

KENTON COUNTY HISTORICAL SOCIETY

Bulletin

March 1996



INSIDE:

**The Origins of The Kenton County Fiscal
Court: 1891 to 1910**

KENTON COUNTY OFFICERS FROM 1776 TO 1880s

In 1884, in the Daily Commonwealth newspaper, O. J. Wiggins listed over 100 names of court officers and legislators primarily from Kenton county, which was formed in 1840, and before 1840, primarily from Campbell county. Recently John Boh compiled brief, biographical "abstracts" of each and arranged them alphabetically. A wonder full help for your research. Cost: \$2.00, including mailing.

Attention Business Leaders!

The Kentucky Centennial Business Program, formed in January 1996, will recognize companies which have been in continuous operation for 100 years or more.

Kentucky's historic business and commercial enterprises have profoundly influenced Kentucky's history as well as its economy. The Kentucky Centennial Business Program is accepting applications to "show your age" between January and March 1996. Businesses accepted into the program will receive:

- ◆◆ Statewide publicity
- ◆◆ Recognition at an annual reception
- ◆◆ Rights to use the KCB logo and slogan
- ◆◆ Complimentary one-year membership in KHS
- ◆◆ Advice and technical assistance if the company desires to preserve its historic business records and artifacts at a local or state repository

For more information contact:

Kentucky Centennial Business Program
c/o Kentucky Historical Society
Old State Capital
P.O. Box 1792
Frankfort, KY 40602-2108
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OLD TIME RADIO AND NOSTALGIA CONVENTION
APRIL 12-13 MARRIOTT INN
FRIDAY 12 PM-9PM SATURDAY 9 AM-4PM
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KENTON COUNTY HISTORICAL SOCIETY

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Northern Kentucky Heritage Magazine

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K. C. H.S. MEETING NOTICE

DATE: Tuesday, April 9 7PM
PLACE: Kenton County Library,
Covington

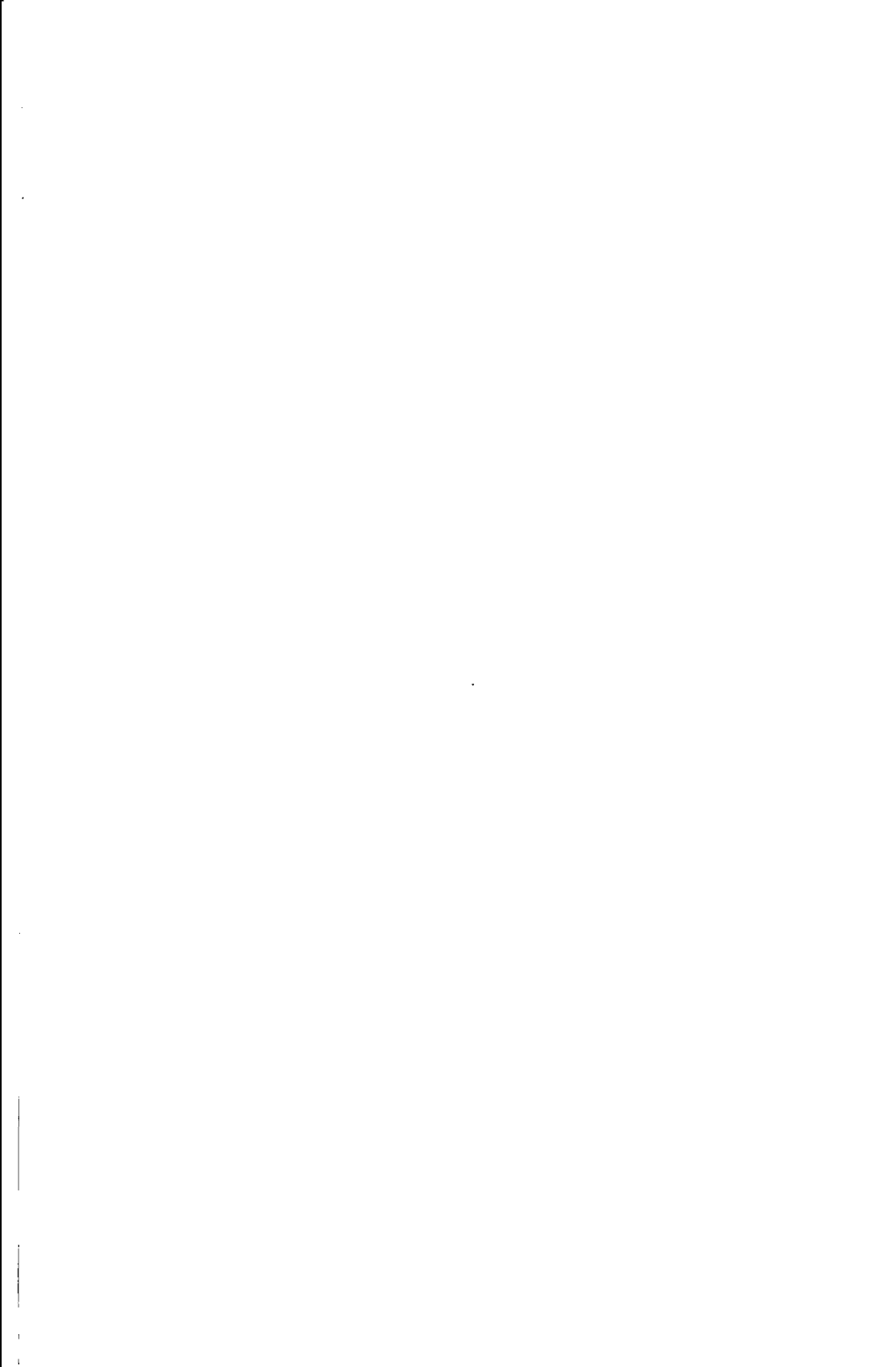
PROGRAM: Dr. Joseph Gastright
The Second Suspension Bridge
The History of the Suspension
Bridge since 1880

