stated that his total fees for each trial were $3.50 and had been that sum for a 30-year period. Since many individuals taken before justices’ courts are unaware of the

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8 In civil cases, justices are compensated principally for issuing summons, orders of arrest, orders of attachment, and for noting court orders, and for rendering judgments. See ibid., sec. 64.240.

9 Ibid., secs. 64.340, 453.020; Livingston County v. Crossland, 229 Ky. 733, 17 S.W. (2d) 1018 (1929). In Jefferson County justices of the peace are compensated on a salary basis. See KRS, 1948, sec. 64.250.


93 KRS, 1948, sec. 64.240.
fees which justices may legally charge, the temptation is
great for many justices to charge all that the traffic will
bear.\(^4\)

Unfortunately, too few individuals taken before justice
courts are aware that they may object to trial by these
agencies. One writer suggests that the "justice" adminis-
teried by the justice of the peace may be defeated through
an appeal to the circuit court;\(^5\) but even though such an
appeal may be taken, it is sometimes a cumbersome and
time-consuming process, and one that not every person, par-

ticularly the out-of-state motorist, can afford to follow.
Ideally, the solution to the problems created by justice
courts would seem to lie in the complete abolition of these
courts and in the creation of trial justice courts in their
stead.\(^6\) Justices appointed to head such courts should be
trained in the law and should be compensated on a salary
basis.\(^7\)

Indeed, it is probable that Kentucky would be faced with
such an alternative if the method of compensating justices
were ever challenged before the United States Supreme
Court; for it is unlikely that the court could hold that a de-
fendant before a justice had waived or could waive his

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\(^4\) Each person convicted in a misdemeanor case before the county judge
must pay a $4.50 fee to the judge who, in turn, must pay it into the county
trasury. \textit{KRS, 1948, sec. 458.030.} It has been claimed that in some coun-
ties justices are collecting this fee, although the attorney general has ruled
that they are not entitled to receive it. See \textit{Opinion of the Attorney General,
No. 1780, January 25, 1930.}

\(^5\) Frank K. Warnock, "Pecuniary Interest of a Justice of the Peace in
Final Trial of a Misdemeanor in Kentucky—Violation of the Due Process

\(^6\) Wherever it appears feasible, police courts should be abolished and
their duties transferred to trial justice courts. Incidentally, police judges
are compensated by salaries for their duties in misdemeanor cases. See \textit{KRS,
1948, secs. 26.140, 26.210.}

\(^7\) Courts similar to those advocated have been established in every county
of Virginia and Missouri and in most Tennessee counties. For a discussion
on these courts, see A. F Kingdon, "The Trial Justice System of Virginia,"
\textit{Journal of American Judicature Society, XXIII} (April, 1940), 216-221,
Lawrence Hyde, "Administration of Justice in Missouri," \textit{State Government,
XXIII} (February, 1950), 31; H. N. Williams, "General Sessions Courts in
Tennessee," \textit{Journal of American Judicature Society, XXXI} (December,
1947), 101-104.
rights to due process of law through failure to object to trial. Yet, as previously noted, this is the rule of law permitting the Kentucky justice to assess his fees. As a matter of fact, a federal district court has taken the position that under such circumstances a defendant cannot be deemed to have waived his right to due process through failure to enter a seasonable objection to trial.\textsuperscript{98} According to that court, to hold that the defendant has waived his right through failure to assert it is nothing short of arbitrary, inasmuch as he is not required to know that he has such a right in the first place. Following the United States Supreme Court's decision in \textit{Tumey v Ohio},\textsuperscript{99} holding that a justice's financial interest in the outcome of a trial violated the rights guaranteed a defendant by the due process clause of the Fourteenth Amendment to the United States Constitution, the Kentucky court of appeals stated in one case that a justice could not collect any fee whatever from a defendant except through "agreement, acquiescence and grace."\textsuperscript{100} However, the court has not followed the dictum announced in this case, adopting instead the position that a person brought before a justice for trial must object or, otherwise, suffer the consequences.\textsuperscript{101}

\textbf{FEE LEGISLATION}

The constitution requires that fees collected by sheriffs, circuit and county court clerks, and jailers in counties with 75,000 or more population be paid directly into the state treasury and that these officers be compensated on a salary basis.\textsuperscript{102} The salary of each officer, together with his expenditures for clerical assistance and other necessary office

