PROGRAM EVALUATION

LAWS AND REGULATIONS AFFECTING KENTUCKY EDUCATIONAL TELEVISION

Research Report No. 189

Legislative Research Commission

Frankfort, Kentucky

Committee for Program Review & Investigation

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PROGRAM EVALUATION: LAWS AND REGULATIONS AFFECTING KENTUCKY EDUCATIONAL TELEVISION

KENTUCKY GENERAL ASSEMBLY
COMMITTEE FOR PROGRAM REVIEW AND INVESTIGATION

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FOREWORD

In April 1981, the Committee for Program Review and Investigation of the Kentucky General Assembly authorized this study of the Kentucky Educational Television network. The areas studied were the compatibility of state and federal educational television laws and regulations and the effect of state personnel laws and regulations on meeting affirmative action requirements and hiring qualified personnel.

Successful accomplishment of this study is owed in part to the cooperation extended the Program Review and Investigation staff by the Department of Personnel, the Education and Humanities Cabinet and KET. Special appreciation is extended to the Executive Director and staff of the Kentucky Educational Television network for the provision of working space, access to information and documents, and a general atmosphere of openness and cooperation.

Appreciation is also extended to Dr. Jim Peyton, Sandy Deaton, Dee Swain, Norman Lawson, and Ethel Alston, staff of the Legislative Research Commission, for their assistance, advice and counsel. Finally, we wish to extend appreciation to Jeanie Privett and Esther Robison for their patience and diligence in providing the secretarial services essential to this final product.

Vic Hellard, Jr.
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The Capitol
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SUMMARY

In 1980 Governor Brown organized a group of business leaders, known as the Executive Management Commission, to review the service agencies of state government and to make recommendations to improve their operations. Several of their recommendations addressed operational problems of the Kentucky Educational Television (KET) network. Some of these recommendations dealt with changes in the personnel system, more private sector recruitment, and more affirmative action. The network's managing authority indicated in its response to the Commission's report that legislative and administrative constraints were a hindrance to implementing these recommendations.

Based on the request of one of its members, the Committee for Program Review and Investigation approved this preliminary review of KET in April, 1981. The focus was on two general areas:

- compatibility of KET's statutes and organization with the federal concept, laws, and regulations of public broadcasting; and
- impact of the state's personnel system on KET's ability to meet affirmative action requirements and to hire qualified personnel.

Kentucky's educational television network consists of television broadcasting and production related facilities and services. Statutes authorizing the development of this network in 1962 created the nine-member Kentucky Authority for Educational Television (KAET) to manage and operate this network.

The review of KET's statutes and organizational structure for compatibility with the federal concept of public broadcasting and its laws and regulations indicates no major incompatibilities in the areas of administration, funding, or programming. However, two areas were identified which would strengthen the Kentucky Authority for Educational Television's control over the use of its facilities by other agencies and would help to strengthen its public image as an independent public broadcaster.

RECOMMENDATIONS

- The KET Authority should adopt clear standards and review procedures for special programming developed or chosen by other agencies for airing on KET. These standards and procedures should ensure KET the flexibility to accept or reject programming developed by other state agencies for airing on KET, based on technical standards and content.
- The KET staff should compile an annual listing of appearances by state officials on KET public affairs and special programs, including the date, program and purpose of these appearances. This report should be given to the KET authority and released to the public.

Impact of the state's personnel system was reviewed through an analysis of KET's personnel composition, comparing salaries with those of the public broadcasting market, and a review of the statutory limitations of the state's classified personnel system. Results support the Management Commission recommendation for a change in the relationship between KET and the personnel system, to provide KET with greater flexibility and responsiveness.

The nature and function of public broadcasting requires a special relationship between the Kentucky Authority for Educational Television and its professional staff, who operate under First Amendment rights of professional freedom. Furthermore, the First Amendment rights of the Authority itself need to be ensured through insulation from administrative control by any state government official; therefore, the Committee proposed and adopted the following:

RECOMMENDATIONS

- The General Assembly should amend the term of office of the five members of the Kentucky Authority for Educational Television appointed by the Governor from the current four-year term to a six-year term.

- The General Assembly should amend KRS 18.140 to permit the Authority for Educational Television to determine those employees to be exempted from state classified service.

CHAPTER 1

INTRODUCTION

Public broadcasting began in Kentucky in 1962 with the creation of an independent corporate agency, the Kentucky Educational Television (KET) network, consisting of television broadcasting and production facilities and services. The Kentucky Authority for Educational Television (KAET) was created by the General Assembly to manage, control, and operate this network of educational television. The KAET consists of nine members, four statutorily designated representatives of secondary and higher education and five members appointed by the Governor. The KAET was given the power in its enacting legislation to adopt rules and regulations governing the use of the network and to employ the persons necessary to provide educational television services and functions.

KET, with an annual budget of approximately $6,000,000 in FY 1981, receives direct appropriations for its daytime schedule of elementary and secondary instructional programs, which are determined by the state's curriculum priorities. Additional educational programming is provided by contract in the evenings and and on weekends for higher education telecourses. Evening hours are also used to provide educational and public affairs programming obtained nationally or developed locally and funded through grants and donations.

In 1980 the Governor formed an Executive Management Commission, composed of business leaders, to review the operations of the various service agencies of state government. In its review of KET, the Commission identified several areas in which problems threatened the operational effectiveness of KET. Several of these areas appeared to be related either to conflicts between state and federal laws and regulations or to the impact of state laws on KET's operations.

In April, 1981, the Committee for Program Review and Investigation, a statutory committee of the General Assembly, commissioned this preliminary review with the intent of determining the extent or validity of certain specific problems, identifying ways of relieving these problems, and identifying the need, if any, to conduct a more in-depth study. The prescribed focus was to identify conflicts or constraints in four areas:

- compatibility of KET's current organizational structure with the federal concept of public broadcasting;
- compatibility between the state's statutes and the federal broadcasting rules and regulations;
- interference of state personnel laws and regulations with KET's ability to meet federal affirmative action requirements; and
- impact of the state personnel system on KET's ability to hire qualified personnel.

State and federal laws, regulations, reports and legal opinions were reviewed. Interviews were conducted with representatives of the major agen-

cies involved, KAET, KET, The Department of Personnel, the Department of Finance, the Department of Education, the Council on Higher Education, the Education and the Humanities Cabinet, and the Education Committee of the Legislative Research Commission. Data regarding KET's personnel composition and the salary levels of the public broadcasting market were analyzed.

Chapter 2 outlines the federal concept, laws and regulations governing public broadcasting, and analyzes KET's organizational structure, laws and regulations for areas of compatibility or incompatibility. Chapter 3 addresses the impact of the state personnel system on KET and the KAET. Options to state classified service are discussed in Chapter 4. Recommendations are made, when appropriate, within the sections of the paper to which they apply.

CHAPTER 2

COMPATIBILITY OF FEDERAL AND STATE REQUIREMENTS

The compatibility of federal and state requirements for public broadcasting as an area deserving study developed from recent public discussions and press reports concerning KET public affairs programming. These discussions and press reports centered on KET's implementation of the fairness doctrine and equal opportunity provisions required by the Federal Communications Commission (FCC). Questions were raised regarding KET's obligation to air arguments opposing public addresses made by state government officials. In the ensuing debate, concerns were raised regarding political broadcasting. This study was requested to discover whether this or any other conflicts did exist.

This section of the preliminary review begins with a presentation of the federal concept and concerns for public broadcasting which center on protecting freedom of the press from government interference through unnecessary administrative, fiscal, or programmatic controls. This is followed by a review of federal statutory and regulatory requirements of local public broadcasting stations. In each of the areas reviewed, Kentucky public broadcasting statutes and policies are compared to the federal requirements. The areas of administration, funding, and programming provide a framework for the comparison of federal and state requirements.

Federal Concept and Concerns for Public Broadcasting

The first amendment of the U.S. Constitution guarantees freedom of the press. The Supreme Court, in AP (Associated Press) vs. United States (1945), states that the first amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. . . ." The Supreme Court, in Red Lion vs. FCC (1969), held that,

> it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. Thus, the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purpose of the first amendment.

Thus, although freedom of speech traditionally implies an absence of governmental supervision or control, the concern for the public's right coupled with a scarcity of frequencies and the potential for signal interference, has caused the U.S. Supreme Court to recognize the necessity of governmental supervision of broadcasting through the Federal Communications Commission.

Despite the power of regulation, the concept of independent broadcasting protected by First Amendment freedoms is a central theme in federal regulation of both commercial and public broadcasting activities. For public television, protection of First Amendment rights and insulation from government interference is even more an issue than for commercial television, due to the nature of its funding and its administrative relationships. These features are perceived as making public television more vulnerable to censorship and polit-

ical influence.

A recent occurrence demonstrates this vulnerability. The airing last year of the program Death of a Princess caused considerable controversy over first amendment rights of public broadcasting stations to air controversial programs. The Saudi Arabian government protested to the U.S. State Department the Public Broadcasting Service's plans to air the program, because, in the Saudis' view, it was a distorted presentation of Saudi Royalty. Given the charged international political atmosphere and the threat of oil cutbacks, corporate sponsors of public television programming, other corporations doing business with the Saudis, and some government officials attempted to pressure many PBS stations into cancelling this program. In all, only eight public television stations actually cancelled the program, although many others claimed to have received pressure to cancel it. Currently a case is in court filed by a Houston citizen who "argued that state educational television officials cancelled the program for political reasons." This case is of national significance, according to the May 10, 1980, Courier-Journal, because the station is state-owned, the cancellation represented government censorship, and it infringed on the constitutional rights of viewers.

In an effort to insulate public television from government control, Congress created in 1967 an independent federal corporation, the Corporation for Public Broadcasting, to protect public broadcasters from executive or legislative interference in:

- administration,
- funding, and
- programming.

The Corporation for Public Broadcasting (CPB) was established under the Public Broadcasting Act as a funding agency. The CPB distributes funds to various organizations for the promotion and development of programming for non-commercial educational television stations.

To insulate its administration the fifteen members of the CPB Board of Directors, appointed by the President, are confirmed by the Senate. Futhermore, no more than eight of the CPB Board members may be of the same political party and members are appointed for staggered six-year terms.

To further insulate programming from government interference, the CPB established the Public Broadcasting Service (PBS) to distribute programs and interconnect various public television stations. PBS is a membership organization representing non-commercial educational television licensees in a manner similar to that of a trade association. It was created as independent of the CPB, with responsibility only to its member stations through a board of directors.

To insulate public broadcasting from influence related to its funding, Congress established in 1975 a multi-year advance authorization system of funding for the Corporation for Public Broadcasting. This authorization system is linked with forward funding:

- to enhance the long-range planning for the development of programming;

- to insulate the CPB and PBS member stations from political or other interference with program development or regular operations and programming decisions.

Since political appointees comprise the Board of the CPB and directly oversee its programming funding priorities, additional safegrounds were felt to be necessary. Therefore, peer review panels were organized in 1978 to review program funding proposals and to perform the program-decision-making function of the CPB. These panels, according to Congressional testimony, were designed to insulate public broadcasting programming priorities from political considerations, through their legislated composition of diverse interests and political perspectives.

Even with the safeguards established in the CPB, influence from the federal government is still possible. A special provision was placed in a 1967 amendment to the FCC Act of 1934 prohibiting federal interference or control over the CPB and local public television. According to this amendment, no

> department, agency, officer, or employee of the United States [may] exercise any direction, supervision, or control over public telecommunications, or the Corporation [for Public Broadcasting] or any of its grantees or contractors, or over the charter or bylaws of the Corporation, or over the curriculum, program of instruction, or personnel of any educational institution, school system, or public telecommunications entity.[1]

One area of public television, equal employment opportunity, was specifically exempted from this noninterference amendment. This exemption was made to ensure that all public telecommunications entities receiving federal funds did not discriminate in employment on the grounds of race, color, religion, national origin or sex.

In summary, the federal concept and concerns for public broadcasting involve insulation from censorship and political interference. Achieving this insulation and preserving first amendment freedoms is difficult, as can be seen in the Death of a Princess controversy. Congress, however, has provided some measure of insulation to public broadcasting through the CPB. Beyond the federal statute of noninterference just presented, Congress established peer review panels for insulation in programming, multi-year forward funding for insulation in funding and CPB's bipartisan Board of Directors for insulation in administration.

Federal Regulatory Bodies

The prohibition of federal interference or control over the Corporation for Public Broadcasting (CPB) and local public television has limitations. The Federal Communications Commission (FCC) and the CPB place certain constraints on broadcasting, in general, and public broadcasting, in particular, to ensure both the freedom of speech rights of the public and equal employment opportunities.

The Federal Communications Commission (FCC) regulates all broadcasting facilities, including commercial and non-commercial television stations. The amended Federal Communications Act of 1934 gives the FCC rulemaking authority over educational television stations such as KET. Under FCC rules the tele-

vision licensee is responsible and accountable for the implementation of all FCC administration and programming regulations. Administrative regulations take the form of public accountability and equal employment requirements. In the Public Telecommunications Act of 1978, Congress emphasized that stations should maintain greater financial accountability through records "clearly indicating the receipt and disbursement of all funds." Furthermore, Congress requires that the boards of public broadcasting stations conduct open meetings, in order to foster "public involvement and station accountability to the public."