As a follow-up program, the May meeting includes a Saturday walking tour of the Suspension Bridge accompanied by an engineer of the Kentucky Department of Highways, followed by lunch. Mark your calendars for May 18, 10:30 A.M. Details in the next bulletin.

Kenton County Historical Society membership dues are \$10 per year; \$5 for students and Senior Citizens.

Subscriptions in Northern Kentucky Heritage Magazine, a semi-annual magazine of regional history covering ten counties, are \$12 a year for members; \$15 a year for non-members.

To subscribe to the magazine or become a member in KCHS, please mail check to KCHS, P. O. Box 641, Covington, KY 41012
Editor of KCHS Bulletin: Jo Ann Brown



The Kenton County Court 1891-1910

by Daniel J. Whalen

The current government of the Kenton County Fiscal Court, has its origins in the years 1891 to 1910. During these years, state political reform, as well as local city-county conflicts and financial problems influenced the basic structure, powers, and limitations of the fiscal court.

In 1850, Kentucky's third constitution placed county administration in the hands of courts of claims. In 1880, the General Assembly allowed Kenton County to replace its court of claims with a Board of County Commissioners. -1

In 1891, Kentucky adopted its fourth and current constitution as part of a major political restructuring and reform. The constitution established the fiscal court as the form of county government. Each member of the fiscal court had to be at least 24 years of age, a resident of Kentucky for 2 years, and a one year resident of the county. Members were elected for 4 year terms and permitted to succeed themselves, including a presiding judge. -2

Each county had two options concerning the composition of the rest of the fiscal court. Under the first option, the court would consist of the county judge along with the justices of the peace, a system similar to the old court of claims. The General Assembly divided each county into 3 to 8 districts, each electing a justice of the peace or magistrate. -3

Under the second option, the fiscal court would consist of the county judge with three commissioners. In addition, according to a law passed in 1892, the commissioners must live in separate districts drawn up by the county judge, although elected by the entire county. -4

The 1892 legislation determined that a magisterial fiscal court would originally govern each county. The people of the county could later petition the county judge to hold a referendum on the two systems of county government. -5

