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Legal Development of the Borrowing Power of Kentucky Municipalities

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The volume of municipal bond offerings in the United States has shown a large increase since the beginning of the present century. This growth was scarcely impeded by the long continuation of the business depression and the war has failed to retard it appreciably, despite the clamor for less non-military expenditures. Probably the following are among the many reasons for this large increase in the debts of local governments. (1) The expansion of municipal intervention in unexplored channels of public life, and (2) the increasingly receptive market for bonds with tax free characteristics.

When it is considered that in 1901 municipal bond offerings in the United States amounted to some $94,000,000, and in 1936 amounted to some $1,117,351,500,\(^2\) evidently it is high time some study of the legal development should be made along with the purely financial development.

Inseparably a part of any history of a particular power of a municipal corporation is the development and legal status of the corporation itself. In this article the writer will attempt to present a brief summary of the development of cities in England down to 1607, then trace the development in the colony of Virginia, thence to Kentucky. In this way a true background of the picture will be drawn. The adoption of the fourth and present Constitution of Kentucky, in 1891, presented for the first time constitutional limitations on the powers of cities to borrow money and levy taxes. To present the background leading to adoption of these provisions and to point out how the provisions have become insufficient protection for the taxpayers, is the purpose of this article.

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Local government in the United States developed from institutions begun in the colonies which were similar to those existing in England. The history of these English institutions is difficult accurately to trace. However, it will be enough for our purpose to sketch briefly the growth of English local institutions from the time when they can be clearly understood, that is, from the latter part of the Anglo-Saxon period.³

When, in the ninth century, the various Anglo-Saxon kingdoms were united into the kingdom of England, the country was divided for the purposes of local government into shires, which in turn were divided into hundreds, and these into townships.⁴ Boroughs and burgesses were in existence, yet none of these appeared to have any characteristics resembling those of a corporate body.

After the Norman Conquest (1066), the sheriff became supreme in the county (as the shire now came to be called) because he was the king's representative. The government and the courts of these political subdivisions changed frequently, and at no time does it appear that local self-governing authority was given to these subdivisions or by them assumed.⁵ The whole system of local administration was under the control of a very energetic national government. The officers were appointed, and were selected from an independent class, the rural gentry.⁶

Many and varied causes went to make up the peculiar communities known in the thirteenth century as boroughs. There is the “garrison theory” that the boroughs were fortified places which were the governmental centers of their counties. There is also the theory that the borough was formed around the trade centers, and there is the further theory that the boroughs formed around the courts.⁷ Perhaps none of these theories is entirely correct, but all the above factors exerted their influence.

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³Fairlie, “Local Government of Towns, Countries, and Villages” (1920), p. 1. ⁴Ibid. pp. 3–4. ⁵Fairlie, “Local Government of Towns, Countries, and Villages” (1920), p. 16. ⁶Ibid. p. 17. ⁷Holdsworth suggests that all these factors contributed to the rise of boroughs, and that the evolution was accentuated as commerce, activities in handicrafts, war, and agriculture became more intense. Holdsworth, History of English Law, 6th Ed. (1939), pp. 139-140.
The boroughs were granted privileges by the King to act, but not to act as a unit. It has been suggested that the evolution of the "corporate person" doctrine was due to the seeping in of alien canon and common law theories. At any rate I have found no evidence of a corporate charter being granted a town until 1439. In that year, Henry VI granted what has been called the first charter of incorporation to Kingston-upon-Hull, and an institution resembling a municipal corporation was born. The charter began with a recital of the King's good-will to the people for services performed for him. Then it incorporated the mayor and burgesses, granting corporate powers subsequently so common, such as the power to sue and be sued, and to purchase and hold land by the corporate name.

Whether this really was the first charter ever granted a city cannot, of course, dogmatically be said. It does, however, indicate that by the early fifteenth century the corporate idea had been evolved, and applied to towns. There is evidence that such charters were quite frequently granted in the reigns of Henry VII and Henry VIII, but it had not become a realm-wide practice.

Whether the municipal corporations thus created could validly incur obligations does not expressly appear. I have found no charter expressly granting that power, and have found no evidence that the power was implied. Neither does it appear that the power was assumed by the corporation as a corporate right.