Equal employment opportunity regulations arise from many sources and are generally tied to federal funding. This is the method of regulation employed by the CPB. The FCC, however, ties its equal employment regulations directly to the broadcaster's license to operate. Under FCC laws and regulations, public broadcasters must maintain minimum minority compositions based on 50% of the proportion of minorities in the broadcaster's operating area. This percentage applies to the total composition as well as composition in specific occupational categories. Depending on the station's size, automatic FCC reviews may occur yearly or every five years. Failure to satisfy FCC minority requirements can result in the loss of the broadcaster's license to operate.

FCC regulation of programming takes the form of the fairness doctrine and the so-called "equal time" provisions, which apply to both public and commercial broadcasters. "Equal time" applies to a balanced presentation of political candidates while the "fairness doctrine" applies to a balanced presentation of issues.

According to the FCC's Law of Political Broadcasting and Cablecasting: A Political Primer, the fairness doctrine "applies to issues rather than persons, and it does not require either 'equal time' or 'equal opportunities.' It does require a broadcaster to provide 'reasonable opportunity' for the presentation of conflicting views on controversial public issues in his area." Each licensee is held responsible for implementing the fairness doctrine in its full range of programming, not individual programs. Thus, as the FCC states it, the broadcaster "need not present contrasting views in a single broadcast, or even the same series of broadcasts, provided [the broadcaster] presents them somewhere in his overall programming." The licensee is expected to exercise his judgment as to the reasonable opportunity, format, spokesmen, and timing of the presentation of contrasting views.

Federal Communications law never uses the phrase "equal time" in reference to political broadcasts, but uses a more encompassing term, "equal opportunities." Section 315 of the amended Communications Act of 1934 states that "if any licensee shall permit any qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station." The FCC notes in the Law of Political Broadcasting and Cablecasting: A Political Primer that:

> If a candidate obtains time on a station, other candidates for the same office may obtain 'equal opportunities' on the station. Equal opportunities usually include equal time, but the term means more than equal time. For example, it means the right to obtain time in a period likely to attract approximately the same size audience as the period in which the opposing candidate appeared.

Exceptions to the FCC's equal opportunities rule include:

- bona fide newscast;
- bona fide news interview;
- bona fide news documentary (if the appearance of the candidate is incidential to the presentation of the subject or subjects covered by the news documentary); or
- on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto). 47 U.S.C., sec. 315(a).

As with the fairness doctrine, decisions regarding what constitutes equal opportunities are left to the reasonable judgment of the broadcast licensee.

Congress has placed one additional programming regulation on public broadcasting. This is a prohibition on editorializing, supporting, or opposing candidates for public office.[2] An unsuccessful effort was launched in 1978 to delete this requirement from federal law to lessen government interference in public broadcasting.

Violations of these federal regulations by a public broadcasting licensee can result in loss or suspension of broadcast licenses or federal monies. (The FCC holds the license holder responsible for compliance with these requirements but has the right to review compliance when a complaint is lodged.)

State Organization and Federal Concept

The organizational structure of public broadcasting in Kentucky involves several state agencies, including the Kentucky Authority for Educational Television, the Education and Humanities Cabinet, the Department of Education, and the Council on Higher Education. This section discusses the responsibilities of these organizations and how this organizational structure fits the federal concept of independent broadcasting; First Amendment rights are reviewed as well. Comparisons stress the specific areas of federal concern:

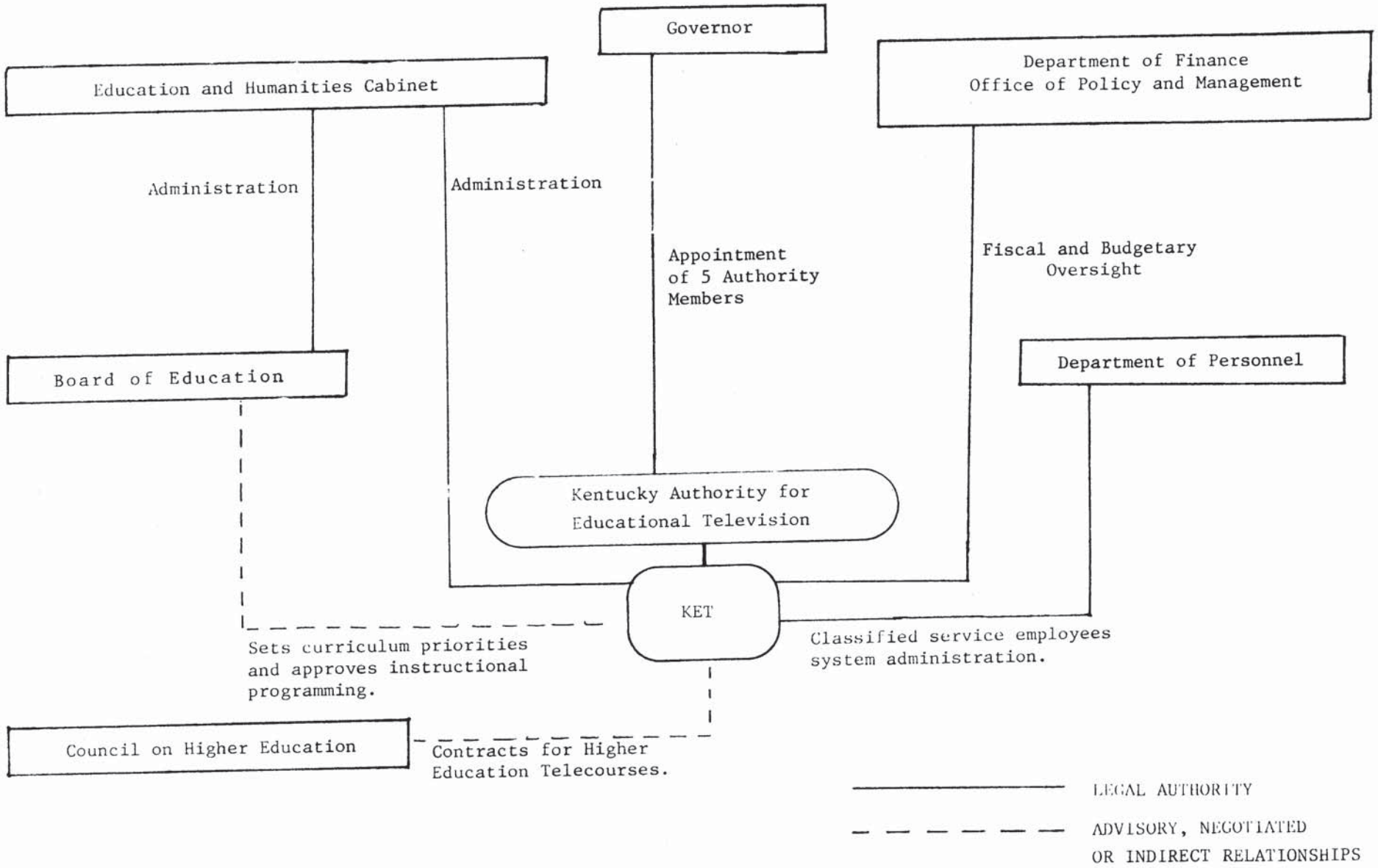
- administration,
- funding, and
- programming.

The roles of various state agencies impacting Kentucky public television are presented in Figure 1. These state agencies generally reflect the federal concept of independent public broadcasting. To the extent permitted by the Kentucky Constitution, a degree of funding insulation is provided to evening and public affairs programming through the KET Foundation. Lines of authority and control that KET may currently exercise in the area of special programming need development as they relate to other state agencies with the capacity to produce television programs.

Administration. The Kentucky Authority for Educational Television makes policy and oversees the operations of KET. Four members of the Authority are designated by statute and include the Superintendent of Public Instruction, and one designee each from the Department of Education, the University of Ken-

Figure 1

Relationships Between State Agencies
Involved in Kentucky Public Broadcasting



tucky, and one other state university. Five of its members are appointed by the Governor. The Authority, like the Department of Education (DOE), is attached to the Education and Humanities Cabinet for administrative purposes. Budgetary and fiscal oversight of KET is performed by the Office of Policy and Management in the Department of Finance. KET classified personnel, although under the direct supervision of KET, are covered by the policies of the Department of Personnel. Administration of curriculum priorities and approval of instructional programming is the responsibility of the Board of Education. Higher education telecourses are selected by the Council on Higher Education (CHE).

The Kentucky State Board of Education (KSBOE) is named the licensee on thirteen of KET's fifteen television transmitters. The remaining two are held in the name of the Authority. This places both the KSBOE and the KET in the position of legal liability, according to the operating rules of the FCC, which hold the licensee responsible for all activities related to broadcasting operations and programming. Thus, because all fifteen transmitters carry the same programming, the Kentucky State Board of Education, although not actually operating KET, would be held legally responsible for any formal complaints or other administrative actions brought against KET by the FCC. To remove the KSBOE from this imposed responsibility, the Board and the KET are working with the FCC to change the license holder on all transmitters to the Kentucky Authority for Educational Television.

The formal relationship of DOE with KET is through the Authority membership as previously discussed. A Memorandum of Agreement between the Authority and the State Board of Education that outlines the procedure for developing each year's instructional program schedule and priorities is expected to be adopted soon.

Other powers and restrictions detailed in KRS 156.070

- allow the State Board of Education to lease facilities suitable for establishing and furthering television;
- prohibit the Board from operating television facilities; and
- allow the Board to contract with any public agency or instrumentality of the Commonwealth with proper technical qualifications to coordinate matters of curriculum for the public schools of Kentucky.

These contracts are limited to the special uses of television or related facilities for other programs in the public interest. The contracts prohibit the use of the television or related facilities in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. The Board may apply for and receive state funds, contributions, gifts, and matching funds for the rental operation of television.

The Kentucky Authority for Educational Television is a nine-member independent corporate agency and instrumentality of the Commonwealth. The Authority meets quarterly, has an executive committee, and may form ad hoc committees to deal with special issues, such as public affairs programming. According to KRS 168.010, it is charged with the management, control, and operation of KET in the public interest. Once again, its nine members include the Superintendent of Public Instruction, who serves as an ex-officio member, and

a second member from the Department of Education who is recommended by the Superintendent of Public Instruction and must be qualified to serve as a liaison and coordinator of the Authority and Department on matters of curriculum; one representative from the University of Kentucky; one representative from the state universities; and five additional members appointed by the Governor. The members of the Authority serve staggered four-year terms.

The federal concern regarding influence in the administration of public broadcasting is evident in the structure of the CPB Board of Directors. The fifteen CPB Board members are appointed by the President and must be confirmed by the Senate, but no more than eight may be of the same political party.

One of the insulation measures the Kentucky General Assembly established for KET was the use of staggered four-year appointments, so that one governor could not under normal circumstances, have the opportunity to appoint a majority of members to the Authority in a normal four-year term. If a constitutional amendment allowing the Governor to serve two successive terms is approved by the voters, this insulation measure will sometimes lose its effect. A multi-party approach based on the CPB Board structure would be one way to ensure a measure of administration insulation for the KET Authority. Another alternative would be to modify the composition of the Authority or the length of its appointments. This latter approach was adopted by the Committee for Program Review and Investigation.

RECOMMENDATION

1. The General Assembly should modify the current term of appointment of the five members of the Kentucky Authority for Educational Television appointed by the Governor from four-year to six-year terms.

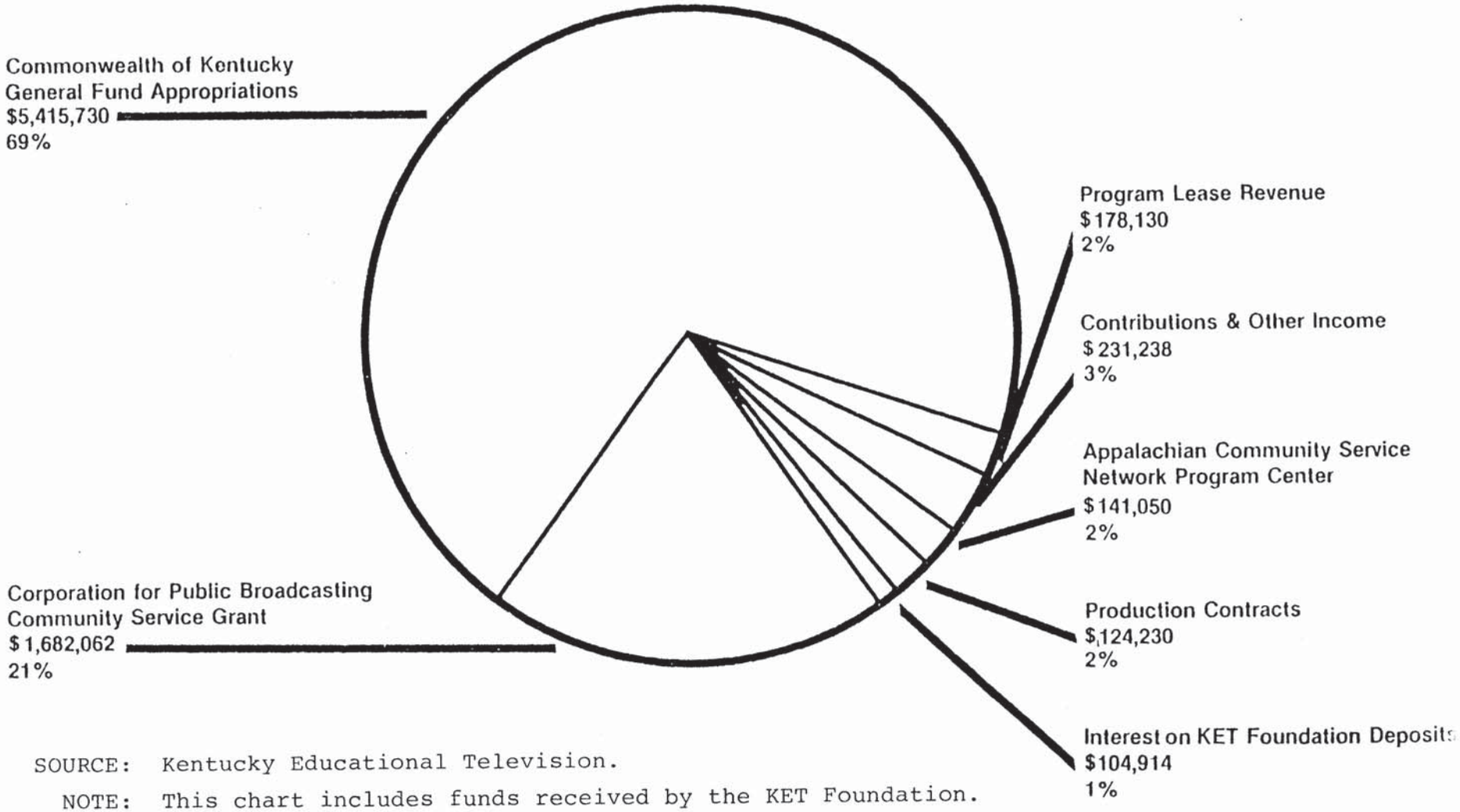
Funding. KET receives revenues from several sources, including state and federal money, corporate contributions, and membership subscriptions. The sources and amounts of revenues for FY 1981 are displayed in Figure 2. As indicated, the primary sources of funds are state general fund revenues (69%), followed by CPB grants (21%). State general funds are appropriated biennially and are designated for the purpose of providing educational programming. Expenditures are monitored by the Office of Policy and Management (OPM) in the Department of Finance.