Regardless of its form, the fiscal court had the same powers. Its main duty was to handle the county's financial and business affairs. In doing this, it would exercise both executive and legislative powers, but not judicial authority. -6

The 1891 Constitution placed several limitations on the fiscal court. Because counties are agents of the state, the General Assembly had complete control over county govern-

ment. The legislature had the power to draw up districts within a county, to determine the number of these districts, to determine the rules for electing commissioners, to determine the jurisdiction of justices of the peace, to assign additional duties to the county judge, and to regulate the counties through general laws. The constitution also imposed debt limitations on the counties, since railroad speculation had bankrupted many of them in the past. The constitution furthermore imposed tax limitations on the counties, since many of them had suffered taxpayer revolts. Finally, the constitution prohibited certain types of special legislation and any local deviation from the uniform laws of the commonwealth, since some counties had used special legislation to gain unusual powers and exemptions from state laws. -7

Kenton County's Fiscal Court first met on January 22, 1895, in Independence. The court consisted of the county judge and five justices of the peace. Actually the county had a total of seven justices of the peace, but two were elected from districts within the city of Covington, which special legislation had supposedly separated from the rest of the county. -8

In September 1897, R. S. Richardson and 336 others filed a petition with the county judge to hold a referendum on the system of county government. The judge placed the question on the November ballot. According to the *Kentucky Post*, the immediate cause for the petition was the action of the court. It increased the salary of the county treasurer. Raising the salaries of county officers had always created public outrage in the past, and it would continue to in the future. -9

In November, the people voted 343 to 205 that Kenton County should have a fiscal court composed of the county judge and three commissioners. The justices of the peace would continue to serve until commissioners could be elected in November 1898. The office of justice of the peace would continue, but the justices would no longer sit on fiscal court. -10

Despite the results of the 1897 election, a magisterial fiscal court continued to govern Kenton County until January 1910. Apparently, the county judge and sheriff failed to carry out a state statute requiring that:

The County Judge shall furnish the Sheriff with a copy of the order authorizing a special election, and the Sheriff shall cause the same to be advertised in all the county papers not less than four weeks previous to such election. The Sheriff shall also cause two copies of the order

to be posted in a conspicuous place in each precinct where such a vote is to be taken not less than two weeks preceding the election. -11

According to the same statute, the voters would have to wait eight years to address this issue again. -12 The results of the referendum were therefore void and another referendum could not be held until at least 1905.

In other results of the election of 1897, the county judge and four magistrates lost their bids for re-election. The four magistrates then joined together to vote themselves back pay for work they had supposedly done attending to the poor in their districts. This action stirred up new controversy, yet angry voters could do nothing about it. The old Fiscal Court left office at the end of December 1897, and the new Court assumed duties in January 1898. -13

The new Court quickly ran into trouble, due largely to special legislation passed between 1836 and 1886, which had virtually removed the city of Covington from the county's jurisdiction. Although the General Assembly never specifically separated Covington, both city and county assumed that it did. Thus, the two Covington magistrates did not sit on the Kenton County Fiscal Court when that body was created. In addition, taxes levied for county expenses applied only to county residents living outside the city. -14

In 1899, several county residents brought actions against Sheriff John Boske to challenge the collection of taxes. They claimed that Covington residents did not pay their fair share of expenses common to the entire county. They claimed secondly that, because the General Assembly never specifically separated Covington, the absence of Covington's magistrates from the Fiscal Court made the court an illegal body without taxation powers. -15

The cases of *Richardson v. Boske* and *Wilson v. Boske* were tried in the Kenton Circuit Court, which found in favor of the county. The plaintiffs appealed to the Kentucky Court of Appeals. In its opinion of October 31, 1901, the Appeals Court held that, according to the 1892 state law creating the fiscal court, a city separated from its surrounding county must pay a proportionate share of common expenses based on total taxable property. The special laws which exempted Covington residents from paying Kenton County taxes and allowed Covington to decide what it should pay contradicted the new law and were thus made void.