\textsuperscript{98} Ex Parte Baer, 20 F (2d) 912 (1927).
\textsuperscript{100} Shaw v. Fox, 246 Ky. 342, 55 S.W (2d) 11 (1932).
\textsuperscript{101} See Pinkleton v. Lueke, Williams v. Same, 265 Ky. 89, 95 S.W (2d) 1103 (1936).
\textsuperscript{102} Since Kentucky's third constitution (1850) imposed no limitation on the maximum compensation of county officers, fees accruing to county offices in Jefferson County made these offices so lucrative that individuals were willing to corrupt elections in order to win them. It was felt, therefore, by members of the 1890 constitutional convention that functionaries holding these offices should be compensated on a salary basis. See Debates of the Kentucky Constitutional Convention, 1890. Vol. III, p. 4136.
expenses, must not exceed 75 per cent of the fees collected and paid into the state treasury.\textsuperscript{103}

Although the constitution provides that the fees of county officers shall be regulated by law, the legislature until its 1950 session made no serious attempt to regulate such fees except in Fayette and Campbell counties.\textsuperscript{104} An 1893 law did provide that each jailer, county court clerk, circuit court clerk, receiver, examiner, and sheriff in counties with over 40,000 and less than 75,000 population should file with the state auditor an annual report showing the income and expenses of his office and pay to that official all net income earned in excess of $3,000.\textsuperscript{105} But this law, however desirable it would seem to have been, was repealed by the legislature five years after its enactment.\textsuperscript{106} In 1950, the legislature authorized fiscal courts to fix the maximum annual compensation which all county officers and employees, except clerks, sheriffs, and jailers in counties with 75,000 or more population, and tax commissioners in all counties,\textsuperscript{107} may receive whether such compensation be derived wholly or in part from fees; to fix the number of deputies and assistants that county officials may employ and prescribe their compensation; and to prescribe the maximum annual amounts which county officers may expend for office expenses. In order to prevent any fee officer from receiving greater remuneration than that authorized, fiscal courts may have audits made of the accounts of these officials.\textsuperscript{108}

Since this law has been in effect only a short period, it is difficult to predict its influence on fee administration. This much, however, can be said: the average fiscal court, composed of members who, for the most part, have but little acquaintance with the technical aspects of financial admin-

\textsuperscript{103} KY. Const., sec. 106. Since 1944, the state has returned 25 per cent of these fees to the county in which they are collected. KRS, 1948, sec. 64.350.

\textsuperscript{104} In these two counties, sheriffs are compensated on a salary basis, and limitations are placed on the sums which they may expend for deputy hire and office supplies and equipment. See KRS, 1948, secs. 64.120, 64.125.

\textsuperscript{105} Kentucky Acts of 1893, chap. 226.

\textsuperscript{106} Kentucky Acts of 1898, chap. 31.

\textsuperscript{107} Concerning compensation of these officials, see fn. 25 and 26 above.

\textsuperscript{108} 1950 Supp. to KRS, secs. 64.530, 64.540.
istration, is ill-equipped to perform the tasks which this law imposes. Prior to the enactment of this law, fiscal courts were authorized to have audits made of the fiscal operations of county officials, but as a matter of fact they rarely did so. It is well known that county financial officers are reluctant to force other county officers to obey the fiscal laws since they also have a vested interest in the fee system. Moreover, in some instances, those responsible for enforcing fiscal laws may exceed non-fiscal officers in the matter of violating them. It would seem that, before the recent fee legislation can be made even moderately effective, a financial officer, approved by some state agency such as the department of revenue, should be placed on the county level. In smaller counties, it probably would be necessary to vest this function in some existing county officer. The official on whom this duty is conferred, however, should be required to meet qualification standards prescribed by the state agency.

**VERIFICATION OF FEE COLLECTIONS**

Fee collections of county officers need to be verified for two important reasons: in the first place, part or, in some instances, all of the fees collected by these officials belong to the state; and, secondly, all moneys earned by them in excess of their legally authorized compensation belong to the county. Although the recently enacted fee legislation should make possible better regulation of fee officers, it does not offer a complete solution to the fee problem, because there are no satisfactory internal checks to insure that all fees collected will be honestly and accurately reported. The statutes now require the county judge, each justice of the peace, and the circuit court clerk to maintain judgment books showing records of all civil and criminal cases. Unless this record is kept, however, it becomes impossible to

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109 See KRS, 1948, sec. 67.080. The absence of a separation of powers on the county level seriously impedes accountability in county government. Since the fiscal court performs some administrative tasks (particularly is this true of its presiding officer, the county judge), an audit performed under its direction does not constitute a really independent check on county administration.
verify fees which these officials have collected. Likewise, without this record, the verification of fees earned by the jailer, commonwealth's attorney, county attorney, and sheriff becomes impossible.