Although KAET is an independent corporate agency it is fiscally responsible to state government for the use of general funds. OPM has the same control over KET general fund expenditures and appropriations as it has over other independent units, e.g. universities, and other non-independent agencies of the executive branch. Thus, OPM reviews and approves all expenditures as they relate to KET's appropriations and the availability of funds. Furthermore, OPM implements budgetary cutbacks ordered by the the Governor, such as the recent one in which KET major equipment funds were eliminated. Generally, the area of cutbacks is determined by the agency and its appropriate cabinet secretary in conjunction with OPM.

In addition to state general funds, KET receives funding through its non-profit foundation fund which includes federal grants, corporate contributions and membership subscriptions. Expenditures from foundation funds are not controlled by any entity of state government other than the KAET. (The

Figure 2

SOURCE AND AMOUNT OF REVENUES
KENTUCKY EDUCATIONAL TELEVISION
FY 1981



SOURCE: Kentucky Educational Television.

NOTE: This chart includes funds received by the KET Foundation.

KET Foundation undergoes annual private and periodic federal audits, but is not audited by the State Auditor's Office.) These funds are used primarily for the provision of public affairs programming. They are also used to overcome some of the operational limitations imposed by state government regulations.

KET Foundation money has been used for the following activities:

- purchase of evening programming;
- production of Kentucky-related evening programs;
- special talent for productions (This need arises when there is a time constraint preventing KET from requesting a personal service contract, which usually takes 3 months);
- staff for Foundation specific activities;
- trainees under CPB programs;
- printing of the KET program guide; and
- travel advances for KET employees for work-related trips (credit cards or cash).

Because of the federal concern with possible government interference in public broadcasting through the threat of withholding funding, the Congress has placed in federal law an advance multi-year appropriation mechanism to enhance insulation between the federal government and the CPB.

Although the CPB is given added political insulation through advance multi-year funding, this approach is not possible in Kentucky because the state Constitution would prohibit it. Forward funding beyond two years could commit a future General Assembly to appropriating a specific amount of money to KET. The General Assembly constitutionally may not authorize funds to be spent beyond a two-year period. The KET Foundation, as noted above, does provide funding insulation for KET's evening and public affairs programming because it does not receive state funds.

Programming. Evening programming includes entertainment, public affairs broadcasting, and higher education programming. This category encompasses programming beginning at 3:30 p.m. Monday through Friday and all programming on Saturday and Sunday. It is a management philosophy that education (as opposed to entertainment) programs should be given the most time. Consequently, such programs as the GED series are run during prime time.

KET has several options for evening programming. It can air PBS broadcasting, purchase programs from commercial networks or from other ETV stations, or produce its own programs. Currently, KET uses all of these approaches except purchasing from commercial networks. Programs are chosen from one of these sources based on:

- application to KET's mission;
- cost;
- quality of program;

- uniqueness of program, especially in comparison to commercial television;
- public demand;
- being commercially non-viable programs; and
- being art or theatre productions.

All evening programs are paid for out of KET Foundation monies arising from community service grants of the CPB; from sales of GED and other instructional series; and from donations from members, telefunds or grants.

Evening programming schedules are developed from an ascertainment process including:

- interviews,
- voting by viewers,
- ratings with demographics,
- cost assessment, and
- consideration of special things KET can do as a state network.

The programming decision begins with the Director of Programming, then, depending on the nature of the problem, it moves to higher levels within KET, such as:

1. Associate Executive Director for Broadcasting,
2. Executive Director,
3. Executive staff committee (Director of Programming, Executive Director, Associate Executive Director, Chief Engineer, and the Director of Production),
4. KET Authority, and
5. An ad hoc committee of the Authority created for difficult programming decisions.

In July, 1978, the Council on Higher Education created the Telecommunications Consortium to provide college course programming to a broad group of Kentuckians who cannot attend classes at a university or college. This consortium consists of all two-year and four-year public and private colleges and universities, as well as KET. Aside from planning teleconference continuing education programs for professional groups, the primary thrust of the consortium is to provide telecourses for college credit.

The number of telecourses which KET can broadcast each semester depends on available air time and programming. Funds for leasing these programs are provided by the Council on Higher Education, but KET bears the actual expense of broadcasting each telecourse.

Daytime programming priorities are determined through needs assessments

from DOE Educational Improvement Plans, teacher surveys, DOE program managers, KET utilization specialists, and the statewide competency testing program.

Each year the state Superintendent of Public Instruction prepares an instructional priority list and sends it to KET. KET reviews this list and develops plans for programming, which may involve securing or producing programs to meet these priorities. DOE personnel, working with KET staff, then review various KET plans for programming.

The State Board of Education and the Kentucky Authority for Educational Television, as noted above, are negotiating a memorandum of agreement which will set down in writing the procedure for scheduling instructional programming each year. The memorandum has not been formally adopted, but it will probably give the State Board of Education the function of approving the DOE instructional programming list.

One important area the proposed memorandum of agreement does not address is special daytime programming. Special programming is handled between the KET and DOE staffs in response to special needs that school teachers or students may have. A recent example of special programming was a program on test taking. KET leaves a half hour in each week's daytime schedule for special programming. Special programs may be requested from time to time. The unwritten procedure has been to combine a verbal contact with a written request.

With video recorders, cameras and editing equipment becoming more affordable and portable, a number of state agencies have developed the capability to produce television programs. This capability can be fulfilled if they consult with KET about the production of television programs.

The Department of Education produced a program for airing this year called The Children's Mansion, which featured interviews with a number of former governors' children who had lived in the mansion. This program was produced without close consultation with KET and consequently technical reasons prevented its airing. A substitute slide show about the Save the Mansion effort was aired in place of The Children's Mansion program. Early input by KET staff could have prevented the problems associated with The Children's Mansion program.

Currently the Department of Education is helping KET produce a special program on environmental education in association with the Department for Natural Resources and Environmental Protection. This program requires a large number of location shots around Kentucky. The DOE will use its portable video equipment to tape these portions of the program, while KET will handle the studio work and editing of the program.

The FCC holds KET responsible for the final product aired, in terms of technical aspects and fairness or equal opportunity. KRS 168.030 allows the KET Authority "to prescribe and enforce regulations governing the use of educational television and television facilities and related functions and facilities." The KET Authority has not prescribed any regulations related to agency-developed programming. Such regulations governing the airing of agency-developed or chosen programs could help prevent wasted development costs, ensure KET's control over programming, enhance KET's insulation from political influence, and avoid unnecessary duplication of television production.

RECOMMENDATION

2. KAET should adopt clear standards and review procedures for special programming developed or chosen by other agencies for airing on KET. These standards and procedures should ensure KET the flexibility to accept or reject these programs, for airing on KET, based on technical standards and content.

In summary, the comparisons between public broadcasting in Kentucky and the federal concept of independent public broadcasting show that state organizations in Kentucky generally reflect that concept. In the area of administration, the succession amendment, if adopted, may affect the number of appointments one governor may make to the KET Authority. The KET Foundation currently provides a degree of insulation for public affairs and evening programming, because no state government funding sources are used. The procedures for special programming requests and projects from other state agencies need to be developed and formally adopted by the KET Authority.

Federal Requirements and State Compatibility

The FCC requires licensing for each television transmitter and translator KET operates throughout the state. For each license specific technical standards and procedures have been established, as well as various types of programming responsibility provisions such as the fairness doctrine and the so-called "equal time" law. (The "Public Affairs Programming" policies adopted by KAET are included in Appendix A.) The potential loss of a broadcasting license is not the only enforcement mechanism available to the federal government for non-compliance with federal broadcasting laws and regulations, however. Federal funding may be cut off for non-compliance with affirmative action requirements. These requirements are discussed in Chapter 3, "Effects of State Personnel Laws and Regulations."

This section assesses KET's conformity to FCC programming standards. These programming standards include the fairness doctrine and the equal opportunity provision, better known as the equal time provision. Examples of KET's compliance with these important requirements and a recommendation for an annual report on the appearances of state officials on KET programs are presented in this section.

Fairness Doctrine. The Executive Director of KET has extended an open invitation to Kentucky governors and other state officials to use KET to address the people of Kentucky for the purpose of illuminating current public issues. Such usage is seen by KET as a legitimate public function and an appropriate role since it is the only television station which broadcasts to all areas of Kentucky.

Prior to the program Kentucky Journal, the procedure used for presenting state officials was for KET to establish the program format and the airing time through negotiations with the guest. According to the Executive Director, KET tried to accommodate the format needs or requests of the official making the address if, in KET's professional judgment, they were appropriate. However, KET reserved for itself the right to make all final format and broadcasting decisions. As to the content of the program, KET limited its interference to a judgment of the appropriateness of the program to Kentucky's

informational needs.

In the summer of 1980 the content and style of a live budget address by the Governor resulted in a debate regarding the obligation of KET to permit equal time for opposing views. A number of Kentucky Republican leaders wanted to respond to the budget address and viewed the opportunity to do so as their right under the fairness doctrine and equal opportunity regulations of the FCC. KET administration did not feel obligated under the specific requirements of either regulation to permit a response aired in the same manner as the budget address. Time was subsequently provided within the newly created Kentucky Journal program, however. In addition, an ad hoc advisory committee of the KET Authority was created to review Governor Brown's summer budget address and KET's actions and obligations involved. This committee had its meeting in February and concluded that KET operated within the requirements of the federal regulations (see Appendix B for a summary of this Committee's conclusions). The fairness doctrine is designed to maintain balance in the airing of issues. It does not mandate particular times or program formats for the airing of opposing viewpoints. Equal opportunity is to be afforded only for legally qualified candidates for public office appearing on a broadcasting station, with the exception of newscasts. In light of the criticisms surrounding the summer broadcast, the committee suggested that KET periodically air a statement about its public affairs broadcast policy. The following statement is now run periodically during KET evening programming:

> It is KET's policy to afford time for the presentation of contrasting views on issues of public importance.

Even with formal public affairs programming policies, the airing of KET public affairs programming policy statements, and the availability of an ad hoc committee on public affairs programming, the funding and administrative ties between KET and state government spark public concern regarding the use of KET by state officials for political rather than official purposes. A public report on the appearances of state officials on KET programs could help to further KET's image of independence and openness to public scrutiny. Such a report compiled for the period from 1974 to the present is included in Appendix C.

RECOMMENDATION

3. The KET staff should compile an annual listing of appearances by state officials on KET public affairs and special programs, including the date, program and purpose of these appearances. This report should be given to the KET Authority and released to the public.

Equal Opportunity. The issue of political debate or appearance of candidates for public office on KET is governed by federal law relating to equal opportunity. State law appears to prohibit the use of educational television facilities for political purposes. This apparent conflict is the subject of an Attorney General's opinion (79-465), which interprets the state prohibition in such a manner as to neutralize the potential conflict between the state and federal statutes. The following excerpts from the Attorney General's opinion summarizes the conflict.

> State law requires that the contract under which the Author-

ity operates and controls the network for the State Board contain a provision that '. . . the Authority will not undertake to transmit or relay, and will not permit any other party to transmit or relay, in the use of the authority's television facilities, any subversive matter, any political propaganda, or any image or message in the interest of any political party or candidate for public office; or to be used by, or in aid of, any church, sectarian or denominational school; but this proviso is not intended and shall not be construed to be a limitation upon dissemination by the authority of legitimate objective instructional material which is properly related to the study of history or of current events, or which is not more than factually informative of current issues of government or of various political ideologies.' [KRS 168.100(2)].