The court also held that a magisterial fiscal court must consist of all the magistrates of the county regardless of

whether the city was separated. Otherwise, residents of a separated city could be taxed by the county without representation. Thus, because the Kenton Fiscal Court excluded magistrates from Covington, it was an illegal court, and its levy of 1899 was an illegal tax. -16

As a result of this ruling, the Kenton Fiscal Court would in the future be composed of the county judge along with seven magistrates, two from Covington and five from the county. The old court of five magistrates would finish its term in December 1901, and the new seven-member court would convene in January 1902. It all sounded simple enough, but the full effect of the *Richardson* decision was yet to be felt. -17

About a week before Christmas, the fiscal court met with the city officials to discuss the *Richardson* decision. Contrary to popular expectations, a squabble did not arise. In fact, the meeting was quite peaceful, and the two sides discussed a number of issues.

First, city officials raised an old issue: the desire to remove the county seat from Independence to Covington. They pointed out that City Hall had been built to accommodate county offices anyway. Secondly, city officials requested the county pay a reasonable rent for the offices in City Hall, since "City Hall was purely city property, paid for by city money, and entirely within the city's control." -18

Thirdly, city officials complained about paying for county services within the city which, according to the *Richardson* decision, should be paid by the county. The mayor and city solicitor suggested these issues be submitted to arbitration. Both sides established a committee for negotiation and then left the meeting on friendly terms. -19

The issues, however, soon destroyed friendly relations. When Covington offered offices to the county for \$7,000 a year, the county refused. The mayor stood firm and accused the county of "trying to drive a hard bargain." -20 He pointed out that the city would pay four-fifths of the rental anyway, since it would be assessed for four-fifths of the county levy. -21

Having failed to reach an agreement with the fiscal court of office rental, City Solicitor Frank Hanlon eventually turned to a new tactic to move county offices into City Hall. On January 10, 1902, he filed suit to ask for a writ of mandamus forcing the County Clerk John Yates to occupy an office in City Hall. The ground for this action were that the clerk's present office was hazardous to the safety of county records, which included papers valuable to the people of Covington. -22

The dispute over the county seat arose again when a

councilman called for City Solicitor Hanlon to investigate legal steps for moving the county seat to Covington. In doing so, he argued that "the largest number of county taxpayers transact business here, and Covington is more central to the smaller outlying towns."-23 He further argued that by removing the county seat, the city could "cripple" the power of the Fiscal Court. He complained that as conditions were now, the Court ignored the needs of Covington. This complaint was not without substance, considering the recent vote to raise county salaries at the expense of city taxpayers. However, by suggesting that the purpose of removing the county seat was to cripple the Fiscal Court, he made matters worse between city and county.-24

The dispute over county services arose when Covington stopped providing services within the city limits which it believed was county responsibility. The county, however, declined to provide these services, which included caring for the city's poor. As a result, conditions for the city's poor became extremely bad. Finally, recognizing that someone had to do something, the Fiscal Court decided to pay all pauper claims. This action apparently reduced some of the city-county tension. Within a month, Covington appointed a new committee of three to negotiate with the county concerning such expenses as pauper claims, cases of county prisoners, and the holding of elections.-25

At the March 17, 1902 Fiscal Court meeting, the county attorney recommended the county pay all bills for the previous year's election. The Court accepted this recommendation. Although the Court was also expected to hear a report on arrangements for county use of the city's branch smallpox hospital, no arrangements were made. When the Court met again March 18th, it decided to pay all pauper claims for February, but not January. As expected, the Court also appointed John Rees as County Overseer of the Poor since, in light of the *Richardson* decision, Covington had abolished his position as City Overseer of the Poor.-26

Although Covington and county relations remained good throughout 1902, the Fiscal Court continued to have its problems in other areas, especially in finance. Eventually, the county's financial situation became so bad that, in April 1902, the fiscal court met behind closed doors, to keep its financial problems secret. The Court sought money from all possible sources outside of the county levy. In one action, the Court instructed County Attorney Tracey to collect money supposedly owed by the former county clerk, Alex Davezac. Davezac

responded that it was the Court that owed him money. -27

Reports began to circulate that some county magistrates had been cheating the county. When the magistrate for Ludlow and West Covington (at the time a separate city) presented unusually high bills for the care of the poor, the Court decided to investigate. It found in many cases that the magistrate had given money to persons who were in no need whatever! The Court warned him to cease this practice, and apparently that was the end of the matter. -28