In a number of counties, verification of fees collected is rendered difficult by the absence of adequate records. For example, it is frequently impossible to determine whether the justice of the peace has collected the $5 fee due the county attorney in cases where he has levied a fine of less than $25. Occasionally, those who have paid fines will volunteer this information to the field examiner of the state auditor's office while he is making the county audit. In some counties, it is not uncommon to find court records indicating that sometimes as high as 90 per cent of the individuals convicted in misdemeanor cases are assessed fines of approximately $5 of which $2 or $3 of the fine is paid in cash and the remainder through a jail sentence. It may be true that those convicted choose this course; however, it is difficult to understand why they would do so. A justice of the peace, by neglecting to enter the confinement period on the commitment papers of a person sentenced to jail for failure to pay a fine (only about one out of every ten justices issues proper commitment papers), can fail to report the fine should it be paid by the prisoner or a friend before the end of the confinement period.

Revenue collections of the county clerk can be verified, at least, within reasonable limits. This statement, of course, refers to revenues which he is legally entitled to collect. It is possible, for example, to check his fees derived from issuing licenses; moneys earned in connection with his property tax duties can be verified; and most of the fees derived from his recording duties admit of check. However, there is no way of determining the number of duplicate copies of legal documents, such as wills, or the number of duplicate copies of automobile registration receipts issued by him. As a matter of fact, there is no way of determining whether he actually charges for some of his recording duties. His income from these duties is of particular importance to the county, and much as it should be considered in determining
whether his total compensation exceeds that prescribed by the fiscal court. The clerk, as well as all other county officials, should be held responsible for all fees which he is legally entitled to collect regardless of whether he collects them. It must be admitted, however, that the very nature of the fee system makes almost impossible the task of holding him accountable.

Moneys earned by the circuit court clerk can also be verified with a relative degree of accuracy. It is possible, for example, to check his fees derived from issuing licenses; and the amount that he has earned from paying jurors and from acting as a collecting agent for fines and forfeitures due the state, as well as the percentage of circuit court fines paid him, can be verified from records of the state department of finance. But the latter department has a record only of the moneys paid it; and in order to verify completely the clerk's income, thorough audits must be made of the records of the circuit and inferior courts.

REPORTING OF FEE OFFICERS TO THE FISCAL COURT

If the constitutional limitation on the compensation of county officers is to have any meaning, some agency must be empowered to enforce it. Enforcement should not be left to the courts, for these agencies can act only when interested parties call their attention to cases of violation. Undoubtedly, the framers of the present constitution intended that the legislature should provide some arrangement whereby county officials would be required to render a strict accounting of their fees. However, except for a brief period following the adoption of the constitution (1893-1898), the legislature has made no effort to provide adequate regulation. With the exception of legislation applicable to the sheriff\textsuperscript{110} who acts ex officio as tax collector, there has been no legislation stating specifically that county officers must file financial reports showing the revenues and expenditures of their offices. Nor has the legislature ever

\textsuperscript{110} See KRS, 1948, sec. 134.310. The sheriff is the only county officer specifically required by statute to keep a record of all his fees. KRS, 1948, sec. 64.100. But this statute, dating from 1893, has never been interpreted by the courts.
declared which units of government are entitled to receive the surplus fees of county officers. The court of appeals has held, however, that until the legislature acts, such fees must revert to the county. In the absence of legislative regulation, the court of appeals likewise has been forced into the position of legislating the method of fee accounting. Judicial regulation, however, is not altogether satisfactory, since by its nature it provides only sporadic enforcement.

Formerly, section 246 of the constitution provided that no public officer, except the governor, should receive as his annual compensation a sum exceeding $5,000. In view of that provision and a statutory provision authorizing fiscal courts to cause correct accounts and records to be kept of all county funds, the court of appeals held that, even in the absence of specific statutory authorization, fiscal courts were empowered to force county officers to account annually to them for fees which they had collected. However, in 1949, section 246 was amended; and in the following year the legislature authorized fiscal courts to fix the annual compensation of all county officers and employees. Although the new legislation does not contain any provision requiring county officers to file financial reports with fiscal courts, these agencies undoubtedly possess authority to force them to do so, because such reports will be necessitated for the purpose of enabling fiscal courts to determine: (a) whether the new constitutional salary limitation is being violated; and (b) whether county officers are receiving greater compensation than has been authorized.

