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REPORT OF THE 1974-75

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AND THE

1976 KENTUCKY GENERAL ASSEMBLY

NOVEMBER 6, 1975

INTERIM JOINT COMMITTEE ON

STATE GOVERNMENT

COMMITTEE JURISDICTION: matters pertaining to the sovereignty and jurisdiction of the Commonwealth; the general assembly, its committees, officers and service agencies; redistricting; the governor; the lieutenant governor; inter-governmental cooperation; relations with the federal government; administrative organization; administrative regulations; statutory administrative agencies; department of law; secretary of state; state personnel; state retirement systems; military affairs and civil defense; public property and public printing; public officers, their terms, appointments, fees, compensation, removal, oaths and bonds; public information; state and regional planning; the arts; the libraries; archives and records; public corporations; Commonwealth attorney; circuit clerk.

SUBCOMMITTEE ORGANIZATION

AND MEMBERSHIP

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GENERAL ASSEMBLY SPACE
AND CAPITOL PARKING

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LOBBYING AND CONFLICT OF
INTEREST

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Sen. P. McCuiston

COMMITTEE ACTIVITY

The Interim Committee on State Government and its four subcommittees held a total of twenty meetings during the 1974-75 interim, including three public hearings. Issues considered by the Interim Committee and its subcommittees included open records, administrative procedures, lobbying, conflict of interest, availability of meeting and office space for the General Assembly and parking space in the Capitol area, legislative compensation, and conflicts between economic development and environmental protection activities of government agencies.¹

Open Records

The issue of which governmental records should be open to public inspection and which records should be exempt from public disclosure was a major item of "unfinished business" undertaken by the Interim Joint Committee on State Government at its first meeting following the 1974 General Assembly session. 1974 House Bill 22, which would have declared governmental records open to public inspection unless specifically closed by law, was passed by the General Assembly but vetoed by the Governor. In his veto message, Governor Ford expressed concern that House Bill 22 would provide inadequate protection of records containing information of a personal or private nature concerning individuals and businesses. Shortly after the Interim Joint Committee on State Government created the Subcommittee on Open Records, the Kentucky Court of Appeals rendered a decision declaring the general principle that government records would be open to public inspection, unless an overriding public policy warranted confidentiality.² As the court noted, the decision left largely unanswered the question of which records should and would be considered "public."

The Subcommittee on Open Records held four meetings during the interim, including one public hearing. The Subcommittee's goal was to develop legislation which would define those governmental records warranting exemption from the general policy of disclosure; prescribe reasonable procedures concerning access to records and copying of records in order to protect records from damage and prevent undue interference with other duties of public agencies; and establish effective and economical methods for resolving disputes concerning access to records.

In the course of its work, the Subcommittee solicited the viewpoints of public officials and concerned citizens on the basic issues and on initial

¹For analyses of the issues of open records, lobbying, conflict of interest, and legislative compensation in Kentucky, see LRC Informational Bulletin No.110, Issues Confronting the 1976 General Assembly (forthcoming).

²City of St. Matthews v. Voice of St. Matthews, Inc., Ky., 519 S.W. 2d 811 (November 22, 1974).

drafts of legislation. Most of the persons and organizations responding to the Subcommittee's invitations to comment favored the general principle of open access to records, but differed as to whether the disclosure of particular kinds of records would further, or be detrimental to, the public interest. The major concerns discussed by the Subcommittee with respect to particular categories of records were whether their disclosure would (1) involve an invasion of personal privacy or (2) be detrimental to effective policy analysis and agency administration. Several public officials felt that unlimited disclosure of working papers drafted for internal agency use in administration and policy analysis would inhibit effective and candid communication necessary to agency management and decisionmaking. Opponents of this viewpoint argued that citizens need to know what policy alternatives are being considered prior to a final decision in order to effectively participate in the policy-making process.

An additional issue which developed during the Subcommittee's deliberations was whether an individual should have access to any governmental record relating to him. Major concern regarding this issue was expressed by those state agencies and professional employees engaged in treatment programs, particularly in the area of mental health. Professional opinion was divided on the question of whether a patient's access to records on his progress contributes to or inhibits treatment. The Subcommittee ultimately decided that an individual's access to records maintained on him is necessary if he is to be able to correct any errors in such records.

At its July 29 meeting, the Subcommittee concluded its review of testimony and communications, Kentucky's and other states' laws and model legislation and finalized 76 BR 81 for submission to the full Committee. On August 28, the Interim Committee on State Government voted to prefile BR 81 with the recommendation that it pass.

76 BR 81 would statutorily establish the general policy that records maintained by public agencies are open to public inspection, but would exempt several categories of information from disclosure. The exemptions include (1) information of a personal nature the disclosure of which would be a clearly unwarranted invasion of personal privacy; (2) records relating to business and industry which would provide an unfair advantage to competitors or reveal unannounced location or expansion plans; (3) appraisals and estimates concerning public agencies' plans to acquire real property; (4) test questions and other examination data prior to the administration of the test; (5) information concerning investigation or detection of violations of law; (6) non-factual information in preliminary drafts or memoranda prior to its use by an agency in taking action; and (7) records deemed confidential by federal law or state statute. In addition, the bill would guarantee an individual access to records maintained on him on proof of identification; establish procedures for agencies to follow in providing access to records and copies of records; permit persons denied access to records to seek an Attorney General's ruling on the denial or go directly to circuit court; and establish a system for monitoring experience under the law.