This apparent conflict is resolved interpretively by the Attorney General in this way.

> At first glance this might be construed as prohibiting debates and other appearances on public affairs programs by political candidates and spokesmen for various political factions. Such an interpretation would run directly counter to the federal laws and regulations requiring reasonable access for candidates for federal elective office, the equal opportunity provision of Section 315, the duties imposed by the fairness doctrine, and the public interest requirements of the Communications Act. This conflict would raise a question as to whether the state requirement would pass muster under the Supremacy Clause of the United States Constitution. In light of the FCC's rules and the court decisions affecting the impact of state law on the control of broadcast programming, we believe the more desirable and constitutionally correct interpretation of the Kentucky statute to be that the 'factually informative . . .' language of the law permits KET to air public affairs broadcasts featuring political candidates provided such programs are consistent with, and in furtherance of, the requirements imposed on stations by federal law.[3]

Although the Attorney General's opinions do not have the force of law, they are heavily relied on for interpretational purposes. If the OAG 79-465 remains as the accepted interpretation of the restrictions on political broadcasting, no conflict between current state and federal law exists.

This section has presented examples of state compatibility with federal requirements. Present Kentucky statutes may be said to conform with the equal opportunity provision of FCC statutes, as interpreted by the Kentucky Attorney General. It is interesting to note that the strong prohibition regarding the use of KET for political propaganda is reflective of the General Assembly's intent to keep KET insulated from political influence.

Recent measures by KET have enhanced its compliance with the fairness doctrine. These measures include the airing of statements expressing KET's commitment to the fairness doctrine and the formation of an ad hoc committee on public affairs programming. The present study recommends an additional measure for countering illusions of political favoritism in KET's public affairs broadcasting, the publication of an annual report, listing appearances by state officials on KET programming, to be presented to the KET Authority members and released to the press.

Conclusion

The statutes governing public broadcasting in Kentucky do not conflict with the federal statutes for public broadcasting. However, when the funding, administration, and programming areas are viewed in terms of ensuring the federal concept of First Amendment freedom and government insulation, it would seem that some changes in the organization, procedures and regulations of KET could serve to achieve further compliance with these concepts.

The first recommended change is in lengthening the term of appointment of Authority members. Secondly, KET needs to adopt regulations and guidelines concerning the airing of programs developed by agencies outside of KET for the purpose of airing on the Kentucky educational network. Finally, a presentation by KET staff to the KET Authority of an annual public report on public affairs broadcasting and appearances by state officials would help to reinforce the perception of an independent public broadcaster.

CHAPTER 3

EFFECTS OF STATE PERSONNEL LAWS AND REGULATIONS

The question of what effects state personnel laws and regulations might be having on KET's ability to meet affirmative action requirements and to hire competent individuals was raised by the Committee for Program Review and Investigation prompted by the Governor's 1980 Executive Management Commission Report. Recommendations and findings within that report, and KET's response to them, indicated that the state's personnel laws and regulations might be hampering KET in these areas. The Management Commission Report recommended changes in the relationship between KET and the state personnel system to allow KET more flexibility and to improve its response time in hiring personnel. The report further suggested that KET's competitiveness might be hampered by comparatively low salaries at its upper management levels. In its response to the report, KET indicated that minority recruitment activities were hampered by the state personnel system.

This section presents the results of several comparisons between KET and other state agencies, and KET and the national broadcasting market. These comparisons were made in the areas of personnel composition, minority employment and salaries, to provide some indicators of KET's relative position. The results indicate that KET, like public broadcasting in general, is primarily a professional/technical/management oriented agency. It requires a trained workforce for whom there is a highly competitive national market. KET salaries in 1980 were approximately seven percent lower than those of other state agency type public television networks. Compared to public broadcasters in the same budget range however, KET's salaries were an average of forty percent lower. In the area of affirmative action, KET's overall minority composition is better than required, but composition in upper level management positions is less than twenty-five percent of the required minimum.

These comparisons indicate problems in the general personnel categories of officials, managers, professionals, and technicians. These are the types of positions which comprise over eighty percent of KET's personnel. Furthermore, these positions include those second- and third-level management positions which the Management Commission felt would most benefit from private sector recruitment practices, as well as those positions identified as needing greater hiring flexibility and quicker response to applicants.

All but four of KET's approximately 175 employees are governed by the state's classified personnel system, which is designed to achieve systemwide equity of standards and treatment for state employees. However, this standardized system reduces individual agency discretion, and consequently, flexibility and responsiveness. It also restricts the KAET's authority over employees in classified service. In extreme cases it could affect KET's insulation or the accountability of professionals to the KAET for exercise of their professional judgment.

Comparison With Other State Agencies

According to its director, the State Department of Personnel's Division of Classification is responsible for maintaining a balanced and equitable per-

sonnel system. In determining the classification level and salary range of an agency's personnel, competitive salary levels in related businesses and industries are considered. However, given the state salary appropriations, the Division of Classification's primary consideration is in maintaining equity between comparable positions within the various state agencies. According to the director of this division, available revenues are too low to permit state government salaries to be competitive with the private market. In his opinion, the effects of this problem are most pronounced at the entry levels of the technical, professional, and managerial classifications.

The observation that KET shares a common problem with all state agencies is important in considerations regarding equity between agencies. However, commonality is only one consideration; the degree of impact is also important. Impact can be affected by agency size, composition of personnel, employee turnover rate, and the competing personnel market.

At an average of less than 175 employees, KET is one of the smallest agencies of state government. Its employee turnover rate appears comparable to those of other agencies. The majority of personnel positions at KET, however, fall within the managerial/technical/professional classification categories, rather than the secretarial/clerical classifications. Thus, its situation is different from those of other state government agencies. Department of Personnel data on employees above and below grade 18 for a sample of state government agencies is presented in Table 1. "Grade 17 and Below" primarily represents secretarial/clerical and other non-professional or non-technical positions, while "Grade 18 and Above" represents the majority of managerial, technical and professional positions.

As indicated in Table 1, approximately 82 percent of KET's positions are grade 18 and above. This pattern contrasts sharply with state government in general, where only 33 percent are grade 18 or above. KET also differs markedly from another highly technical/professional oriented agency, the Department of Professional Support (the state's computer software programming agency), which is composed of 64 percent grade 18 and above.

The markedly managerial/technical/professional composition of KET is representative of the public broadcasting market. According to a Corporation for Public Broadcasting (CPB) report, the personnel composition of public television licensees was approximately 80 percent technical/professional/managerial, and 20 percent secretarial/clerical in both 1979 and 1980.[4] This pattern causes the industry and KET to rely heavily on a trained and educated labor supply which one can expect to require higher starting and long-term salary levels.

This situation is compounded by an apparent workforce shortage in the industry. According to the Corporation for Public Broadcasting, there were 2,962 job openings in 1978 in public broadcasting. Only 2,579 (87 percent) of these positions were filled, 672 by promotion and 1,907 by new hiring,[5] resulting in an excess demand of 13 percent.

KET therefore faces the need for an educated and trained work force whose supply is inadequate to meet the current industry demand. In this situation, salary levels, both starting and long-term, must be competitive to attract skilled and experienced public broadcasting personnel. This problem is not as crucial for other state agencies who are less dependent upon a managerial/technical/professional staff or who do not encounter a labor supply insufficient to meet the market demand.

TABLE 1

COMPARISON OF KET TO STATE GOVERNMENT
MINORITY, FEMALE AND PROFESSIONAL COMPOSITION

APRIL, 1981

Unit of State Government	Grade 17 and Below						Grade 18 and Above						Total				
	Non-White	%[a]	Female	%[a]	Subtotal	%[a]	Non-White	%[a]	Female	%[a]	Subtotal	%[a]	Non-White	%[b]	Female	%[b]	Total
Department																	
KET	3	10	18	62	29	19	6	5	22	17	130	82	9	6	40	25	159
Professional Support	6	6	71	65	110	34	1	1	53	25	216	66	7	2	124	38	326
Education	98	7	996	75	1323	38	51	2	801	36	2197	62	149	4	1797	51	3,520
Cabinet																	
General Government	33	4	608	81	751	52	13	2	170	25	690	48	46	3	778	54	1,441
Finance	95	14	340	49	690	71	17	6	46	17	277	29	112	12	386	40	967
Justice	110	5	869	42	2087	55	70	4	155	9	1741	46	180	5	1024	27	3,828
Commerce	31	3	607	49	1251	80	8	3	60	19	316	20	39	3	667	43	1,567
Education & Humanities	124	8	1232	75	1647	40	62	3	916	36	2518	60	186	5	2148	52	4,165
Public Protection	25	6	380	83	457	41	18	3	88	13	662	59	43	4	468	42	1,119
Natural Resources	11	2	260	50	525	48	18	3	76	13	575	52	29	3	336	31	1,100
Human Resources	1,210	13	7121	77	9240	80	117	5	1112	44	2255	22	1327	12	8233	72	11,495
Transportation	389	7	1070	18	5851	81	18	1	65	5	1390	19	407	6	1135	16	7,241
Personnel & Management	17	7	187	75	248	41	9	3	111	31	356	59	26	4	298	49	604
Energy & Agriculture	30	9	134	42	317	67	2	1	20	13	158	33	32	7	154	32	475
Branch																	
Legislative	4	6	53	79	68	39	1	1	45	42	107	61	5	3	98	56	175
Judicial	1	4	24	96	25	1	80	3	1441	62	2233	99	81	4	1465	65	2,258
Executive	2,075	9	12,808	56	23,064	68	354	3	2846	26	10,976	32	2429	7	15,654	46	34,040

SOURCE: Kentucky Department of Personnel, "Employee Status Summary as of 4/01/81."

[a] Represents the percent of agency subtotal for this grade category.

[b] Represents percentage of agency total for all grades.

Public Broadcasting Salary Comparisons

To compete for qualified personnel in the public broadcasting market requires that KET have at least a competitive salary range. CPB data reports salaries by personnel category, specific positions, type of licensee, and budget size. Based on this data it is possible to make some judgments as to the competitiveness of KET's salary levels.

Public television licensees (numbering 160 in FY 1980) are divided by the CPB into four types of organizations. "Community" licensees (there are 64) are independently created nonprofit corporations or foundations. "University" licensees (52 in operation) are state or private colleges or universities. "Local Authority" licensees (19) are local administrative units, such as city governments, school boards or local library systems. Finally, "State/Outlying" licensees (25 in number) are commissions or state boards of education, or they reside in such outlying areas as Puerto Rico. These types are further classified by budget size: less than $600,000; $600,000-$1,399,999; $1,400,000-$2,199,999; $2,200,000-$2,999,999; $3,000,000-$5,999,999; and $6,000,000 and above. The CPB considers KET as a state/outlying licensee in the $6,000,000 and above budget category.

CPB salary survey data indicates significant salary level differences based on licensee type and budget size.[6] In general, community licensee salaries exceed other types at all position levels. State/outlying and university licensees tend to have the lowest salary levels of the four types of licensees. These differences are most apparent within positions classified as officials, professionals, and technicians. As might be expected, budget size and salary range are positively correlated. As budget size increases, so does the average salary, from $13,376 for the less than $600,000 category, to $19,493 for the $6,000,000 and above budget category.

Although many comparisons could be made based on licensee type and budget size, it seems the most appropriate would be with those of similar licensee type or budget size. For simplicity, average salaries are compared for six personnel positions as defined by the CPB. "Officials" are those administrators who set broad policies, execute policies or direct departments or special phases of operations. "Managers" are non-policy administrators responsible for departments, divisions, or phases of operations. "Professionals" includes all individuals requiring a college degree or an equivalent. "Technicians" need basic scientific knowledge and manual skill, and generally have two years of college or technical training. "Clerical" includes secretaries, receptionists, and other clerical positions, while "manual" includes skill/craft and unskilled labor positions not peculiar to public broadcasting.

Table 2 presents data on average salary levels based on salaries as of January 1, 1979 and January 1, 1980. In 1979, KET salaries were slightly higher than salaries in other state/outlying stations for professionals (.5 percent) and for technicians (1.7 percent), but as much as 18 percent lower in the other four categories. In 1980 the pattern is different; KET salaries are higher than other state/outlying stations for officials (7.6 percent) but lower for all other categories.

A much larger difference is found when KET is compared with other stations in the $6,000,000 and above category. In 1979, KET salaries were substantially lower, ranging from a 26.6 percent difference for professionals to a 65.2 percent difference for officials. (These differences in Table 2 are

TABLE 2

COMPARISON OF KET SALARIES
TO THOSE OF
OTHER PUBLIC BROADCASTING LICENSEES
1979-1980

Position Level	KET	1979 Public Broadcast Licensees				KET	1980 Public Broadcast Licensees			
		State Licensees	Percent Difference	$6,000,000 and Above	Percent Difference		State Licensees	Percent Difference	$6,000,000 and Above	Percent Difference
Officials	$24,112	$24,809	2.9	$39,831	65.2	$28,508	$26,352	- 7.6	$42,252	48.2
Managers	16,956	19,379	14.3	26,219	54.6	20,639	21,645	4.9	30,752	48.9
Professionals	14,430	14,351	- .5	18,264	26.6	13,958	15,678	12.3	19,506	39.7
Technical	12,393	12,186	-1.7	16,762	35.3	12,849	12,954	.8	18,277	42.2
Clerical	7,546	8,898	17.9	10,575	40.1	9,064	9,599	5.9	10,672	17.7
Manual	8,838	9,803	10.9	11,254	27.3	9,026	10,694	18.5	12,895	42.9

SOURCE: KET Data: Corporation for Public Broadcasting Annual Employment Survey for Public Broadcasting Stations, January 1979, 1980. Licensee Data: Salary Report for Public Television Licensees 1979-1980. Corporation for Public Broadcasting, Washington: October 1980.