Despite strong insistence on the part of the court of appeals that financial reports be made, it is extremely doubt-

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111 Shupp v. Rodes, 196 Ky. 523, 245 S.W. 157 (1922); Holland v. Fayette Co., 240 Ky. 37, 41 S.W. 2d 651 (1931); Commonwealth v. Coleman, 245 Ky. 673, 54 S.W. 2d 42 (1932).
112 KRS, 1948, sec. 67.080.
113 Holland v. Fayette County, 240 Ky. 37, 41 S.W. 2d 651 (1931); Commonwealth v. Coleman, 245 Ky. 673, 54 S.W. 2d 42 (1932); Taylor v. Broughton, 254 Ky. 265, 71 S.W. 2d 635 (1934). Not all judges of the court of appeals are agreed, however, that a fiscal court's authority to cause correct accounts and records to be kept empowers it to require county officers to file financial reports. See, for instance, Judge Dietzman's dissent in Holland v. Fayette County, supra.
ful whether they have been filed in very many counties. Indeed, it appears that in a large number of counties the sheriff has been the only officer filing reports with any degree of regularity. Financial reports have not been made for two principal reasons: in the first place, many fiscal courts have not been aware of their authority to require them (some courts probably are aware of their authority but prefer not to exercise it), and, secondly, the state auditor's office has not conducted investigations to determine whether they have been made, taking the view—unwisely, it would seem—that the filing of such reports is a matter concerning only fiscal court members and the other county officers concerned. In all fairness to the auditor's office, however, it should be stated that, upon request, this agency will furnish fiscal courts information on the fiscal operations of county officers. But the fact that the auditor's office does not itself assume the initiative seems to merit special emphasis.

At first glance, it would seem that the county attorney who is charged with the duty of looking after the financial interests of the county would take action to enforce financial reporting. However, though some county attorneys do perform this duty, the incentive is not great for county attorneys generally as much as they themselves are fee officers. In the final analysis, therefore, unless fiscal courts demand reports or unless county officers report voluntarily, enforcement of the constitutional limitation on compensation must come from taxpayers. Indeed, an examination of the decisions of the court of appeals will reveal that much enforcement to date has resulted from taxpayer suits. But as previously noted, regulation of this nature, though probably helpful, leaves much to be desired. It is thus possible that some moneys belonging to the county treasury are not ar-

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114 Ordinarily before a taxpayer may institute suit to recover moneys due the county, he must appeal first to the fiscal court, requesting that it bring action. But when it is evident that an appeal would be futile, the taxpayer may bring immediate action. See Taylor v. Broughton, 254 Ky. 265, 71 S.W (2d) 638 (1934); Howard v. Ador, 314 Ky. 213, 234 S.W (2d) 733 (1950).
No one is in a position to say the amount of such sums. By examining court records, however, as well as records of the state departments of finance and revenue, it is possible to arrive at a reasonable estimation of the gross incomes of a few county officials. In some counties, the county clerk’s office will earn between $10,000 and $12,000, the sheriff’s office between $12,000 and $15,000, and the jailer’s office between $14,000 and $18,000. Besides numerous $5 fees received from misdemeanor cases, some county attorneys receive as their percentage of fines between $4,000 and $6,000; and occasionally the sum exceeds $10,000. The latter officers have very few office expenditures; and, consequently, gross income estimations for their offices are not greatly in excess of their net income. The former officers, on the other hand, must spend considerable sums for deputy hire and office equipment and supplies; and, thus, it is difficult to determine accurately the amount of their net income. Such a determination can be made only when accurate records have been maintained.

Although court decisions pertaining to fee accounting are few in number, they constitute the principal body of law on the subject. According to the court of appeals, the annual report of a fee officer must show the total income of the office together with necessary expenditures for deputy hire, clerical assistance, and office equipment and supplies. Each expenditure must be itemized and its purpose stated. In a certain sense, the fiscal court, in receiving

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115 During the fiscal year ended June 30, 1948, only 14 of Kentucky’s 120 counties received revenues from surplus fees. See The Kentucky Auditor of Public Accounts, Kentucky Counties (Biennial Report of the Auditor of Public Accounts for the Fiscal Years Ending June 30, 1947, and June 30, 1948), pp. 70-80.

