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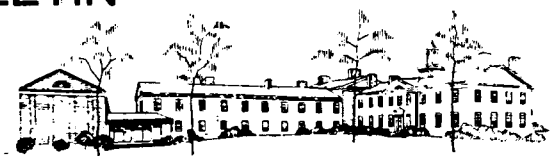

No. 2 (March 1975, replacement)

MASSAGE PARLOR REGULATION

Recently the United States Supreme Court declined to review a North Carolina Supreme Court decision that upheld a Fayetteville ordinance regulating massage parlors [Smith v. Keator, 285 N.C. 530, appeal dismissed for want of a substantial federal question, 43 U.S.L.W. 3329 (1974)] as it had in other massage parlor cases: Patterson v. City of Dallas, 355 S.W.2d 838 (Tex. Civ. App. 1962), appeal dismissed, 372 U.S. 251 (1963), cited in Smith at 537; and Kisley v. City of Falls Church, 212 Va. 693, 187 S.E.2d 168 (1972), appeal dismissed, 409 U.S. 907 (1972), cited in Smith at 538. This action afforded short-lived hope for those in local government law who expected to quell the proliferation of massage parlors through stringent regulation. In this case the plaintiff appellant had attacked the constitutionality of the ordinance on grounds that it violated two clauses of the Fourteenth Amendment -- the due process clause by permitting the city council arbitrarily to deny or revoke massage parlor licenses, and the equal protection clause by impermissibly classifying on the basis of sex.

Despite the failure of the appeal, however, the Smith case left unresolved a number of other objections, some of which were quickly raised again in federal court, Fehlhaber v. Thompson, _____ F. Supp. _____ (E.D.N.C. [No. 1031], 1974).

In Fehlhaber, the court following the rule of similar cases in the Fourth Circuit and other courts, held that:

(1) The prohibition of heterosexual massage (massage of a member of one sex by a person of the opposite sex) is a violation of the Civil Rights Act of 1964 in that it impermissibly requires the use of sex as a criterion for employment [Citing Cianciolo v. Members of the City Council, Knoxville, Tenn., 376 F. Supp. 719 (E.D. Tenn. 1974); Joseph v. House, 353 F. Supp. 367 (E.D. Va. 1973); Corey v. City of Dallas, 352 F. Supp. 977 (N.D. Tex. 1972).

(2) The overly restrictive regulation of the massage business violates substantive due process under the federal Constitution and perhaps also the state constitution [New State Ice Co. v. Liebmann, 285 U.S. 262 (1932), quoted with approval in Cianciolo, supra; see also In re Alston Park Hospital, Inc., 282 N.C. 542, 551 (1973)].

(3) A detailed procedure for identifying patrons, including the requirement that patrons' names and addresses be kept on record, is unreasonable in view of the purported governmental purpose and is therefore an unconstitutional invasion of privacy [citing NAACP v. Alabama, 357 U.S. 449 (1958). See also Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); Roe v. Wade, 410 U.S. 113 (1973)].

A further objection that was not raised in Fehlhaber but could be raised in future litigation is that the presumption of illicit activity

on which blanket prohibition of heterosexual massage rests is infirm under Vlandis v. Klein, 412 U.S. 441 (1973).

Since statutes prohibiting prostitution, pandering and other forms of commercialized vice [G.S. 14, Art. 27], and nuisance [G.S. 19, Art. 1, defining and providing for its abatement] are already a part of state law, the draft ordinance appended to this bulletin focuses directly on providing counties that wish to regulate massage parlors with a locally based regulatory scheme. The caveat from Cianciolo v. Members of the City Council, Knoxville, Tennessee is, however, an appropriate one for attorneys in this difficult area of sumptuary law:

> [T]he rights of all massagists to exercise a legitimate occupation in a professionally responsible manner must be entitled to full recognition. [376 F. Supp. 719, 724 (E.D. Tenn., 1974).]

At least three other provisions of some massage parlor ordinances should be considered: (1) required health examinations for massagists, (2) additional training requirements for massagists (measured in hours) as a prerequisite to licensing, and (3) substantial civil penalties for violation of a massage ordinance.

(1) A required health examination appears to be within the powers of counties under G.S. 153A-134. Do note, however, the possible problems with unconstitutional presumptions under Vlandis v. Klein mentioned above if an express requirement for a venereal disease test is included.

(2) Counties that are considering a training requirement should closely examine the language of Smith v. Keator [21 N.C. App. 103, 106 (1974)] in which, after concluding that a massagist is not a "person practicing any professional art of healing" [G.S. 105-41(a)], the court adds the following dictum:

> Administering a massage requires manual skill and dexterity, but it does not require mental or intellectual skill, advanced knowledge, or specialized instruction and study. An uneducated person can give a massage as well as an educated person.