* "Percent Difference" is a comparison between KET and the appropriate Public Broadcast Licensee.

** "State Licensees" are defined by the CPB as stations licensed to commissions, state boards of education, or stations in outlying areas; KET is one of 25.

*** "$6,000,000 and Above" licensees are those stations having a yearly budget of $6,000,000 or more; KET is one of 13.

expressed as percentages of KET salaries.) The contrast is less in 1980, ranging from 17.7 percent to 48.9 percent lower. Part of this large difference between KET and others of the same budget size is related to the licensee types in this budget size; 62 percent (8 of 13) of the licensees with a budget of $6,000,000 and above are community licensees, while the remaining 38 percent are state licensees.

Community licensees and state licensees show major differences in source and amounts of funding. According to the CPB, in 1978, community licensees received 27 percent of all public broadcasting's state contributions, 84 percent of all subscriptions, 92 percent of all business income, 89 percent of foundation monies, and 73 percent of auction/marathon income.[7] State licensees, on the other hand, received 64 percent of the state funding, three percent of subscriber funding, 3.5 percent of business income, 4.3 percent of foundation monies, and nine percent of auctions/marathons income. This differing pattern of funding sources may represent differences in flexibility to expend these funds. It is reasonable to expect that state licensees who are agencies of a multi-layered state government will have less flexibility, especially in the area of salaries, than an independent organization controlled by an immediately accessible decision-making board. Independent organizations that must compete for private market funds can also be expected to offer higher salaries to compete with the commercial broadcasting market for highly qualified personnel.

In summary, these salary comparisons appear to support the Management Commission's concern that KET salaries may not be sufficiently competitive with those of the private market. KET's ability to compete with others of its size may also be impaired by its dependence on highly controlled state funds, restricting its ability to adapt salary levels to the market demand.

To accomplish salary changes for positions within classified service requires modifying all similar positions in all agencies of state government. Since several of KET's positions are not unique to KET, equity concerns as well as concerns over the fiscal impact of a statewide reclassification are obstacles to accomplishing these changes. If KET's higher level positions were exempt from classified service, KET would be able to vary the salary levels as needed up to the maximum as set by statutes, the median salary paid to other state government commissioners. The recommendations contained in Chapter 4 would serve to accomplish this for most, if not all, of the official and upper level management positions.

Affirmative Action Comparisons

In addition to personnel composition and competition differences, KET differs from other Kentucky state agencies in the area of affirmative action requirements. While most state agencies receive some federal funding having a contingent requirement of equal employment opportunity, KET faces requirements directly impacting its ability to operate. A 1979 report by the Public Broadcasting Service indicates fourteen different federal laws or regulations regulating equal employment opportunities in public broadcasting.

The FCC renews operating licenses once each five years. It can also convene a special license hearing based on an affirmative action complaint. Under the FCC's rules and regulations a public broadcasting license can be suspended or revoked if there is substantial evidence of a pattern of dis-

crimination. FCC guidelines issued in February, 1980, require public broadcasters with fifty or more employees to undergo an automatic and complete yearly review of their EEO programs. These stations (including KET) must have a written ten-point EEO program and must carry out a "positive continuing program of specific practices designed to ensure equal opportunity."[8] To be in compliance, a broadcast licensee the size of KET must demonstrate a full-time employment rate of minorities and/or women equal to fifty percent of the ratio of these groups available in the local workforce. This fifty percent ratio applies not only to the total employment of the licensee, but also to each of four categories: officials, managers, professionals, and technicians. KET's required workforce ratio of four percent is based on the Lexington Standard Metropolitan Statistical Area minority ratio of eight percent.

Meeting these affirmative action guidelines within the state's classified personnel system is difficult, since this system expressly prohibits hiring based on racial grounds. KRS 18.310(1) stipulates that:

> No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious opinions or affiliations or ethnic origin or sex or handicap.

KET shares this personnel system problem with the majority of state agency type public broadcasters. Although the problem has been acknowledged nationally by the Task Force on Minorities in Public Broadcasting,[9] the Corporation for Public Broadcasting (whose distribution of funding is contingent upon meeting EEO guidelines) states in its response to the Task Force that the CPB "does not support the concept that 'merit hiring' represents a reason for discriminatory practices."

KET's dilemma in this situation is how to maintain a specified racial balance without giving preferential hiring consideration based on sex or race. The federal regulatory agencies advocate hiring practices favoring minorities when the ratio of minority employees does not meet the established guidelines. This difference could place KET in the position of ignoring state classification laws or risking loss of its broadcasting license.

Fortunately, this situation has not occurred. KET has maintained an acceptable minority composition of state classified employees since at least 1974, as indicated in Table 3. This acceptable composition is, however, based on small numbers and is thus sensitive to change. For example, in 1974 the loss of one minority member would have reduced the percentage of minorities to three percent. Likewise, in 1981 the loss of four minorities would have reduced the percentage to about four percent.

KET has some additional margin of protection through the FCC reporting method, which considers the total of both KET classified service personnel and KET Foundation personnel. Table 4 presents the minority composition of KET's state and Foundation staff from 1978 to 1981. The higher minority composition in the Foundation staff reflects one of the functions of the Foundation.

The KET Foundation is used by the Kentucky Authority for Educational Television to avoid some of the obstacles of the state's classified personnel system. Foundation positions are used to provide candidates with training or experience to qualify for state classified service positions. Foundation monies are also used to provide for a minority of training program involving

TABLE 3

KET STATE PERSONNEL MINORITY COMPOSITION

1974-1981

	April 1974	May 1975	January 1977	June 1978	April 1979	December 1980	March 1981
Total Staff	126	152	160	175	192	167	171
Total Females	33	42	43	48	65	45	46
Minority Females	1	4	4	5	8	4	4
Minority Males	4	4	5	5	6	6	8
Percentage Females	26%	28%	27%	27%	34%	27%	27%
Percentage Minorities	4%	5%	6%	6%	7%	6%	7%

SOURCE: "Kentucky Educational Television Minority Report," 1978-1981.

NOTE: Table contains state "unclassified" employees but not KET Foundation employees.

TABLE 4

KET STATE PERSONNEL COMPARED TO KET FOUNDATION PERSONNEL
MINORITY COMPOSITION

JUNE 1978-MARCH 1981

	JUNE 1978			APRIL 1979			DECEMBER 1980			MARCH 1981		
	State	Foundation	Total	State	Foundation	Total	State	Foundation	Total	State	Foundation	Total
Total Staff	175	22	197	65	7	72	167	20	187	171	29	200
Total Females	48	11	59	127	7	134	45	14	59	46	17	63
Minority Females	5	2	7	8	2	10	4	1	5	4	2	6
Minority Males	5	4	9	6	1	7	6	1	7	8	2	10
Percentage Females	27%	50%	30%	34%	50%	35%	27%	70%	31%	27%	59%	31%
Percentage Minorities	6%	27%	8%	7%	21%	8%	6%	10%	6%	7%	14%	8%

SOURCE: "Kentucky Educational Television Minority Report," 1978-1981.

TABLE 5

FEMALE AND MINORITY COMPOSITION OF
KET STATE AND FOUNDATION EMPLOYEES
BY PERSONNEL LEVEL

MARCH 1981

PERSONNEL	COMPOSITION				
	Total	Females	%	Minority	%
Officials					
State	8	2	25	0	0
Foundation	2	2	100	1	50
Combined	10	4	40	1	10
Managers					
State	8	3	37	0	0
Foundation	1	1	100	0	0
Combined	9	4	44	0	0
Professional					
State	26	12	46	1	3
Foundation	13	8	61	2	15
Combined	39	20	51	3	7
Technicians					
State	106	11	10	8	7
Foundation	8	1	12	1	12
Combined	114	12	10	9	7
Office					
State	21	18	85	3	4
Foundation	5	5	100	0	0
Combined	26	23	88	3	11
Custodial					
State	1	0	0	0	0
Foundation	0	0	0	0	0
Combined	1	0	0	0	0
Craftsmen					
State	1	0	0	0	0
Foundation	0	0	0	0	0
Combined	1	0	0	0	0

SOURCE: "Employment Report KET March 31, 1981," KET.

several different technical areas of broadcasting.

FCC regulations require the minimum minority composition for the total employees as well as for each of these four classes: officials, managers, professionals and technicians. The importance of the Foundation in maintaining this acceptable minority composition is reflected in Table 5. KET has no minorities in the managers category. Maintenance of an acceptable composition level in the officials and professional categories is due to Foundation staff composition. Excluding the Foundation staff, KET would have an acceptable composition in only one category, technicians.

Conclusion

In summary, although total KET employment figures indicate an acceptable level of minority composition, the maintenance of this level is very tenuous. First, small changes in personnel composition can change an acceptable composition to unacceptable, particularly within specific personnel categories. Second, within the specific job categories, two of the four required by the FCC are acceptable only when independent KET Foundation employees are included. The tenuous nature of this balance between acceptable and unacceptable composition, coupled with the level of specificity at which it must be maintained, and the consequences of not maintaining it necessitate KET's being able to respond directly to specific personnel needs. Under state classified service, KET cannot give preferential consideration to a candidate or employee based on race or gender. Therefore, employment of a minority member and maintenance of an acceptable composition is dependent on the minority person's being the most acceptably qualified candidate under the job description in effect. Exempting positions from classified service would allow flexibility here. Recommendations contained at the end of Chapter 4, if implemented, should help to provide this flexibility.

CHAPTER 4

CONSTRAINTS UNDER THE PERSONNEL SYSTEM

The Management Commission report recommended a change in the relationship between KET and the state personnel system to give KET greater flexibility and the freedom to respond quickly in hiring. The report further cited the need to hire second- and third-level managers from the private market, modifying current salary levels if necessary. Data and findings of the present report support these recommendations.

The following section discusses the extent to which the current personnel system can accommodate KET's particular needs. Because of the constraints inherent in this system, alternatives which would increase flexibility and KAET's authority over its employees are considered. It is maintained that the nature of public broadcasting creates a relationship between the KAET and certain professionals paralleling that of agency head and principal assistants. Recognition of this by the Department and the Board of Personnel would qualify these positions for exemption from classified service.

Personnel Laws Governing KET

KAET was created in 1962 as an "independent corporate agency and instrumentality of the Commonwealth" (KRS 168.010). It is charged with the responsibility of managing, operating, and controlling Kentucky's network of educational television and related services. This charge includes the authority

> to prescribe and enforce regulations governing the use of educational television and television facilities and related functions and facilities (KRS 168.030.)

Authority to employ personnel necessary to accomplish KAET's purposes is specified in KRS 168.080.

> Subject only to the availability of funds from any source, the authority may employ and prescribe the qualifications and duties of such persons as it may deem necessary to the proper performance of its purposes and functions including an executive director...and a chief engineer....

Prior to 1980 the compensation of these employees was to be fixed in accordance with standards established by the Commissioner of Personnel. Legislation of that year modified this to limit the Commissioner's authority to classified service employees. Determining the compensation for unclassified employees was specified as the responsibility of the KAET. A ceiling on this compensation was set at "the amount paid to a majority of all commissioners of state government."

Although the language of KRS 168.080 seems clear in specifying "availability of funds" as the only limit to KAET's employment authority, Attorney General's opinions do not so interpret it. According to a 1977 opinion (OAG 77-707), KAET is an independent agency not specifically exempted from classi-

fied service and therefore subject to classified service statutes. Under these statutes, prior to the 1980 session, only the executive director, a principal assistant and their personal secretaries were recognized as exempt. Furthermore, KET could prescribe duties and qualifications but not fix compensation. The Attorney General cited as a reason the Governor's power under KRS 64.640(2) to fix the compensation payable from the state treasury to all offices of an independent agency.

H.B. 287, passed in the 1980 Session, contained several statutory changes aimed at countering those limitations on KAET's employment authority.

- The statute specifying positions exempt from classified service was amended to specify the Executive Director of KET.

- KET employees exempt from classified service under KRS 18.140 were exempted from KRS 64.640 and the Governor's approval of their compensation.

- KRS 168.080 was amended to give KAET the responsibility for determining the compensation of exempt employees.

Despite these changes, the Attorney General in 1980 again interpreted KAET's authority as limited. According to OAG 80-537, KAET now has the authority to fix the compensation of unclassified employees but not to determine who are exempt employees. This determination was identified as the responsibility of the legislature.

Having all but four of KET's approximately 200 employees under state classified service means that statutory safeguards have a number of effects on KAET's personnel activities. Kentucky's classified service system objectives are aimed at ensuring that:

- all appointments and promotions will be made solely on the basis of merit and fitness (KRS 18.120), and

- the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all personnel positions in the same position class [KRS 18.210(1)].

The statutory procedures and requirements defining the classified service system are designed to achieve equity through a highly structured, centralized system of controls for limiting discretionary and discriminatory practices. This system has several effects on KET.