The powers of the municipalities varied widely in different communities. Generally these powers were limited to management of local police, judicial administration, control of markets, and charge of ancient town property. Most of the revenues came from fines, fees, licenses, and rents from borough property. "While lotteries and public subscriptions were not infrequently resorted to for extraordinary expenses, or to pay off an accumulated debt." Apparently, the accumulation of a debt was a fiscal necessity and the creditors do not appear to have considered the legality of the debt.

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8 Goebbels, Development of Legal Institutions, 7th Ed. (1937), p. 534 et seq.
11 Fairlie, op. cit. p. 89.
Not until the English statute establishing "Borough Funds"\textsuperscript{12} was there an express provision made whereby the cities could pay their debts. This act provided that if all claims could not be paid out of the Borough Fund, into which all revenues were directed, then warrants signed by the mayor and sealed could be given debtors and redeemed when sufficient revenue to pay the claims could be received. These correspond to the modern tax anticipation warrants.

Above is set out the legal status and the formation of the English municipal corporation in 1607. Its framework was vague and sketchy, but its corporate characteristics were becoming easily discernible. This was the type of local government the colonists brought with them to America. Naturally the American municipalities would bear resemblances to those already formed in England.

\textbf{IN VIRGINIA}

In Virginia, the colonists closely followed the trends already begun in the mother country in the formation of local governments. Certainly the charters were similar in form and content to the English charters, and it appears that Virginia followed the English system of political subdivisions more closely than any of the other colonies. There were "plantations" and "hundreds", which soon came to be called "parishes", and later, the "county" replaced the parish as a place for local administration.\textsuperscript{13} Most of the proprietary grants and commissions to royal governors bear indications that the growth of "boroughs" and "cities" and lesser corporate towns was looked upon as a matter of course.\textsuperscript{14}

The boroughs were merely election districts from which burgesses were sent to the colonial assembly, and do not seem to have been corporate entities.\textsuperscript{15} Some of the first settlements were named "James City", "Charles City", "Henrico City", and so forth, but there seems to be no evidence that they were ever accorded corporate privileges.\textsuperscript{16}

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\textsuperscript{15} and 6 William IV, Ch. 76, § 92 (1835).

\textsuperscript{16} Fairlie, "Local Government of Towns, Counties, and Villages" (1920), p. 19.

\textsuperscript{17} Fairlie, "Municipal Corporations in the Colonies" (1898), in Municipal Affairs, Vol. II, pp. 341-381.


\textsuperscript{19} Brown, "First Republic", pp. 144, 205, 254.
The term "corporation" was frequently applied to many of the earliest settlements but it is not clear that the term had any special significance. There were repeated efforts in Virginia, encouraged or commanded by royal authorities in England, which were directed toward building towns; but in only one instance does incorporation appear to have been a feature of this policy. This was in 1705 when the House of Burgesses passed an "Act for establishing ports and towns." The Act provided that "the directors and benchers of every burgh respectively to be chosen by virtue of this act shall be and they hereby are erected and constituted to be a body politic, and have continued succession forever with power to implead, sue and be sued, to purchase and enjoy lands." Additional provisions granting power to use a common seal, to pass ordinances, and to levy taxes were included.

This Act had no significant influence. Apparently, no corporation traces its origin to it, and by its terms its operation was suspended for three years after its passage. In 1710, a royal proclamation repealing it was published in Virginia.

The device employed by Parliament appears also in Virginia in 1705 when the House of Burgesses authorized the governor to grant a charter to Williamsburg. The Act provided that "it may be lawful" for the governor by letters patent to incorporate all persons who have an interest in that city. He was to give them power to have perpetual succession, to use a common seal, to buy and hold property, and to sue and be sued.

Governor Spottswood feared that to grant this charter would constitute a lessening of the Crown's authority over the colonists, and he refused to grant it until pressure from the House of Burgesses persuaded him to do so in 1722. In 1736, Governor Gooch granted a similar charter to Norfolk, and the legislature confirmed it the same year, with some modifications. As confirmed, the charter gave power to the mayor and council to erect work-houses, houses of correction, and prisons. Very few cities in Virginia, however, were granted corporate charters.