116 The fact should be stressed that the figures quoted above represent gross income.

117 Holland v. Fayette County, 240 Ky. 37, 41 S.W. (2d) 651 (1931). Fiscal courts, in the absence of statutory authority, often purchase office supplies for county officers. Such purchases appear to be illegal since they should be made from fees collected by county officers. This practice has never been directly challenged in the courts, but the attorney general’s office has recently stated that, as far as the law is concerned, it is illegal. See The Louisville Courier-Journal, August 11, 1950.

118 As stated by the court in the case of Goodlett v. Anderson County, 267
these reports, is allowing deferred claims against the county. Unless fee officers are required to render a strict accounting of their fees and are allowed to make only legally authorized expenditures for operating their offices, funds rightfully belonging to the county are being denied it. The fiscal court (assuming that it is in a position to audit claims against the county) is handicapped in that it cannot exercise current control over the expenditures of these officers. Although it is now empowered to control the maximum total sums which they may expend, the court cannot control their expenditures for individual items. Apparently, the only way current expenditure control can ever be attained is through outright abolition of the fee system.

If the fee system is retained, however, enactment of certain laws seems essential to make the system even moderately workable. In the first place, every county officer should be required by law to file an annual financial report with some county agency and with the state department of revenue. The department should be empowered to institute action in the Franklin County circuit court to force county functionaries to file these reports. Secondly, the office of county financial officer should be established in every county, and the functionary holding this office should be empowered to examine and audit all claims against the county as well as to receive financial reports filed by county officers. The fiscal court should not be divested entirely of its authority to allow claims, but it should not be permitted to approve any claim which has been initially disapproved by the financial officer unless, when it does so, it states in writing the reasons for its approval. Finally, the state

Ky. 166, 101 S. W (2d) 421 (1936), "When a claimant has a claim against the fiscal court, he must itemize it, and then point out the statutory provision for its payment. He must be able to say, 'Here's the service, here's the statute, now pay me.' Unfortunately, however, the advice of the court of appeals is often unheeded.

110 The statutes authorize the department to bring action in this court to force compliance with provisions of the county budget act. See KRS, 1948, sec. 68.350.

auditor's office should examine carefully all county financial reports and should be required to report to the proper authorities (i.e., the officer concerned, the fiscal court and the proposed financial officer, the county attorney, and the department of revenue) any irregularities discovered. In cases where appropriate local action is not immediately taken to correct such irregularities, the department of revenue should be empowered to take whatever action it deems necessary to correct them.

**AN APPRAISAL OF THE SYSTEM**

As noted earlier in this report, the fee system developed in the eastern states during the colonial period and, at one time, extended throughout most of the United States. Today, however, the system has been abandoned by most states, although it still persists in Kentucky and in a few southern and midwestern states. In Kentucky, where the system is perhaps more deeply embedded than in any other state with the possible exception of Florida, statutory officers are compensated on a salary basis. This latter fact would seem to provide ample proof that the legislature itself considers the salary basis of compensation preferable to compensation by fees.

**ADVANTAGES**

Proponents of the Kentucky fee system advance several arguments in its behalf. In the first place, they assert that it tends to compensate officials according to the amount of work which they perform. But this assertion is not substantiated by actual facts. It has been found, for example, that net incomes of county officials earning comparable

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121 Although such a recommendation is beyond the scope of this report, it would seem advisable to remove the auditing function from the state auditor's office and place it under proper safeguards (i.e., impartial selection and indefinite tenure of auditors) in the department of revenue, the agency now approving county budgets and supervising their execution. If such transfer were made, state supervision of county financial administration would thus become a continuous and integrated process.