In 1903, the county's financial problems and those with Covington came together when a dispute arose over county taxation of city residents. On April 1, 1902, the Fiscal Court levied "a tax of thirty-eight cents on each \$100 valuation of property assessed in the county." -29 Twenty-five cents of this would go toward payment of county expenses. Ten cents would go toward repair and construction of county bridges and roads, three cents toward building a home for the county's poor. Believing that it was complying with the *Richardson* decision, the Fiscal Court applied this tax to the entire county, including the city of Covington. -30

H. B. Huelefeld, a Covington resident, did not believe he should pay for general county purposes, and he brought suit against the Kenton County Sheriff in an attempt to have the county levy declared void. The basis of his claim was that the magisterial districts had been improperly divided in 1892. Specifically, the two districts within the city contained more people than the five districts outside the city. The people of Covington were therefore not receiving fair representation on the Fiscal Court, so the Court did not have the authority to tax them. -31

The case was decided by Judge Tarvin of the Kenton Circuit Court on January 21, 1902. The Court ruled in favor of Huelefeld without even considering the argument that the composition of the Fiscal Court was based on illegally drawn districts. Instead, the Court based its decision on the separation of Covington from the rest of the county. -32 Although the fiscal court had assumed from the *Richardson* decision that the city and the county had not been separated, the Court of Appeals had explicitly stopped short of this conclusion. -33 Because the Court of Appeals never decided the issue of separation, Judge Tarvin was free to do so.

In his opinion, the General Assembly recognized the separation of Covington from the rest of the county in special legislation between 1836 and 1886. Judge Tarvin then pointed to the constitution's provisions for the composition of the Court

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when a city is separated from the rest of the county. Viewing these provisions as being "enacted with reference to Kenton County alone," he held that the constitution also recognized the separation of Covington.⁻³⁴ Finally, Tarvin interpreted the decision of the Court of Appeals in *Nienaber v. Tarvin* as "expressly" recognizing the separation as well. Since Covington had been separated from Kenton County, the Fiscal Court had no authority to tax Covington residents, and the 1902 levy was illegal.⁻³⁵

Judge Tarvin's ruling clearly contradicted the Fiscal Court's interpretation of the *Richardson* decision but was not entirely inconsistent with the decision itself. The Court of Appeals had merely required that Covington pay its proportionate share of common expenses. It never said that the county could tax city residents, nor did it decide the issue of separation.

Because the Circuit Court had declared the county levy of 1902 illegal, the Fiscal Court could neither collect that levy nor pay for services it had provided. As a result, the county was broke, and the Fiscal Court had no means of remedying the situation. At its meeting January 24, 1903, the Fiscal Court discussed the *Huelefeld* decision and prepared its response. The Court decided to inform all charitable institutions and the county poor that it could no longer provide them money. It also informed the County Board of Health, the County Overseer of the Poor and the City Jailer that it could no longer meet their expenses. Finally, it voted to withhold payment on all claims that it recently allowed.⁻³⁶

Fortunately for the county, on January 27, 1904, Judge Shaw of the Kenton Circuit Court determined that Covington must provide offices for county officials free of charge. The county only had an obligation to maintain offices at the county seat, and if Covington wanted additional offices within the city, it should have to pay for them.⁻³⁷

The Circuit Court had thus forced a compromise settlement of most disputes between city and county. The last issue, that of moving the county seat to Covington, died for lack of popular and legislative support which rarely moved the seat of an established county.⁻³⁸ The Kenton Fiscal Court, after being financially devastated by the *Huelefeld* decision, recovered within a few years by cutting back on expenses and generally appropriating its funds more wisely. The county treasurer could report the restoration of good financial standing on March 30, 1909, with a balance of \$89,224.03. ⁻³⁹

Despite the settlement of all these problems, however,

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the people of Kenton County voted in November 1909 to change the fiscal court from the magisterial form to the commission form, thereby reviving a local government similar to that which existed before the 1891 Constitution. The magisterial fiscal court met for the last time in December 1909. On January 3, 1910, the newly elected county commissioners met along with the county judge as the Kenton County Fiscal Court.⁴⁰ To this day, Kenton County is still governed under essentially the same structure since 1910.