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28 Hening's Statutes at Large, Vol. 3, p. 405 (1705)
30 Hening's Statutes at Large, Vol. 3, p. 419 (1705).
31 Ibid. Vol. 4, p. 541.
The seat of local governmental activity largely remained the unincorporated towns, created by special acts of the legislature.

By 1764 the powers of Norfolk and Williamsburg had been considerably expanded. Power to tax for expense of a night watchman and for public lighting, because the city "has no authority to levy upon inhabitants a tax to answer expense thereof", was granted in 1763.\textsuperscript{22} And Williamsburg was empowered in 1764 to levy taxes to build a courthouse, market house, prison, contagious disease hospital, to buy fire engines, dig public wells, and hire a night watchman, "and that the common hall shall not levy or assess taxes on the inhabitants of the said city for any other use, intent, or purpose whatever."\textsuperscript{23}

Thus developed the municipalities in Virginia before the Revolution. The power to tax was closely restricted by the legislature, and the power to borrow money does not expressly appear to have been given. Evidence as to whether the power was implied is lacking. I was unable to find any colonial cases in which the point was considered.

\textbf{In Kentucky}

Kentucky was segregated from Virginia and made into a separate state in 1792. In that year a constitution was adopted which provided, in part, that all laws which were in force in Virginia and of a general nature would continue in force in Kentucky.\textsuperscript{24} This resulted in the continuation of several towns within the boundaries of Kentucky which were established by the Virginia legislature. Among these were Boonesborough (1779), Louisville (1780), Lexington (1782), Harrodsburg (1785), Frankfort (1786), and Danville (1787). These towns were not, however, made bodies corporate by the Virginia legislature. The acts establishing these towns merely provided for certain named trustees to hold land, lay out lots, and enact local rules for the community.

It was on June 23, 1792 that the Kentucky General Assembly first passed an act establishing a town in Kentucky.\textsuperscript{25} It was "An act for establishing a town at Woodford Court

\textsuperscript{22} Hening's Statutes at Large, Vol. 7, p. 654 (1764).
\textsuperscript{23} Ibid. Vol. 8, pp. 21, 22 (1765).
\textsuperscript{24} Littell's Laws of Kentucky (1809), pp. 21–28; cf. Hunt v. Warwick's Ex., Hardin (Ky.) 61 (1806).
\textsuperscript{25} Ibid. p. 62.
House’, and vested title to two acres of land in seven named persons as trustees for the purpose of establishing the town of ‘‘Versailles’’ The trustees were given power to lay off this land into lots, dispose of them, and adopt rules and regulations to govern the community. The town was not made a body corporate, and was not given a charter in its proper sense. It is impossible to distinguish this method of establishing towns from the method employed in Virginia. Both used private acts of the legislature for this purpose, and it was not until the later Act of 1796 that the first indication that Kentucky was deviating from the Virginia method appeared. This latter policy in Kentucky seems to have been to ‘‘establish’’ the town, and add to its powers by special acts of the legislature. The town of Louisville, we have seen, was established by Virginia. In 1795 the Kentucky legislature gave the trustees of Louisville added powers, such as to keep a market house in repair, to regulate streets, and to levy taxes not exceeding twenty-five pounds annually on property, real and personal. Power to pass ordinances and regulations for local government also was conferred. The only fiscal regulation was the limit on the taxing power.

In the same year, Lexington was empowered to tax up to 120 pounds annually, and to employ a night-watchman, and similar acts were passed relating to other towns established by Virginia. After breaking the ice by establishing Versailles, the legislature followed by establishing several other towns, but the corporate idea never received legislative sanction in any of these acts.

It was held in an early Kentucky case that corporations could only be created by statutes, and could act only in the manner prescribed by law. This appears to be the first Kentucky case in which the powers of a municipal corporation were considered by the courts.