122 Concerning arguments for and against the fee system, see Debates of the Kentucky Constitutional Convention, 1890, Vol. III, pp. 4131-4161. See also Editorial, "Abolish the Fee System," *National Municipal Review*, XXII (February, 1933), 47, 63.
gross incomes show considerable variation. Secondly, it is argued that county officials paid on a salary basis will not satisfactorily perform their duties. This argument is disproved by experience in other states as well as Kentucky. Finally, the argument is made that, unless county officers receive a portion of the fees which they are required to collect, such fees will remain uncollected. Moreover, it is claimed that, if the legislature should place the compensation of county officials on a salary basis and direct that fees collected by them be paid into the state or county treasury, a large number of state officials would be required to determine whether honest and accurate reports of fee collections were being made. Of all the arguments advanced in favor of the fee system, the latter one seems to have the most merit. Yet, upon reflection it will be seen that the problem of accounting for fees extends beyond the fee system. It should be pointed out that abolition of the fee system will not by itself solve the problem of accounting for fees. Unless satisfactory internal checks are established on the county level, county officials will be tempted to retain the fees which they collect as well as their salaries. These checks, therefore, should be present under all circumstances; and the existence or non-existence of the fee system is no valid excuse for their absence. Indeed, it seems that before a satisfactory accounting for county moneys can ever be attained, day-to-day financial control must be exercised on the county level. Moreover, with or without the fee system, county officers should be required to report under oath all fees which they have collected.

### DISADVANTAGES

Several criticisms may be directed against the fee system. In the first place, since for political reasons fee officers do not always collect all fees to which they are entitled by law,

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124 State supervision, however desirable it may be, is no substitute for daily financial control maintained on the county level. Due to the large number of counties which the state department of revenue and the state auditor's office are required to supervise, state supervision in Kentucky is, of necessity, only cursory in character.
it is impossible to determine total county revenues or rather the revenues which should have been collected. Furthermore, the fee system is frequently abused through assessment of illegal fees. For example, some county clerks, when issuing a marriage license, require the license applicant to purchase, in addition, an ornamental marriage certificate. Clerks purchase such certificates (often with county funds) from an "unofficial state printer." Again, these same officials have at times received illegal fees for preparing claim vouchers. (This has been said to be one of the principal reasons for the near-bankruptcy of one county during the last depression.)

Secondly, the fee system makes current expenditure control impossible. Under this system as it now exists, the fee officer is practically a law unto himself. For example, he collects his fees from which he compensates his deputies and purchases his office supplies (quite frequently the latter are charged to an unwary fiscal court). If he has the inclination, he makes an annual report to the county. His report has but little value, as much as he seldom bothers to itemize receipts and expenditures, and it seldom suffers careful scrutiny by the fiscal court which usually accepts the report without question.

Thirdly, fee officers frequently neglect to perform duties for which they consider the fees too small to warrant the use of their time. For this particular reason, the county attorney may neglect to bring action to collect moneys owed on delinquent tax claims owned by the state and county. Again, the county clerk frequently neglects to keep adequate budget records because he feels that he is not being compensated to do so. His salary as clerk of the fiscal court, however, is intended to compensate him for performing this

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125 In a survey of 20 Kentucky counties, one writer discovered only one county in which the sheriff and jailer filed detailed financial reports. Stephenson, op. cit., p. 276.

126 If, within one year after the right of action accrues, the attorney has failed to institute suit to enforce a tax claim, the state department of revenue may act. KRS, 1948, sec. 134.500. However, it is economically impracticable for the department to collect small claims. Since such actions are barred five years after the right of action accrues, it appears that through the attorney's inaction considerable tax moneys are being forfeited.
duty. In this connection it should be noted that some county officers have exerted influence on state legislators for the purpose of having remunerative duties assigned to their offices. For example, although the county clerk ordinarily issues licenses, the circuit court clerk has succeeded in having the legislature assign to his office the duty of issuing motor vehicle and motor carrier operator licenses. Again, the county clerk is assigned the duties of computing taxes and preparing tax bills, although such duties could be performed by the tax commissioner at no additional expense to the county.

Finally, compensation of law-enforcement and judicial officers by fees tends, in many instances, to make the administration of justice a mere mockery. Everyone brought before a court in an English-speaking country is deemed to have a right to an impartial trial. Yet, in Kentucky, a defendant in a justice of the peace court is not guaranteed that right, because the justice who presides at his trial does not receive any compensation unless he adjudges the defendant guilty. Moreover, the commonwealth’s attorney and the county attorney derive most of their income from court fines. Although there is a limitation on the maximum compensation which these officials may earn, it cannot be denied that they are financially interested in court convictions.\(^{127}\) Also, since the sheriff receives compensation for making an arrest only in case the person arrested is convicted (in felony cases, he is paid when an indictment has been returned), he has less incentive to be as diligent in his law-enforcement duties as the community might expect. Indeed, experience of past years tends to confirm the fact that the sheriff prefers to spend his time collecting taxes.\(^{128}\)

It seems that justice would be more fairly administered and law enforcement rendered more effective if all law-

\(^{127}\) Some of the officials are opposed to this method of compensation, feeling that it tends to cause those who are fined to hold malice toward them.