The North Carolina Supreme Court did not reconsider this matter on appeal [Smith v. Keator, 285 N.C. 530, 533 (1974)] because its review was limited solely to the constitutionality of the Fayetteville ordinance.

(3) Some existing massage parlor ordinances also contain substantial civil penalties for violation of the ordinance. North Carolina case law on civil penalties is quite old, and none of the cases offer any guidance on whether a rule of reasonableness applies to the amount of penalty that can be exacted for violation of a city or county ordinance. I have attached a discussion of the civil penalty taken from Enforcing Municipal Ordinances in North Carolina by Allan Ashman (Institute of Government, 1966) in the appendix following the draft ordinance. The publication is now out of print, but there appear to be no new developments in the area of civil penalties since it came out.

Despite the judicial curtailment of some types of county regulation, a fairly wide ambit remains for reasonable regulation of massage parlors. The draft ordinance is designed to provide a scheme for licensing both parlor owners and massagists, setting the minimum age of both those who may work in massage parlors and those who may patronize them, and excluding from the legitimate massage business those who use massage as a pretext for illicit and illegal activities.

The amounts of the fees for both a massage parlor license and a massagist's license are purposely left blank in the draft ordinance. The authority for counties to regulate the massage business [upheld by the North Carolina Appeals Court in Smith v. Keator, 21 N.C. App. 103, 106

(1974)] is derived from G.S. 153A-134, which provides that the fee charged must be reasonable. This section merely codifies prior law regarding the distinction between fees charged for regulation and taxes intended to raise revenue. Case law has held that license fees are designed to regulate rather than to raise revenue and must not exceed in amount the approximate cost of administering the regulatory program [State v. Moore, 133 N.C. 698, 708 (1893)]. Nor may regulatory fees substantially or unduly impede a person from engaging in a lawful occupation [id. at 704]. A license fee that far exceeds administration costs or appears to be intended to prohibit or discourage the licensed trade or employment will not be upheld.

If you have comments and suggestions on the draft ordinance or would like to share copies of the ordinance that your county adopts, or if you need further help or information, please contact

L. Lynn Hogue
Institute of Government - University of North Carolina at Chapel Hill
Box 990
Chapel Hill, North Carolina 27514
(919) 933-1303

Draft Ordinance

TITLE: AN ORDINANCE REGULATING THE BUSINESS OF MASSAGE AND MASSAGE PARLORS

§ 1. Definitions. (a) "Massagist" (either male or female). One who offers to massage another for a salary or fee.

(b) "Massage parlor." Any place of business where massagists are employed to offer massage for a salary or fee.

§ 2. Licensed health professionals excluded. Licensed health professional acting in the ordinary course of their profession are neither "massagists" as defined in § 1(a) nor owners of "massage parlors" as defined in § 1(b).

§ 3. License required. A person may not (a) work as a massagist or (b) operate a massage parlor unless licensed.

§ 4. Issuing of licenses, fee required. The Sheriff shall issue a license to any eligible person who pays an annual fee of $_____ (_____ dollars) for a massagist's license or of $_____ (_____ dollars) for a massage parlor license. Such licenses shall be valid for one year only and must be renewed annually.

§ 5. Persons ineligible for licenses. The following persons may not be licensed to work as a massagist or to hold a massage parlor license:

(a) A person who has been convicted of a crime involving sexual misconduct including but not limited to those covered by G.S. 14, Article 26 (Offenses Against Public Morality and Decency) and G.S. 14, Article 27 (Prostitution).

(b) A person under 18.

(c) A person convicted of violating this ordinance.

§ 6. Posting required.

(a) The Sheriff shall provide a copy of this ordinance for posting to each massage parlor licensee upon licensing.

(b) Each massage parlor licensee shall display in a prominent place the license issued pursuant to this ordinance together with a copy of this ordinance.

(c) Each massagist shall post his license in his work area.

§ 7. Fingerprinting required. An applicant for a license shall submit to fingerprinting. The fingerprints may be sent to the S.B.I., F.B.I., or other appropriate law enforcement agencies.

§ 8. Prohibitions and limitations.

(a) Minimum Age. (1) No person in the business of massage may massage a person under 18 except under the direction of or by order of a licensed health professional. (2) No person may employ one under 18 to work as a massagist.

(b) Limitation on hours of operation. Massage parlors may operate only between the hours of 8 o'clock a.m. and 10 o'clock p.m.

(c) Limitation on scope of massage. No massagist may in the course of business massage the penis, scrotum, mons veneris, vulva, or vaginal area of another.