The General Assembly, having been flooded with petitions for the establishment of towns, passed, in 1796, a general law

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26 Littell, op. cit. p. 325.
27 Ibid. p. 573.
28 Ibid. p. 640 (Frankfort) p. 646 (Paris).
29 Williamsville (1792), ibid. p. 118; Mount Sterling (1792), ibid. p. 125; Wilmington (1793), ibid. p. 175.
setting forth the manner in which towns could be formed. It authorized the county courts to establish towns, to fix the boundaries, to appoint trustees, and to name the town. The act fixed the powers and duties of the trustees, charging them with the duty of keeping streets clear. They could call on the inhabitants to clear the streets, and if they refused, the trustees could tax them and use the proceeds in paying someone to do their part. This was the only taxing power conferred. This act was held constitutional in Jackson v Winn's Heirs in face of a contention that the act contravened the constitutional prohibition against taking private property without paying just compensation.

The taxing power of Louisville was extended in 1812 by raising the limit to $2000. Lexington had been given power to levy an ad valorem tax up to twenty-five cents on the $100, the year before, and Versailles was authorized to collect $2000 annually from taxes the same year.

The greatest single extension of authority came in 1812 when Louisville was given power to levy assessments on abutting landowners to pave streets, and Paris and Versailles could require landowners to pave streets. This was probably a forerunner of the special assessment bonds which have had a turbulent history in Kentucky. In the case of The Former Trustees of Paris v The Trustees of Paris, the trustees sued their predecessors in assumpsit "for the non-delivery of certain records and papers belonging to the corporation." It is obvious, however, that the term was inadvertently used, because the town could in no legal sense have then been called a "corporation."

Thus, by 1814 municipal powers and duties had become extended, still, no charter providing for corporate privileges for a town had then appeared. It does not appear that express power to sue and be sued, to use a seal, to have perpetual succession, or to borrow money had ever been conferred. A close scrutiny of Littell's Laws of Kentucky, which is a compilation of all acts by the legislature from 1792 until 1822, reveals no

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21 Littell, op. cit. p. 512 et seq.
22 4 Litt. (Ky.) 325 (1823).
24 Ibid. p. 243.
25 Ibid. p. 331.
27 Hardin's Reports 456 (1808).
indication that the legislature ever intended to confer corporate privileges on any town.

Meanwhile, municipal borrowing in the other states had begun shakily but had recovered and grown into a firmly established policy of municipal fiscal government. New York City had incurred debts in the middle 17th century, and more in the middle 18th century, for building fortifications, jails for war prisoners, etc. Although the date of the first municipal bond is not known, New York began floating securities about 1812. Bonds for the city's water supply were issued in 1837-38, and in 1822, the City of Boston had a bonded debt of $100,000.

As the need for additional taxing and regulatory powers in the towns thus created arose, special acts were passed by the legislature to confer those powers on the towns. Thus, Louisville was empowered, by a special act passed in 1822, to use a lottery to pay for draining ponds within the town limits. This act was amended in 1825.

Special acts during this period were more the general rule than the exception. Throughout the Session Acts from 1792 we find such acts as "An act for the benefit of John Holts' heirs." So many of these special acts appear that it is evident that the legislature would lend its aid to solve any difficulty which presented itself. Few acts with state-wide application are found. It was only natural that problems of towns also were solved by special acts of the legislature.

Probably the most important early extension of the powers of a town was made in 1825 to the town of Louisville. This act authorized an increase in the tax levy, and provided that the trustees "may borrow any sum of money to be used in the improvement of said town, not exceeding fifty thousand dollars, on their own audit, as trustees, which shall be obligatory on them and their successors in office." This act is the first affirmative

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[38] Session Acts, 1825, p. 118.
[40] Session Acts, 1826, p. 80.
evidence I have found of towns being granted express power to borrow. How money was borrowed under this act does not appear; presumably it was evidenced by notes, but this is merely a speculation.

The far-reaching effect of this special act could not have been contemplated by the General Assembly. The act indicated that the legislature thought the town did not have borrowing power except as conferred by the legislature, that the legislature could limit the amount that the town had power to borrow as well as limit the power to tax, that borrowed money must be spent for improvement of the town, that although the statute reads "on their own audit," it was designed to mean on the credit of the town, and that the town is about to be clothed, albeit unintentionally, with a corporate character.