\(^{128}\) Senator Herbert O’Conor, Chairman of the U. S. Senate Crime Investigating Committee recently investigating gambling in Campbell County, quoted the sheriff of that county as saying he regarded his office as more or less that of a tax-collecting agency. See Louisville Courier-Journal, June 21, 1951.
enforcement officers were compensated on a salary basis. Furthermore, if Kentucky were to adopt this method of compensation, it would be following the lead of most other states. Abolition of the fee system, by improving judicial administration, would tend to increase the average citizen's respect for the lower courts, the judicial agencies with which he has most frequent contact. If this can be accomplished, respect for the whole court system is likely to increase.

**Recommendations**

Kentucky's experience demonstrates that the fee system has proved to be an unsatisfactory method for compensating county officials. Students of local government and public finance take the view that the fee system should be abolished and that county officers should be compensated by salaries. Most states now compensate county officials on a salary basis, and it seems that Kentucky should do likewise. But this is only one of several reforms that need to be introduced in the government of Kentucky counties. Before these units can be made to function more effectively, county financial management must be strengthened in several respects. Indeed, unless better financial management is provided, it is probable that the abolition of the fee system would create more problems than it would solve. For this reason, the following recommendations, though primarily concerned with the fee system, are intended to strengthen county financial management generally

1. All county fee officers, except those officers who are required by section 106 of the constitution to pay their fees into the state treasury (these functionaries are already compensated on a salary basis), should be compensated by salaries and all fees collected by them should be paid into the county treasury.

2. The legislature should classify counties for the purpose of prescribing the compensation of county officers. Population and taxable wealth probably would be the best classification standards to use in the preparation of a salary schedule.

3. A study should be made comparing the fees charged
by the state of Kentucky with those charged by other states. Information gained from such a study would be most helpful in the preparation of a modern fee schedule.

(4) The duties of each county office should be sufficient to require the full-time attention of at least one individual. In this connection, the office of coroner should be abolished and its duties transferred either to the county attorney or to a state appointed medical examiner. The treasurer, already a salaried official, should be designated to act ex officio as tax collector. The office of jailer should be abolished, and its duties transferred to the office of sheriff. Furthermore, insofar as feasible, duties should always be assigned to the office best suited to perform them.

(5) Justice of the peace courts should be abandoned entirely and trial justice courts established in their stead. Trial justices should be appointed, preferably by the circuit court; they should be lawyers; and they should be compensated on a salary basis. Wherever it appears feasible, duties now performed by police courts should be transferred to trial justice courts. Indeed, it might even be desirable to vest these courts with exclusive jurisdiction to hear minor civil and criminal cases, leaving the county judge free to devote his entire attention to county administration. Before such courts as here advocated could be established, however, a constitutional amendment would be necessary.

(6) The office of county financial officer should be established in every county. The financial officer, whether full- or part-time, should be appointed by the county judge after he has passed a qualifying examination administered by the state department of revenue. To permit selection of the best qualified personnel, county residence should not be made a requirement for appointment to this office. In the small, rural counties it probably would be necessary to vest the financial officer's duties in an existing officer or employee. But in such instances, appointment of the finan-

129 The actual duties of a coroner should be performed by a physician appointed by and responsible to the county attorney. Such arrangement now exists in Nebraska.
The financial officer should be approved by the department of revenue. The county judge should be permitted to remove the financial officer; but when he does so, he should be required to fill the vacancy by making an appointment from a list of eligibles certified by the department.

The financial officer should be assigned the following duties: (1) budget preparation; (2) preaudit of expenditures; (3) purchasing; and (4) record keeping. He should be empowered to require frequent reports from county officers and to conduct audits of their fiscal operations. Moreover, each officer who collects fees should be required to make reports of such collections to him. The establishment of the office of county financial officer seems to be the most needed reform in the field of county government. A financial officer, vested with the powers suggested, would be able to exercise day-to-day control over the fiscal activities of county officers. If financial control is to be effective, it must be exercised on the county level. Furthermore, records kept by the financial officer would furnish adequate information for making a good financial report. Although the work of this official would not obviate the necessity for an independent postaudit, records kept by him would make a thorough audit possible, as well as reduce the time needed to perform it.
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