(d) Inducement to violate ordinances or provisions of General Statutes relating to sexual misconduct. No person may induce a licensee or employee or agent thereof to violate this ordinance or any provision of the General Statutes of North Carolina pertaining to sexual misconduct including but not limited to that covered by G.S. 14, Article 26 (Offenses Against Public Morality and Decency), and G.S. 14, Article 27 (Prostitution).

(e) Licensee required to supervise. Massage parlor licensees shall supervise the conduct of massagists in their employ. Failure to suppress illegal activity is grounds for revocation of a license.

§ 9. Massage parlors subject to inspection. The Sheriff or any member of his department may inspect massage business premises during the hours that they are open for business.

§ 10. Revocation. (a) The Sheriff shall revoke the license of any licensee who has violated this ordinance.

(b) Such revocation may be made only after written notice of the grounds for revocation has been given to the licensee and he has had an opportunity to answer the charges.

§ 11. Violation a Misdemeanor. Violation of this ordinance is punishable by a fine of not more than $50 (fifty dollars) or imprisonment for not more than 30 (thirty) days.

§12. Injunctive relief available. This ordinance may be enforced by any appropriate equitable remedy as authorized by G.S. 153A-123.

Reprinted from Allan Ashman, Enforcing Municipal Ordinances in North Carolina (Institute of Government, 1966)

APPENDIX

B. THE CIVIL PENALTY AND THE CRIMINAL PROSECUTION

1. The Civil Process

The power of municipalities to legislate on specifically enumerated subjects is usually supplemented by a general delegation of authority to pass and enforce ordinances for the general welfare of the city.[37] In North Carolina this general enabling act is G.S. § 160-52, set forth below.

> The board of commissioners shall have power to make ordinances, rules and regulations for the better government of the town, not inconsistent with this chapter and the law of the land, as they may deem necessary and may enforce them by imposing penalties on such as violate them; and may compel the performance of the duties imposed upon others, by suitable penalties.[38]

The imposition of authorized penalties for violations of municipal ordinances is perhaps the most common method used by the municipality to compel compliance with its ordinances.[39] This penalty is sued for by the municipality and recovered, like all other penalties, in a civil action of

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[37] A municipal corporation is considered a "creature" of the General Assembly because it has no inherent powers. State v. McGee, 237 N.C. 633, 75 S.E.2d 783 (1953). It can exercise only those powers which are expressly delegated to it by the General Assembly or which can be implied from those powers so delegated. While the general rule in North Carolina is that the constitutional powers conferred upon the legislature to make laws may not be delegated, an exception is the authority granted by the General Assembly to municipal corporations to exercise the power of local legislation. See Simmons v. Elizabeth City, 197 N.C. 404, 149 S.E. 375 (1929). Cities and towns acting through their duly constituted governing bodies may, under the aegis of the legislature, exercise powers which are legislative in nature. See ESSER, CASES AND MATERIALS ON LOCAL GOVERNMENT LAW (Institute of Government, 1957), p. 110.

[38] See Note, 27 N.C.L. REV. 567 (1949), discussing the legislative authority of, and limitations upon, municipalities. Note also that N.C. GEN. STAT. § 160-52 (1964) is really a "dead letter," for the Court will not uphold an ordinance unless it is based on some specific delegation of power. See N.C. GEN. STAT. §§ 160-200(7), -200(10) (1964). The provisions of N.C. GEN. STAT. § 160-52 (1964) relating to enforcement remain the only operative parts.

[39] McQUILLIN, op. cit. supra note 23 at § 27.05.

debt,[40] subject to the same rules of practice as in private litigation.[41]

2. The Criminal Process

G.S. § 14-4 provides that "if any person shall violate an ordinance of a city or town, he shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days." By enacting G.S. § 14-4[42] the General Assembly made the violation of any ordinance a misdemeanor, and the Court has held that the municipalities' right to arrest for such a violation is given by that specific provision of the General Statutes, not by the ordinance violated.[43] Thus, the violation of a town ordinance in North Carolina is a criminal offense against the state. Prosecutions are brought by the municipality in the name of the state, whether they are tried before a mayors' court or before a justice of the peace.[44]

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[40]See School Directors v. Asheville, 137 N.C. 503, 509-10, 50 S.E. 279, 283-84 (1905). See also RODMAN AND TOURGEE, NORTH CAROLINA CODE OF CIVIL PROCEDURE §§ 5, 6 (1868); Commissioner v. Frank, 46 N.C. 436 (1854), in which it was found that the Revised Code of 1854 provided, for the first time, statewide laws expressly granting governmental powers to municipalities. Whether the enforcement of an ordinance was sought under the authority of a special legislative act or under Chapter III of the Revised Code, the action to be brought was designated as a civil action of debt in the name of the town commissioners for the recovery of the penalty forfeited to them by virtue of the violation of the town ordinance.