A general law passed in 1828 compels town trustees to prepare and publish an annual report of receipts and disbursements because they "are not accountable by any general law of this commonwealth."* Apparently the legislature was becoming more zealous in its designs toward protecting the taxpayers from unscrupulous city officials.

The same year the first municipal corporation was established in Kentucky. The act, entitled "An act to incorporate the City of Louisville," first defined the boundaries. It is also provided that it "shall be a body corporate and politic forever; possessing the power to sue and be sued, to contract and be contracted with, by the name of the City of Louisville, and to have and use a common seal." The mayor and councilmen were vested with all the powers the trustees had. Another limit, however, was placed on the borrowing power.

"The Mayor and councilmen shall have power to borrow money on the credit of the corporation and pledge of the corporation property for the redemption of the same, or to pledge any part of the future taxes of the city for the payment of the interest on said loan. Provided, that the interest paid in no case shall exceed 6 per cent per annum, and that the amount or sum borrowed in any one year shall not exceed the sum of twenty-five thousand dollars."

This provision is noteworthy because it does not expressly require borrowed money to be used for municipal purposes. The

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*Session Acts, 1828, p. 69.
**Ibid. p. 208.
statute provided that its provisions should be in force for "five years, and no longer."

The court steered clear of the question of the trustee's power to bind the funds of the town in Lee v. Trustees of Flemingsburg. The court observed that, "Whether the trustees could bind their corporate funds by any such contract as that described in this case would be an important and interesting question." The court, however, refused to answer the question. The contract was one for a reward, and the court evidently was questioning not the borrowing power, but the power to spend for this purpose. The question of whether the trustees had the express or implied power to borrow money apparently never occurred to the court.

The trustees of Lexington were empowered to borrow money up to $20,000 by an act passed in 1830, and they were authorized to give a mortgage on town property to secure the debt. Lexington was incorporated and granted a charter similar to that granted Louisville in 1831. The limit on indebtedness "at any time" was set at $30,000. A year later Louisville's charter was continued in force.

By 1834, Maysville and Covington had received charters similar in scope to those granted Louisville and Lexington. A year later an act authorized Lexington to raise up to $60,000 by a sale of "script" bearing 6% interest or less. The act designated the form of the "script" (which resembled present-day warrants) and how the money raised was to be appropriated. Since the act authorized expenditures to pay off existing indebtedness, we have the first forerunner of modern refunding bonds. The script was to be redeemed with rents from public property, and in this respect bears a resemblance to modern revenue bonds.

Indeed, this "script" seems to have been clothed with characteristics which today would brand it "municipal bond" with one exception, to wit, no liens or mortgages on city property were given as security to "script-holders." That this act was the origin of municipal bonding in Kentucky appears

*7 Dana (Ky.) 28 (1838).
*8 Session Acts, 1829-1830, p. 121.
*9 Ibid. 1831, p. 57.
*10 Ibid. 1832, p. 212.
*11 Ibid. 1835, pp. 35, 36.
certain. By 1839 they were called "bonds", and power to issue refunding bonds was conferred on Lexington. The issue of serial bonds by Lexington was authorized "for the advancement of the interests of Transylvania University".

A year after Maysville was incorporated, the city was sued in assumpsit by one Shultz for $462, for cutting down and grading a street. It appeared that he had been hired by the trustees before the charter was granted. It was held that the city was liable, the court saying:

"The only difference between the City and the Town of Maysville is in name and in power. One is corporate, the other was quasi-corporate. The corporation of Maysville is but the community of Maysville with a legal name and a legal individuality. It is certainly the duty of the city to pay the debts of the town."

This apparently was the first case indicating the court's view of the status of towns in Kentucky. No authorities were cited.

It seems clear that at this time a city had power to issue bonds only when a special act of the legislature expressly conferred this power on the city. Definite restrictions on the manner in which these powers could be exercised appear in all the acts of this type. They put limits on the amount, the form of the bond, the interest to be paid, the manner of sale, and the uses to which the proceeds may be directed. Whether the bonds were transferrable or not depended on the provisions of the act authorizing the issue.