(Excerpt of College Research Paper, Thomas More College 1989)

Endnotes

1. "Public Notice," *Covington Western Globe*, 23 August 1893, p 2; Fred J. Hood, ed., "Kentucky: Its History and Heritage" (St. Louis, Mo:Forum Press, 1978) pp.75-6; Robert M. Ireland, "The County in Kentucky History," Kentucky Bicentennial Bookshelf (Lexington: University Press of Kentucky, 1976), pp. 3-5; Robert Ireland, *Little Kingdoms: The Counties of Kentucky, 1850-1892* (Lexington: University Press of Kentucky, 1977), pp. 124, 136-7; *Kentucky Acts of the General Assembly* (1880), chap. 575, sec 4; Kenton County, KY, *Order Book of the Board of County Commissioners* (1880), "New Law," *Covington Daily Commonwealth*, 5 April 1880, p. 2.
2. Kentucky, *Constitution*, sec. 99, sec. 100, sec. 144; John Estill Reeves & John P DeMarcus, *Kentucky Government*, Kentucky Legislative Research Commission Informational Bulletin No. 96 (Frankfort: Kentucky Legislative Research Commission, 1972)) pp. 121-2; Joseph O. Van Hook, *The Kentucky Story* (Nonman, OK: Harlow Publishing Corp., 1970), p. 338.
3. Kentucky, *Constitution*, sec. 142; sec. 144; Reeves & DeMarcus, *Kentucky Government*, pp. 121-2; Ireland, *Little Kingdoms*, p. 137.
4. Kentucky, *Constitution*, sec. 144; Ireland, *Little Kingdoms*, p 137; Ireland, *The County in Kentucky History*, pp. 78-9; Reeves & DeMarcus, *Kentucky Government*, pp. 121-2; "Kenton County Needs to be Fair in Redistricting," *Kentucky Enquirer*, 15 April 1892, Item 4, Vertical File on "Kenton County Government," Kenton County Public Library, Covington; Kentucky, *Acts of the General Assembly* (1892), chapter 101.
5. Kentucky, *Acts of the General Assembly* (1892), chap. 101; "Fiscal Court in Danger of Being Abolished," *Kentucky Post*, 30 September 1897, p. 8.
6. Reeves & DeMarcus, *op. cit.*, p 15, pp. 121-2; Van Hook, *op. cit.*, p 338.
7. Thomas D. Clark, *A History of Kentucky* (Lexington, KY: The John Bradford Press, 1960), p. 425; Joel Goldstein, ed. *Kentucky Government and Politics* (Bloomington, IN: College Town Press, 1984), pp. 105,250; Van Hook, *op. cit.* p.338; Reeves & DeMarcus, *op. cit.*, p. 15; Ireland, *op. cit.*, pp. 8-10, 13.
8. "Who Wants It?" *Kentucky Post*, 21 January 1895, p. 4; "Fiscal Court Has No Authority to Levy Tax on City Property," *Kentucky Post*, 21 January 1903, p. 1; *Kentucky Constitution*, sec. 144.
9. "Fiscal Court in Danger of Being Abolished," *Kentucky Post*, 30 September 1897, p. 8; "Fiscal Court Will Expire in Thirteen Months," *Kentucky Post*, 8 November 1897, p. 1;