- It limits KET's ability to employ candidates with qualifications that do not match those prescribed for that position under classified service.

- It controls the salary ranges, starting salaries, and promotional increments for classified positions.

- It restricts the authority for dismissal, rank reduction, or suspension of an employee to the Commissioner of Personnel when there is "due cause."

- It imposes time delays on the hiring process.

- It prohibits special hiring practices based on sex or race.

This centrally controlled system also has the effect of limiting KAET's authority to employ and to prescribe the duties and qualifications of its personnel. This limit is a result of the powers assigned to the Commissioner of Personnel under KRS 18.210(1).

- To establish the rules for classified service;
- To establish personnel classes and assign positions to these classes;
- To establish a pay schedule;
- To establish reasonable qualifications for each position; and
- To reject candidates who fail to comply with the qualifications established for a position.

Given that the Commissioner holds these powers over classified service, KAET is limited in matters affecting the employment, reassignment, promotion, and termination of KET classified personnel. According to the Department of Personnel, these powers are generally exercised in consultation with the affected agency. However, this consultation is by choice of the Department of Personnel and not a requirement. In other words, the Department may choose not to consult the agency, or to ignore the agency's requests or recommendations.

Overcoming the Limitations of Classified Service

The goals of classified service, systemwide equity and control, are the basis for those rules and regulations which reduce flexibility and delay response in hiring. These needs can be accommodated only in a limited way through the classified service. Options to classified service are an independent personnel system, such as the state universities have, the exemption of all employees, as in the case of the Kentucky Historical Society, or exemption of all professional employees from classified service, as the Council on Higher Education does.

Establishing an independent personnel system or exempting all employees would allow KAET the greatest flexibility and control over its personnel. It would have the added effect of insulating KET personnel from administrative controls, other than those related to funding, and place personnel under the direct control of the KAET. Cost and employee reactions are two aspects of this alternative that must be carefully considered. Added costs can be expected to occur in the areas of administration, salaries and benefit plans. It should be noted, however, that the KAET has adopted standards and a salary schedule for its foundation employees that intentionally parallel the state's non-classified service schedule. This action indicates the KAET sensitivity to maintaining equity with state government as a whole. Employee reactions must also be considered, since the greater security of classified service is often a major attraction of government service.

A less extreme approach, both in effects and consequences, is to exempt only a portion of KET employees. This is the practice of the Council on

Higher Education, whose professional employees are exempt, while non-professional employees are under classified service. Obviously, this system offers a compromise in both benefits and costs. KAET would have greater flexibility in hiring and in control over employees who are exempt, while its non-exempt employees would still be subject to classified service and the authority of the Commissioner of Personnel. Costs would not be as great, since fewer employees would be affected by this approach. If division level exemptions are used, determination would be based on the statutory definition of a division. Exemption of employees under the principal assistants clause will require acknowledgement of the importance of first amendment freedom to the public broadcasting industry.

Exemptions from classified service as either division heads or principal assistants are based on the policy-making responsibility of these employees and the importance of direct authority and control of the agency head over his policy makers. In addition, principal assistants may be exempted under KRS 18.140(1g)

> in those instances in which the nature of functions, size or complexity of the unit involved are such that the personnel board may approve...on the petition of the department head approved by the commissioner of personnel.

KET, as a public broadcaster to whom careful attention to protection of first amendment rights is crucial, would appear to be an agency for whom the nature of functions needs special consideration. Policy, in the general context of government, is, according to the dictionary definition, "any course or plan of action...such a course or plan designed to influence future decisions, actions, etc." Thus, the head of any agency adopts policies and objectives for his agency; principal assistants or division heads are responsible for adopting policies not in contradiction to those of the agency, in assigned areas of the organization. In public broadcasting a parallel exists in the area of freedom of speech. The general manager defines the philosophy of the station in terms of the types of programs, intended audience and general approach to issues. Within these confines and the mandates of professional responsibility, such professionals as producers, directors, writers, and commentators are accorded freedom to make decisions on format and content without interference. Like agency heads, however, the general manager is ultimately responsible for all activities. It is, therefore, essential that he have the authority to hold professionals personally accountable to him. Such a relationship exists between an agency head and his policy-making assistants, but does not exist between KAET or its executive director and the professionals in classified service.

Conclusion

The state classified service system does not provide the KAET with the freedom and responsiveness it needs to favorably compete with the public broadcasting market for qualified personnel or to adopt employment procedures to meet affirmative action requirements. In addition, the powers of the Commissioner of Personnel over classified employees affect the statutory powers of the KAET, limiting its authority in personnel matters regarding these employees. Furthermore, KAET and its executive director lack direct control over those professionals operating under the first amendment mandates of professional freedom. The authority and freedom accorded professionals respon-

sible for the creation, production or programming of public broadcasting parallels that of policy-making principal assistants and division heads. The desirability and the need for having agency heads in direct control of policy-making assistants applies equally to the relationship between KAET and its professional staff.

Several alternatives could resolve these problems, including total separation from state government and exemption of all or part of the KET staff from classified service. Another alternative, exemption of professionals needing special consideration due to first amendment rights, could be accomplished under current statutes if the special circumstances and functions of KET employees were recognized by the Commissioner and Board of Personnel. This solution would provide greater flexibility and responsiveness in filling key positions, and would provide for direct accountability of professionals to KAET regarding proper exercise of their professional judgment.

The Department of Personnel, however, does not feel that implementation of these exemptions by administrative action would be advisable. According to the Commissioner this action would represent an over-extension of the Department's powers and would result in the creation of an untenable precedent. Based upon the reaction of the Department and the Committee's feeling regarding further insulating the KET from possible administrative interference by state government officials, the following recommendation was adopted.

RECOMMENDATION

4. The General Assembly should modify KRS 18.140 to permit the Kentucky Authority for Educational Television to determine which of its employees should be exempted from the state's classified service and to have sole authority for the employment, dismissal and setting of compensation, up to the maximum established for the Executive Director and his principal assistants.

FOOTNOTES

1. USCS 47 Sec. 398.

2. USCS 47 Sec. 399(a).

3. KET Policy Statement on Public Affairs/Political Broadcasting, October 6, 1975.

4. Salary Report for Public Television Licensees, 1979-80. Corporation for Public Broadcasting, October 1980, p. 3.

5. Summary Statistical Report of Public Television Licensees. Corporation for Public Broadcasting, July 8, 1980, p. 75.

6. Salary Report, op. cit., p. 3.

7. Summary, op. cit., p. 17.

8. Federal Equal Employment Obligations for Public Television. Public Broadcasting Service, Washington, D.C., 1979.

9. A Formula for Change (The Report of the Task Force on Minorities in Public Broadcasting). Corporation for Public Broadcasting, November 1978, p. 25.

APPENDIX A

KAET Public Affairs Programming Policies

KET's Approach to "CONTROVERSIAL" Programs

A response to the Authority's request that a policy statement on controversial programming be drafted, January 4-5, 1979.

A. Definitions

B. Evaluation

A. Definitions

Programs which may be considered "controversial" in significant ways by a significant number of viewers come in several categories:

1) "Controversial" in respect to community standards of acceptability in terms of language or pictures; i.e., in respect to profanity, obscenity, nudity, violence, sensuality, street language, double entendre, suggestiveness, etc.

2) Any significant public issue about which there are strong feelings is prima facie "controversial." Any program dealing with such an issue will be perceived to be biased by many -- and may well be -- and may easily fail to represent all legitimate points of view. Even when the arguments are carefully balanced the program may become controversial if all recognized advocates do not have equal opportunity to comment, whether or not such additional comment is likely to enhance viewer understanding of the issue.

3) "Controversial" by virtue of the danger perceived by some that to show programs on certain subjects is to encourage the wrong kind of interest, particularly if the program does not forcefully editorialize against the group or enterprise displayed; recent examples have been programs on the Klan, on American Nazis, on homosexuality.

4) A program can be controversial just by virtue of the source of its underwriting or by the affiliation of its producer. For example, a program on the environment underwritten or produced by an oil company, or by a utility firm, or by the Sierra Club is automatically suspect because the viewer assumes a bias, and rightly so in most cases.

The same consequence derives when an institution, such as a university, produces what is essentially a public relations film.

In short, whether the subject of a program is heavy or frivolous, the program is suspect and virtually useless for broadcast if its production was underwritten by a party at interest, regardless of whether that party is educational, religious, political or industrial.

It may be agreed -- and it often is -- that the meritorious content of a particular program should outweigh concern over its source; after all, how can you argue that a program that upholds decency and condemns crime is "controversial" even though -- or especially if -- it is produced by, say, the Methodist church.

If the program truly meets an ascertained need and meets it better than other programs that are available, there is no reason staff should not decide to air it. But that decision should never be made as a consequence of pressure exerted on staff by representatives of the producing organization or institution. That pressure, which is not uncommon, is inappropriate since it is directed not at inducing staff to program to a felt need of the community but rather toward burnishing the image of the producing institution.

B. Evaluation

1) Programs that are judged to be controversial because some viewers may feel they contain words or images that are blasphemous, obscene, or otherwise offensive must be judging in terms of both context and community standards. There are some people who believe that a scatological word or reference should never be aired regardless of context. Some feel that way about profanity, others feel that way about full or partial nudity or the suggestion of nudity. But final judgment must be based not on the automatic rejection of disproportionately vocal individuals; it should be based on how a reasonable cross-section of the community would respond in terms of the total program. A word or picture may be necessary for meaning or mood in one context yet objectionably gratuitous in another.

Sensing community standards is the every day responsibility of staff. Yet, there will be times when the call is close and staff has difficulty deciding. This does not relieve it of the responsibility of making the final decision but it does suggest that it would benefit from advice from the community.

Who in the community? Ideally a few people could be identified who understand the community well enough to speak authoritatively for it. But since that ideal may be questioned by those who question the final decision, it is best to get a truly representative sampling of the community; e.i., educated, less educated, white collar, blue collor, ethnic representation, etc.

There will still be disagreement, among the advisors in most instances, but the staff will come away with a better sense of what the community standard is. Such advice may confirm the staff's initial evaluation (though often the staff itself will be in disagreement and often it is this which convinces them of the need of outside advice); on the other hand, the staff may be surprised by the advice they receive. Over a period of time, this process of seeking outside advice from community representatives should have an added benefit of making staff more confident in their assessment of what is acceptable in that station's community.

2) Programs dealing with controversial public issues are seldom seen by all the conflicting interests as being fully fair and impartial. There is almost always another argument partial observers insist should have been included, another spokesman who should have been interviewed, an unfair view that should have been excluded.

There are several ways a licensee can handle this kind of controversy, some acceptable, some not:

-Refuse to make or air any programs on controversial public issues (unac-

ceptable: provisions of broadcast license require providing time for full discussion of issues of public importance).

-Provide response time for any responsible spokesman who wants to further argue the issue (acceptable).

-Assume that the producer, particularly if a professional with experience in dealing with the subject of the program or with similar issues, knows what he's doing and can be trusted to have done a fair job (acceptable but not always justified).

-Assume that even if this program is unbalanced, over the long haul other views will provide satisfactory balance (acceptable when true).

-Judge whether the issue is significant and the program is fair and balanced; air if it is, reject it if it isn't (acceptable, though failure to air will almost inevitably bring charges of censorship).

All of the "acceptable" alternatives above should be considered; the one or several chosen in any instance must depend on the nature of the issue, the nature of the program treatment, the nature of the advocates at interest.

However, in terms of evaluation of whether a program is balanced and whether a program should be broadcast or rejected, staff may at times be hard put to decide. Programs in this category will normally be public affairs documentaries and it is difficult for a broadcaster in Kentucky to judge the objectivity of a program on international trade or hospital care in California or justice for Indians in Oklahoma or even exploitation of Kentucky's coal resources by absentee owners. Sometimes, too, as in the instance of a program on Kentucky's coal mining, the sensitivities of so many who are often politically influential are so stimulated -- provoked might be a more accurate word -- that not only must objectivity be assured but the vital significance of the program must be established in order to justify suffering the heat that may be generated.

For any of the reasons above, the staff should be prepared to go to outside for advice on:

-the significance of the subject.

-the integrity of the treatment.

That advice should be sought from experts in public affairs/journalism/political sciences, from responsible representatives of the opposing points of view contained in the program and from representatives of the public affected by the issues covered in the program.

3) Wide discretion should be allowed for the exposure of groups or enterprises which most of us would agree are essentially inimical to our society; e.g., the Ku Klux Klan and the neo-Nazis. Equal latitude should be permitted for the exploration of elements of our society about which people have varying feelings, from participation to repugnance; e.g., homosexuality, religious cults, child abuse, drug abuse, alcohol abuse.

Many people feel that individuals caught up in such aberrant behavior are intrinsically evil, that to acknowledge them at all is bad, that to allow them to be presented with anything approaching understanding or sympathy is

anathema.

The question begged, of course, is whether it is not more dangerous to conceal than reveal. This is a very big question; it is one with the question of the effect of TV violence on children and the effect of pornography on children and adults.

The answer is not easy because the actual effects of these things is not known. It is only certain that from the framers of the constitution, this society has felt that the greater danger was to err in the direction of undue restraints, that ignorance and evil were products of the dark, that overexposure was healthier for the body politic and for the climate of this democracy than underexposure.

Nevertheless, the question is a constant one. When in doubt the staff should turn to advisers who represent the subjects under discussion, the people affected by them and those who deal professionally with the subjects in question.