While the incorporation of towns in Kentucky was becoming more frequent by 1850, it was still the exception rather than the rule. Private corporations were readily incorporated, but most towns continued to depend on the old law of 1796 for their existence.

The problem of incorporating municipalities did not appear to be very acute, however, because the delegates to the constitutional convention of 1850 never discussed the possibilities of a general law providing for the establishment of towns and cities

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54 Session Acts, 1838-1839, p. 141.
55 City of Maysville v. Shultz, 3 Dana (Ky.) 10 (1835) at page 11, and see: Keasy v. City of Louisville, 4 Dana (Ky.) 154 (1836).
56 See "An act authorizing the City of Paducah to issue bonds", Session Acts, 1842, p. 126. See Maddox v. Graham, 2 Metcalf 56 (1859), which approved a Maysville bond issue made pursuant to a special act of the legislature. This is the great case that sired nearly all the doctrines applying to Kentucky municipal bonds.
with general powers of fiscal and administrative management. It is rather odd that no such general law was passed. The legislature certainly was becoming increasingly aware that a general law was needed because of the great number of petitions for cities to be granted new charters, or for existing charters to be amended. The charters of Louisville and Lexington, for example, were amended at each session of the General Assembly from 1828 until 1846.

By the year 1852 some general laws applying to towns had been enacted, providing that the "trustees" should be a body corporate. This did not give the towns the same status as a chartered city; rather, it in effect made of the town a quasi-corporate body. This act did not confer express power to borrow money. No general statutes regulating the manner of issuing bonds had yet appeared, and these functions were still regulated by special acts of the legislature. In the Kentucky Laws for the year 1869, there were 108 pages of public acts passed, and there were 550 pages of private and local acts passed. None of these public acts applied to the financial affairs of cities and towns. This enormous quantity of local acts is typical of the statutes of that period, and it was not until the Constitution of 1891, which provided for limits on the legislature's power to enact local laws, that the limits on the manner of exercising this legislative function by the General Assembly were clearly defined.

An act adopted in 1873 contained the first general regulatory provision over municipal bond issues. This act made it permissible for persons holding a bond of any "corporation, county district, municipality, town or city" to register those bonds in the clerk's office of the city issuing them. Transfers were to be made only by transfer on the registry. It expressly provided that it was to be a permissive, not a mandatory statute. The mode of transfer previously had been as ordinary negotiable instruments. The provision probably was designed not so much to control transfers as to provide a public record of bondholders. And it was held in Frantz, Jr v. Jacob that a taxpayer could enjoin the issuance of illegal bonds by the city.

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67 Kentucky Revised Statutes, 1852, p. 666.
68 Kentucky Constitution, Sec. 59.
50 88 Ky. 525 (1889).
both for his own protection and for the protection of innocent parties who may purchase them.

As appears from the above analysis, general legislative regulations governing the issuance of bonds by cities and towns were sadly lacking. Confusion arose as to whether particular towns had power to issue bonds, whether there were limits on amounts and purposes, whether they were negotiable or non-negotiable, and dozens of similarly perplexing problems. Local acts often were employed to settle those questions; however, in other instances, the towns took the initiative, issued the bonds, and hoped the legislature could be persuaded by a special act to validate the issue. This was done in a few cases.\textsuperscript{61}

In 1890, however, a constitutional convention was called for the purpose of drafting a new constitution of Kentucky. This time, happily, the problems were not overlooked.

A committee on municipalities was appointed to draft the provisions relating to towns and counties and other taxing districts. Mr. Bennett H. Young, chairman of the committee, correctly stated the problem to be solved when he submitted their report.\textsuperscript{62}

"The trend of all action on the part of the convention has been to secure, as far as possible, uniformity in the operation of the laws of the Commonwealth. We have had in Kentucky special legislation run mad. No two cities in the Commonwealth are governed by a similar code of laws, and no two are controlled by similar provisions, but each, according to the caprice and whim of each particular local representation 'did that which was right in its own eyes'. There are more than a thousand town and city charters in Kentucky, and in each of these will be found a code of laws peculiar to the locality governed."

And he continued, in explanation of the report being submitted.