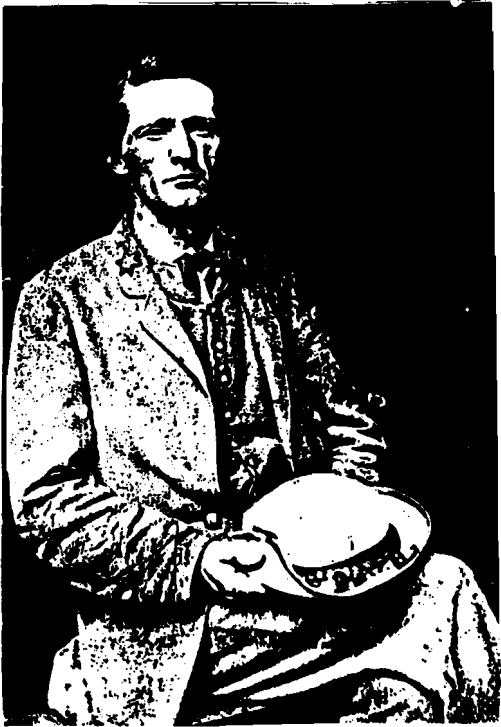
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- Ireland, *op. cit.* p. 139.
 10. "Fiscal Court Will Expire in Thirteen Month," *Kentucky Post*
 11. Kentucky, Amended Statutes (Carroll's Edition), sec. 1857; "Illegal Fiscal Court Election is Claimed," *Kentucky Post*, 20 November 1897, p1.
 12. "Illegal Fiscal Court Election is Claimed," *Kentucky Post*.
 13. "\$720-Back Pay the 'Squires Voted Themselves,'" *Kentucky Post*, 16 November 1897, p. 8; "Unlawful," *Kentucky Post*, 12 November 1897, p. 1.
 14. Ireland, *op. cit.*, p. 16; Richardson v. Boske, 111 Ky 893, 64SW 919 (1901); "Fiscal Court Has No Authority to Levy Tax", " *Kentucky Post*.
 15. Richardson v. Boske.
 16. *Ibid.*
 17. "Rumors of Some 'Dolings,'" *Kentucky Post*, 16 December 1901, p. 3.
 18. "Serene Meeting," *Kentucky Post*, 21 December 1901, p. 1
 21. *Ibid.*
 20. "Council After Fiscal Court," *op cit.*,
 24. *Ibid.*
 25. "Paupers Will Get Their Money," *Kentucky Post*, 21 January 1902, p. 5; "Conference With Fiscal Court," *Kentucky Post*, 14 February 1902. p. 1.
 26. "Rees Will Be Elected," *Kentucky Post*, 15 March 1902, p.1; "Business in Plenty Transacted," *Kentucky Post*, 18 March 1902, p. 4; "Pauper Bills Paid," *Kentucky Post*, 19 March 1902, p. 4.
 27. "Fiscal Court Claims Money," *Kentucky Post*, 8 May 1902, p.3.
 28. "Court Wants Bill Looked Into," *Kentucky Post*, 20 May 1902, p. 1;"Grand Jury," *Kentucky Post*, 22 May 1902, p. 3.
 29. "Fiscal Court Has No Authority..." *Kentucky Post*
 30. *Ibid.*
 31. *Ibid.*
 32. *Ibid.*
 33. *Ibid.*
 34. *Ibid.*
 35. *Ibid.*
 36. "Poured Tales of Woe into Each Other's Ears," *Kentucky Post*.
 37. "Covington Must Give Offices to the County," *Kentucky Post*, 27 January 1904, p. 1.
 38. Ireland, *Little Kingdoms*, p. 4; *The County in Ky. History*, p. 3.
 39. "Jailer's Bill Refused Payment," *Kentucky Post*, 18 December 1906, p.2; "Refuse Funds to Protestant Orphan Home," *Kentucky Post*, 20 April 1909, p.2; Kenton County, Kentucky *Order of the Kenton County Fiscal Court (1909)*, book 4.
 40. Item 3, Vertical File on "Kenton County Government," Kenton County Public Library, Covington.



**REBEL RAIDER AND GREY GHOST:
JOHN H. MORGAN AND JOHN S. MOSBY
IN THE AMERICAN CIVIL WAR**

**A Presentation by Dr. James Ramage,
Professor at Northern Kentucky University**

**7:00 p.m. on Saturday, April 13,
in the Science Lecture Hall
at Thomas More College**



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