4) Programs made "controversial" by virtue primarily of their source of underwriting can be dealt with most effectively in a bureaucratic way. Guidelines should state that the licensee should not ever air a program solely because of pressure from the underwriter. It should even be a point of principle that such blandishments should be politely received and firmly ignored. Unfortunately, such programs may sometimes have usable content which is however contaminated by the association of the underwriter or producing institution because of the bias suspected by the viewer.

Where the subject of a program clearly promotes or furthers the interest of the producer or underwriter, that program should, on its face, be rejected.

On the other hand, it would be foolhardy to make this a totally inflexible rule; it is better noted as a principle to be practiced except in exceptional cases.

(Reproduced for Publication)

September 25, 1980

TO: Authority Members

FROM: O. L. Press

RE: KET "Political" Programming

The statement below reflects both my own convictions and my understanding of the mandates and policies--Federal, state and KET's--under which KET operates as they relate to the continuing (editorial) dialogue over the appearance of Governor Brown and of the Republican leadership.

The Governor was invited to appear on KET to report to the people, in his role as chief executive, on the state of the Commonwealth. Republican leaders were invited to appear on KET to give their views on the major topic of Governor Brown's address, which was the state of the budget. The Republicans claimed that the Governor strayed from the subject of the budget. Certainly the Republicans did. That is something over which KET cannot and should not attempt to exert control. We believe with the FCC and the Congress that broadcasting, particularly public broadcasting, should provide access for open discussion of controversial issues of public importance. If responsible spokesmen take side trips into opinions on other matters, that does not invalidate their substantive contributions to the more rounded view the public will get of these issues by virtue of the debate on them.

The underlying principle of the obligations imposed on broadcasting by the FCC, and that is guaranteed the press in general by the First Amendment, is that it is far healthier in a democracy to allow everyone to speak than to select only those who will confine themselves to subjects circumscribed by others. There are limitations, of course, such as those involving obscenity, profanity and personal attacks. And there is the requirement of equal time for duly qualified political candidates during political campaigns. But aside from those proscriptions, I believe the public is better served by more discussion rather than by less, particularly on issues which affect us all so greatly. And I believe the citizens of the Commonwealth are well served by communication from, and even with, their chief executive through statewide television. Responses by other responsible leaders can add an important dimension to general understanding of the issues.

KET would hope to continue to provide a forum for such reports and such discussions.

Guidelines for Selection, Planning, Production, Review and Broadcast of Public Affairs Programming

October 11, 1977

The public affairs designation as used here is intended to describe programs involving current topics of public interest which may be controversial, may contain elements which are controversial or which may be perceived by some to be controversial.

This does not mean that noncontroversial public affairs programs are of no interest to us or to the public; only that they probably don't need guidelines.

It might sharpen focus on the problems these guidelines are intended to anticipate if we list some of the kinds of programs we might be dealing with:

--Coverage of General Assembly and legislative committees
--Broadcast of public hearings of statewide interest
--Coverage of state board or commission meetings and of state advisory committees
--Documentaries describing the process and organization of government
--Forum for candidates for statewide public office - and perhaps for the General Assembly if some feasible way can be found to handle such large numbers
--Discussions on current issues
--Regular in-depth commentary on Kentucky affairs by a balanced panel of experts
--Press conferences with Governor
--Programs by, for, or about minorities and women

It seems to me that the questions these guidelines must deal with involve the decision on what programs to initiate, the selection of participants, the assurance of balance, circumscriptions of state and federal laws, recourse available to complainants.

Given the above considerations, I would like to offer the following guidelines for your consideration:

The decision on what programs to initiate and what participants to select seems to me properly to be a staff responsibility and one that cannot be delegated. If there was legitimacy to the complaint uttered during the General Assembly about KET balance it was not that the Governor's press secretary selected the interviewees but rather that we did not clearly make the final judgment on whether we should accept his specific recommendations. In short, anyone may propose but only the staff should dispose.

Assurance of balance and circumscriptions of state and federal laws: the requirements for fairness and balance in programming are pretty well established by state and federal statutes, by FCC regulations interpreting the federal statute, and by federal court cases on the subject.

Essentially, the prohibitions and caveats include:

> Under the Public Broadcasting Act of 1967 which amends the Federal Communications Act of 1934 "No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for public office." Under the same act, noncommercial education stations must observe "strict adherence to objectivity and balance in all programs or series of programs." KRS 168 expressly forbids "the Authority to transmit...any subversive matter, any political propaganda or any image or message in the interest of any political party or candidate for public office...but this provision is not intended and shall not be construed to be a limitation upon dissemination by the authority of legitimate objective instructional material which is properly related to the study of history or current events or which is no more than factually informative of current issues of government or various ideology."

On the affirmative side, a broadcaster is required to afford reasonable opportunity for the discussion of conflicting viewpoints on controversial issues of public importance. And in the report of the committee on state and foreign commerce of the U.S. House of Representatives on the Public Broadcasting Act of 1972, it was pointed out that the "funding of public affairs programs by CPB is entirely consistent with the intent of the Public Broadcasting Act of 1967."

All of which adds up to a clear set of guidelines promulgated by state and federal legislative bodies and by federal regulation calling for broadcasters on the one hand to provide opportunity for the discussion of public issues and on the other to carefully and objectively assure a balance of viewpoints in these presentations.

Recourse available to complainants: despite staff's best efforts to assure compliance with requirements of fairness and objectivity, we will, on occasion, be perceived by individuals to have failed...and indeed, there will be times when despite our own best efforts we may actually be guilty of allowing a public discussion or the treatment of a public issue to become unbalanced.

Upon receipt of a complaint we would evaluate the alleged problem and respond to it either by declaring that we believe the program in question to have been balanced, or that there is balance on that subject in overall programming or that we will take steps to provide the balance that was missing.

In the event that we are not able to satisfy a complainant, we would propose to impanel lay and expert citizens with knowledge both in the area of controversy and in the area of broadcast law. We would propose to ask them to view the program, hear the complaint and render an opinion to staff.

We would propose that staff would report to the Authority when the step of impaneling a group of citizens to weigh a public affairs problem is taken and to keep the Authority informed.

In all probability, the FCC would have been brought into this controversy early on by the complainant and possibly by the staff. Obviously, if we have violated regulations of the FCC or provisions of the Federal Communications Act or of state statutes, staff will hasten to comply when such a judgment is rendered. The other process described would apply where there is a difference of opinion not subject to easy determination under law of regulation.

These suggested guidelines are clearly not exhaustively definitive. I believe, however, that they provide an ample framework to make us as comfortable as possible while we launch ourselves on a very modest basis into the public affairs area. Experience will dictate changes and additions. But I believe the major exigencies have been foreseen and a reasonable approach recommended.

OLP

APPENDIX B

Minutes from Ad Hoc Committee
on Public Affairs Programming

EXCERPTS FROM DISCUSSION
OF AD HOC COMMITTEE ON
PUBLIC AFFAIRS PROGRAMMING
WHICH MET AT KET ON FEBRUARY 18, 1981

In attendance:

George Street Boone (Ad Hoc Committee Chairman), attorney
Don Ridings, editor, Kentucky Business Ledger
Harry Barfield, general manager, WLEX-TV
Chloe Gifford, attorney
Al Smith, newspaper publisher
Jim Caldwell, Orion Broadcasting
Paul Knue, editor, Kentucky Post
N. Edd Miller, Communications Department, Northern Kentucky University
Dr. Malcolm Jewell, political science professor, University of Kentucky
John Kenkel, attorney, Washington, D.C. - guest
Don Mills, Deputy Secretary - Education and Humanities Cabinet, guest
Senator Clyde Middleton, guest
Carl Miller, Assistant Attorney General, guest

We ought to be in a position to encourage KET to take risks and to take the kind of risks that confronted them last year. I share the feeling that it is mostly a problem of perception. It's not a legal problem.

When it comes down to the situation of this powerful medium, it can be abused so easily and so subtly that I think you have to have some kind of expression of policy. Probably you ought not to cut off the rough and tumble of the political world, but you need to provide truly equal opportunity for someone to reply. By and large, I don't think that this system can select who that is, somebody else has to select who that is. If it's a party thing, the Republican party ought to select how that is done.

Should we recommend some sort of advisory group to whom questions like this could go if they are not satisfied with what has been done?

Since the Authority is not bipartisan by statute, would there be an advantage to having a deliberately bipartisan group as a buffer zone?

This could possibly weaken the managerial authority or give the perception that whatever decision is made by management is very easily appealed, or very easily overturned or that some other group defacto will make the decision. If you set up advisory committee or appeal process that is so easily accessible that it becomes routine, then it takes a management function away from those who are designated to manage.

Should we have an oversight advisory group without necessarily an appeal procedure or complaint procedure?

You are laying on another layer of bureaucracy. Can you abdicate licensee responsibilities? I don't think you can. It's unfortunate that politics have been thrust into this. Your response to Mr. Stuart was precisely proper and you gave him a proper technical response. I think it is the perception of the public that they don't understand the position you are in.

I don't think you can abdicate your responsibility of representing the licen-

see any further than where you are right now. You can lay on all the ad hoc committees you want to.

I suspect ten years from now if a lot of issues keep getting referred to this advisory committee that's where the power is going to be, and the Authority is going to be viewed as a political instrument. I think the image of KET should be that it is not a fearful, not a timid operation.

One of the things I first thought of that this committee might do was come out with a set of written standards that would be perhaps passed on as a recommendation to the Authority and that they might adopt that, or some modification of it, so you have that basis for your decision making.

I'm not too comfortable with the idea of an oversight committee. Going back and reading all these editorials, the thing the editorials kept harping on was your statement about equal time. Not a single one of them seemed to understand, or was willing to admit, they understood that the equal time doctrine does not apply here.

I think there are a number of state boards which are made bipartisan by statute. I think that could be done with the Authority.

I think some kind of statement should be composed that would be read on certain stated occasions.

There are numbers of ways that the natural inherent partisanship of a Kentucky governor can be addressed or corrected by KET with follow-ups and I agree it doesn't have to be equal time. It has to be fairness. I think the role of the KET Executive Director is somewhat like a newspaper publisher or a station manager in a commercial station. I think he ought to continue to use advisory committees like this for advice and counsel and have a record of having talked to them, but in the long run you are going to have to be the publisher in this case.

You could make a report to your Authority once a year on how you handled public affairs programming and particularly sensitive issues and make a copy of this report available (automatically) to all papers, radio and TV stations in the state and to the universities and to any other interested parties.

It looks to me like KET ought to risk being messy and having everybody on it rather than trying to make these clean cut lines.

Let's go back (to the response the Republicans made). You think that a newsman could do that? That's not the function of the press. I don't know how the press could do that.

I think that should be the real purpose of KET, to get all sides presented.

APPENDIX C

Appearances by State Government Officials on KET Aired Programs, 1974 to 1981

4/23/81	KENTUCKY JOURNAL State Senator David Karem Sally Howe Discussion on the effort to help the growing numbers of crime victims.
5/4/81	KENTUCKY JOURNAL Dr. Grady Stumbo Discussion with Dr. Stumbo about the Department for Human Resources.
5/12/81	KENTUCKY JOURNAL Secretary of Finance George Atkins State Senator Mike Moloney Representative Art Schmidt Discussion on the impact of the proposed Reagan budget cuts.
5/19/81	KENTUCKY JOURNAL Governor John Y. Brown, Jr. Members of the Council on Higher Education in Kentucky's future. Second of a two-part program series dealing with coverage of the Committee on Kentucky's Higher Education future meeting.
5/25/81	KENTUCKY JOURNAL Representative Buddy Adams Representative Joe Clarke State Senator John Berry Discussion on the reasons why two state legislators decided not to run for re-election.
5/27/81	KENTUCKY JOURNAL Frank Metts, Secretary of Transportation Discussion with Mr. Metts regarding his position as Secretary of Transportation.
5/27/81	KENTUCKY JOURNAL Call-In with Attorney General Steve Beshear.
4/14/81	Simulcast by KET of the WKYT-TV Call-In Program featuring Governor John Y. Brown. The program was entitled ASK THE GOVERNOR.
	A seven-part series of BYWORDS programs hosted by Kentucky newspaperman Al Smith featuring former Kentucky governors. Those governors appearing were Governors Chandler, Wetherby, Combs, Breathitt, Nunn, Ford, and Carroll. Each program was a half-hour in length.
3/13/81	KENTUCKY JOURNAL Senator Robert Martin Harry M. Snyder Representative Carl Nett Representative Harold DeMarcus Dr. George Campbell Representative Carl Hines

Taped coverage of a Council on Higher Education budget hearing in Frankfort.

3/16/81 KENTUCKY JOURNAL
Grady Stumbo
Senator Benny Bailey
Representative Gerta Bendl
Representative Buddy Adams
Department for Human Resources committee meeting dealing with state budget problems.

3/19/81 KENTUCKY JOURNAL
Clair Nichols, Department Secretary, Department of Transportation
Everett W. Brown, Budget Director, Department of Transportation
Representative Robert Jones
Representative Clayton Little
Representative Woody May
State Senator Helen Garrett
Taped coverage of a State Transportation Budget meeting.

3/23/81 KENTUCKY JOURNAL
Call-In with Attorney General Steve Beshear.