"In order to remedy this peculiar and anomalous condition of affairs, you will observe that the committee proposes to classify all the cities and towns into five groups and to require that all the cities and towns of the same class shall be governed by a general law enacted for the control of cities of such class."

Arguing further in favor of express provisions in the

\textsuperscript{61}See: Kentucky Laws, 1891–1893, p. 474. Hearne v Covington City Council, 10 Ky Opinions 122 (1878). There a special act of the General Assembly had authorized a bond issue if a vote of the citizens approved. The approving vote was secured, but additional circumstances made the issue unwise. The court held that the act was permissive, not mandatory. This was the only case decided between 1866 and 1886, in which the legal aspects of municipal bonds were in issue.

\textsuperscript{62}Debates of Constitutional Convention, 1890, Vol. III, p. 2128.
constitution in connection with fiscal affairs of municipalities, Mr. Young pointed out the fact "that extravagance and fraud have marked our municipal creation." 63

One of the delegates, Mr. Robert Rodes, observed that the questions of debt limitation and tax levy limitation "are the two great and leading features connected with this report." 64 Strange indeed it is that problems considered too insignificant for mention in the constitution adopted forty years previously had now become the "great and leading features."

Many other reasons for the adoption of general provisions regulating the fiscal affairs of Kentucky municipalities were advanced. Mr. P P Johnson argued that it would lessen litigation and confusion, that it would lessen the labor imposed on lawyers and judges, and would more efficiently guard the taxpayers from unreasonably heavy tax burdens. 65

The report of the committee was adopted substantially as submitted. It provided for limits on the rates of taxation for each class city, and in addition provided, "No county, city, town, taxing district, or other municipality shall be authorized or permitted to become indebted in any manner or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters and indebtedness contracted in violation of this section shall be void." 66

Neither could the municipalities become indebted in any amount in excess of a certain per cent of the assessed valuation of taxable property within the municipality. 67

Thus, the constitution sets the limits, and provides for the general assembly to enact other laws governing the fiscal affairs of Kentucky municipalities. Powers are given cities by general statutes. Among these is the power to issue funding and refunding bonds. The old charters are dispensed with, they remained in effect after the constitution only until the legislature could provide by general laws those things previously granted by local acts.


63 Ibid. p. 2127.

64 Ibid. p. 2135.

65 Kentucky Constitution, Sec. 157

66 Ibid. Sec. 158.
It would be pleasant if one could stop here and say the constitution settled the problems, and if it did not, general statutes did. Regrettably, the opposite is true. Generally the provisions of the constitution have been rigidly enforced, but occasionally leaks have appeared. How the Court of Appeals has permitted one of these leaks to flourish and grow is contained in a previous article by the writer.\textsuperscript{68}

As stated at the beginning of this paper, there has been in recent years a trend toward greater issues of municipal bonds. In Kentucky, the provisions of the constitution and the vigilance of the court had, prior to 1920, served to discourage extravagant borrowing and spending by officials of Kentucky cities. With few exceptions, bond issues were closely scrutinized, and willingly invalidated by the Court of Appeals.

In more recent years, however, the vigilance has slackened, and again citizens of Kentucky municipalities are faced with what may well turn out to be an orgy of extravagance and wastefulness, resulting from the unwise issuance of general obligation and special assessment bonds. This promises to undermine the best foundation for municipal credit, which is the willingness and desire on the part of the taxpayers to discharge their obligations.

The wise exercise of the power to borrow by a municipal corporation establishes the credit of the town and denotes a healthy fiscal standing. Obligations for which tax revenues are pledged should be so limited as to maintain the taxpayer's will to pay. Outstanding obligations which can be refunded at a lower rate of interest should be so refunded while the time is ripe. The many cancerous infections in Kentucky municipal finance should be removed when possible while the market is still good for low interest municipal bonds. A vigorous, vigilant fiscal policy is the mark of a progressive municipality.

\textsuperscript{68} Lovett, John C., "Lease and Option" Device for Avoiding Constitutional Limitations on the Indebtedness of School Districts in Kentucky, XXIX Ky Law Jour. 195 (1941)
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