4/2-3-6/81 KENTUCKY JOURNAL
Commissioner of Agriculture Alben Barkley
Personnel Board Sexual Harassment Hearings.

4/7/81 KENTUCKY JOURNAL
Commissioner of Agriculture Alben Barkley
Commissioner of Personnel Dick Robinson
Reactions to Personnel Board's Sexual Harassment Hearings.

4/13/81 KENTUCKY JOURNAL
Chief Justice John Palmore
Discussion with Chief Justice Palmore regarding his announcement that the Kentucky Supreme Court has decided to allow television broadcast coverage of proceedings in Kentucky courts.

4/16/81 KENTUCKY JOURNAL
Larry Forgy
State Senator Gene Stuart
Representative Art Schmidt
Republican Call-In.

2/26/81 KENTUCKY JOURNAL
Roger Blair, Bureau of Environmental Protection
Stanford Lampe, Louisville Chamber of Commerce
State Senator John Berry, Jr., Turner's Station
Discussed the problems of hazardous waste in Kentucky.

3/2/81 KENTUCKY JOURNAL
Governor John Y. Brown, Jr.
Representative Bobby Richardson
State Senator Clyde Middleton

State Senator Joseph Prather
This program was recorded in Frankfort and contained taped portions of Governor Brown's press conference on state budget cuts and interviews with the other state legislators reacting to Governor Brown's budget proposals and President Reagan's proposed federal budget.

3/5/81 KENTUCKY JOURNAL
Morton Holbrook, Owensboro
Harry M. Snyder, Council on Higher Education
Raymond Bursc, Louisville
William Cox, Madisonville
C. Gibson Downing, Lexington
This program consisted of portions of the Council on Higher Education committee meeting in Louisville discussing the recently completed draft of a desegregation plan for the state's public universities.

3/7/81 KENTUCKY JOURNAL
David Armstron, Jefferson County Commonwealth Attorney
Speaker of the Kentucky House William Kenton
Judge George Baker, Fayette Circuit Court
Discussed whether or not Kentucky should open its courtrooms to television coverage.

3/11/81 KENTUCKY JOURNAL
Governor John Y. Brown, Jr.
Ed Pritchard
William Cox
Taped highlights of a Council on Higher Education meeting recorded in Frankfort.

3/12/81 KENTUCKY JOURNAL
Governor John Y. Brown, Jr.
George Atkins, Secretary of Finance
Grady Stumbo, Department for Human Resources
Raymond Barber, Superintendent of Public Instruction
Taped coverage of Governor Brown's conference on state budget cuts.

1/5/81 KENTUCKY JOURNAL
Former U.S. Congressman Tim Lee Carter appeared discussing his years in Congress.

1/14/81 KENTUCKY JOURNAL
Dr. Grady Stumbo, Secretary of Human Resources
David Wren, Kentucky Association of Health-Care Facilities
Senator Jack Trevey in a taped discussion in Frankfort
Talked about getting Medicaid costs under control.

1/15/81 KENTUCKY JOURNAL
Dr. Harry Snyder, Council on Higher Education
Galen Martin, Kentucky Commission on Human Rights
Bill Shelton, Lexington attorney
Discussed the need for desegregation in Kentucky colleges.

1/22/81 KENTUCKY JOURNAL

Robert Allphin, Commissioner of Revenue
Larry Lynch, LRC Economic Consultant
Representative Buddy Adams
Representative Allene Craddock
George Atkins, Secretary of Finance
Featured in an Interim Appropriations & Revenue Committee meeting taped in Frankfort discussing an estimated short-fall in this year's budget.

1/27/81 KENTUCKY JOURNAL
William B. Sturgill, Secretary, Energy & Agriculture Cabinet
Discussed his new title and his views on the future of coal in Kentucky.

1/29/81 KENTUCKY JOURNAL
Representative Dolly McNutt, Paducah
Carolyn Bryant, U.K. Law School
Discussed a proposed Anti-Abortion Amendment to be added to the United States Constitution.

2/23/81 KENTUCKY JOURNAL
George Atkins, Secretary of Finance
Discussed his views of President Reagan's proposed federal budget.

2/24/81 KENTUCKY JOURNAL
Larry Forgy discussed his views on President Reagan's proposed federal budget

2/25/81 KENTUCKY JOURNAL
John Cobine, Bureau of Health Services
Ann Joseph, Kentucky Task Force on Hunger
State Senator Jack Trevey, Lexington
Discussed the food stamp program in Kentucky.

12/19/80 COMMENT ON KENTUCKY
George Atkins, Secretary of Finance
Steve Beshear, Attorney General
Discussed their perception of how the media covered State Government during past years.

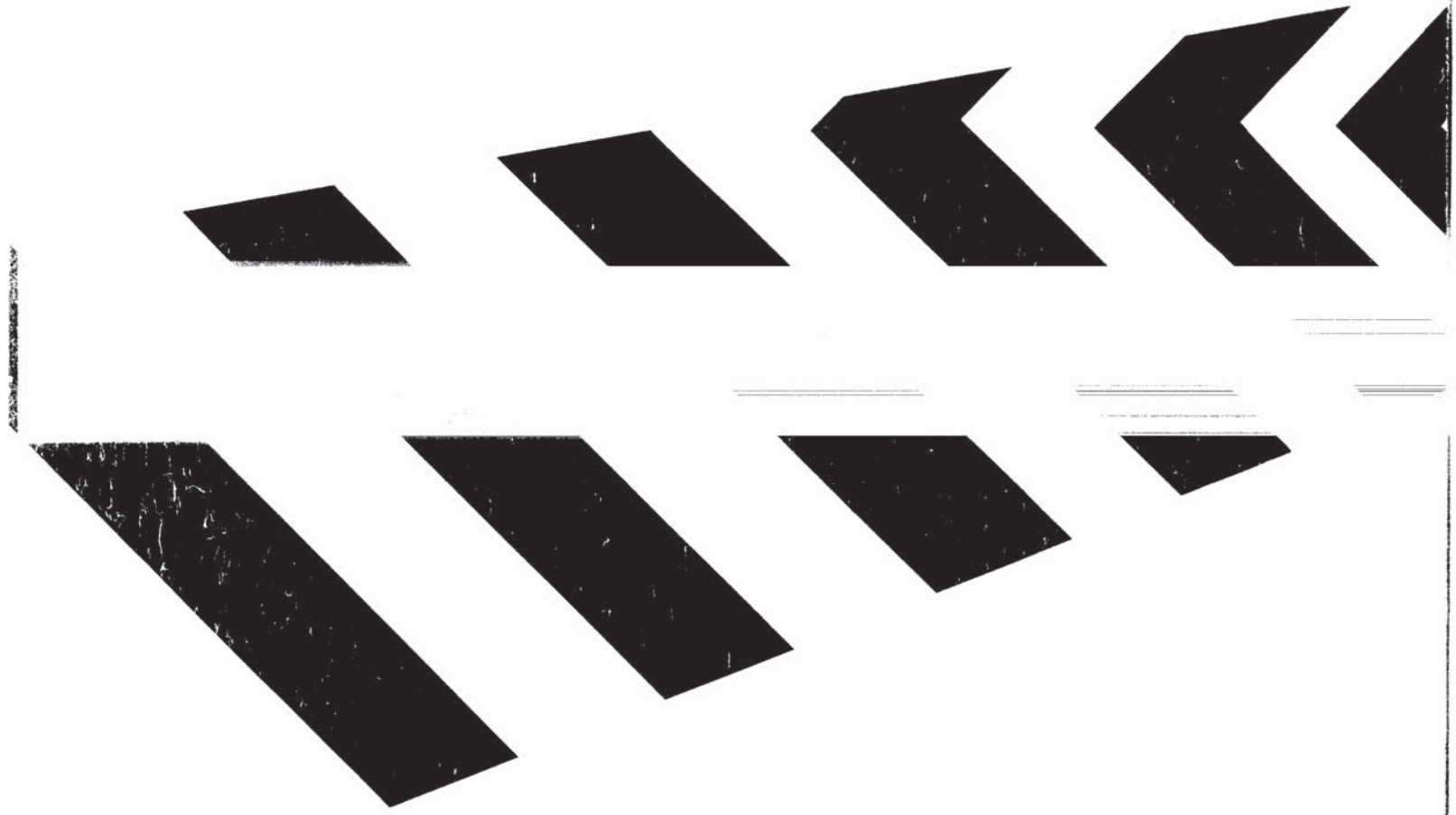
12/11/80 KENTUCKY JOURNAL SPECIAL
Governor Brown's press conference on the year-end report.

12/8/80 BYWORDS
Pat Stewart talked with Bill Sturgill, Secretary of Energy.

12/3/80 KENTUCKY JOURNAL
Experts on state budget:
George Atkins, Secretary of Finance
Dr. Richard Thalheimer, Department of Revenue
Representative Joe Clarke - D
Representative Art Schmidt - R

12/1/80 KENTUCKY JOURNAL
Jackie Swigart, Department for Natural Resources, was interviewed.

11/25/80	BYWORDS Bill Bartleman interviewed the Barkleys (Secretary of Agriculture).
Oct. 1980	Lieutenant Governor Martha Layne Collins did "TV for Learning" spots for KET.
10/28/80	KENTUCKY JOURNAL Dr. Grady Stumbo, Secretary of Human Resources, discussed local health departments.
10/14/80	KENTUCKY JOURNAL Dr. Grady Stumbo, Secretary of Human Resources, discussed the role of the local health departments.
10/9/80	KENTUCKY JOURNAL Representative Gerta Bendl and others discussed nursing homes.
10/7/80	KENTUCKY JOURNAL State campaign chairmen for three major presidential candidates appeared, including Larry Forgy.
10/1/80	KENTUCKY JOURNAL Robert Warren, Deputy Secretary of Finance, and others discussed state budget and its deficit.
9/17/80	KENTUCKY JOURNAL Senate Majority Leader Eugene Stuart, Senator Walter Baker and Representative Art Schmidt reacted to Governor Brown's budget-cut message on 8/28.
8/28/80	Governor Brown's budget-cut message and press conference. Live from KET studios.
7/18/80	COMMENT ON KENTUCKY George Atkins, Secretary of Finance Robert Warren, Budget Director Discussed recent budget cuts.
4/18/80	COMMENT ON KENTUCKY George Street Boone interviewed Governor Brown about 1980 General Assembly.
4/17/80	COMMENT ON KENTUCKY George Atkins, Secretary of Finance House Appropriations and Revenue Chairman, Joe Clarke Senate Appropriations and Revenue Chairman, Mike Moloney Discussed budget and 1980 General Assembly.
4/16/80	COMMENT ON KENTUCKY Representative Bobby Richardson, Majority Floor Leader Representative Art Schmidt, Minority Floor Leader Senator John Berry, Majority Floor Leader Senator Walter Baker, Minority Floor Leader Analysis and overview of 1980 General Assembly.

4/11/80	COMMENT ON KENTUCKY Speaker of the House William G. Kenton Senate President Pro Tem Joe Prather Analysis of past 1980 Generaly Assembly
3/6/80	Governor Brown's message to Joint Session.
3/3/80	Governor Brown before the Appropriations and Revenue Committee on tax reform. General Assembly coverage.
1/8/80	STATE OF THE COMMONWEALTH Governor Brown - Joint Session.
12/11/79	INAUGURATION 1979 Re-broadcast of Channel 27.
11/6/79	Governor Brown's acceptance speech during KET Election Coverage.
8/5/79	FANCY FARM Speeches by Governor Carroll John Y. Brown, Jr. Louie Nunn Harold Rogers Martha Layne Collins
1/31/79	STATE OF THE COMMONWEALTH Governor Carroll - Joint Session
1/18/79	Senate in committee of the whole - with Governor Carroll.
1/12/79	Governor Carroll before the Appropriations and Revenue Committee - General Assembly coverage.
3/3/78	STATE OF THE COMMONWEALTH Governor Carroll - Joint Session
2/24/78	COMMENT ON KENTUCKY Governor Carroll on coal strike issues - interviewed by reporters.
9/1/77	Press conference with Governor Carroll at KET.
3/7/77	Governor Carroll's press conference. Diverse range of topics. From Frankfort.
2/9/77	Governor Carroll's speech to KSBA & Dupree Award. Taped earlier.
1/26/77	Governor Carroll's press conference on energy and education. Interviewed by reporters - Frankfort.
11/19/76	COMMENT ON KENTUCKY Governor Carroll discussing the Special Session with reporters.

10/6/76	Fourth Annual Governor Leadership Prayer Breakfast - Governor Carroll.
7/19/76	COMMENT ON KENTUCKY Governor Carroll discussed Special Session.
4/12/76	COMMENT ON KENTUCKY Governor Carroll with reporters.
4/2/76	COMMENT ON KENTUCKY Governor Carroll discussed ERA, bail bonding with reporters.
3/26/76	COMMENT ON KENTUCKY Representative William G. Kenton Representative Joe Clarke Representative Harold DeMarcus Senator Eugene P. Stuart Discussed Legislature
1/28/76	Budget message to the House and Senate - Governor Carroll.
1/7/76	STATE OF THE COMMONWEALTH Governor Carroll - Joint Session
4/7/75	Governor's Cabinet meeting.
2/ /75	STATE OF THE COMMONWEALTH Governor Carroll - Joint Session
2/25/75	Public forum - Larry Hopkins
1/6/75	COMMENT ON KENTUCKY Governor Carroll
4/17/74	Governor Ford