Material in this note and much of the historical reference is based upon an unpublished memorandum written by George Esser (Institute of Government, 1954).

[41]Board of Education v. Henderson, 126 N.C. 689, 36 S.E. 158 (1900).

[42]N.C. PUB. LAWS, 1871-1872 c. 195, § 2, Code § 3820; Rev., § 3702, C.S., § 4174.

[43]See State v. Earnhardt, 107 N.C. 789, 12 S.E. 426 (1890).

[44]Board of Education v. Henderson, 126 N.C. 689, 36 S.E. 158 (1900).

(Under the Judicial Department Act of 1965[45] the district court will have exclusive, original jurisdiction over most misdemeanors.[46])

A person violating a town ordinance may be prosecuted by the state for the misdemeanor as well as sued by the town for the penalty.[47] In State v. Barrett[48] the defendant was prosecuted for having violated a condition of probation and suspended sentence. The condition was that he violate no penal law of the state. When he was convicted of violating a municipal ordinance (conducting an unauthorized dance), the Court held that he had violated a penal law of the state -- G.S. § 14-4. As a result of this violation, his probation was revoked and the prison sentence invoked.[49]

3. Double Jeopardy

A municipality in North Carolina has the authority to impose a monetary penalty (G.S. § 160-52), to prosecute in the name of the state (G.S. § 14-4) for the violation of its municipal ordinances, or to do both. But if a municipality should prosecute under G.S. § 14-4 and also bring a civil action for the recovery of the penalty under G.S. § 160-52, would it place the violator of the municipal ordinance twice in jeopardy for the same offense? The pro-

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[45] N.C. SESS. LAWS 1965, ch. 310.

[46] N.C. GEN. STAT. §§ 7A-271, -272 (Supp. 1965).

[47] See School Directors v. Asheville, 137 N.C. 503, 509-10, 50 S.E. 279, 284 (1905); State v. Taylor, 133 N.C. 755, 46 S.E. 5 (1903); see also State v. Provo, 178 N.C. 740, 101 S.E. 370 (1919), in which it was held that there must be a valid ordinance before an individual can be prosecuted for having violated it.

[48] 243 N.C. 686, 91 S.E.2d 917 (1956).

[49] The question might be asked whether the Court construes N.C. GEN. STAT. § 14-4 (1953) as being mandatory or directory in this instance.

hibition against double jeopardy is established in both the Federal[50] and the State[51] Constitutions. Most states justify successive prosecutions against a person who violates a municipal ordinance by breaking down the single act of violating a municipal ordinance into two distinct offenses -- one offense in violation of the municipal code and one in violation of the state law.[52] In North Carolina and in other jurisdictions as well, this breakdown is further emphasized by the fact that the action to collect a monetary penalty for failure to comply with a municipal ordinance is a civil action (under G.S. § 160-52); while a criminal prosecution for a violation of a municipal ordinance is under a separate statute (G.S. § 14-4), and the concern is with punishment and not with the collection of a monetary penalty for the city.[53]

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[50]U.S. CONST., amend. V.

[51]N.C. CONST., art. I, § 17. While the Constitution does not speak directly to cases involving former convictions and acquittals as bars to further prosecutions, the Court has held that under this provision of the Constitution -- due process clause -- a person cannot be tried twice for the same offense. See State v. Mansfield, 207 N.C. 233, 176 S.E. 761 (1934); State v. Crocker, 239 N.C. 446, 80 S.E.2d 243 (1954).

[52]This proposition is usually based upon a theory of "separate sovereignties" -- that the city and state are distinct political entities despite the fact that municipalities are creations of the state. See Kneier, Prosecution Under State Law and Municipal Ordinances as Double Jeopardy, 16 CORNELL L.Q. 201 (1931). See also LOCKHART, KAMISAR, and CHOPER, CONSTITUTIONAL-CRIMINAL PROCEDURE 242 (1964).

[53]See City of Milwaukee v. Johnson, 192 Wis. 588, 589, 213 N.W. 333, 335 (1927), in which the Court said that subjecting an individual to penalty under an ordinance and subjecting him to criminal prosecution are "distinct in their legal character, both as to the nature and quality of the offenses and the jurisdiction offended against." See also City of Kansas City v. Clark, 68 Mo. 588, 590 (1878), in which the Supreme Court of Missouri, since it did not regard "the violation of the ordinance under consideration as a crime," held that a prosecution under both city law and state law did not constitute double jeopardy. The Court said that a crime is "an act committed in violation of a public law, and the prosecution for violation of the city ordinance was but a civil suit."

The North Carolina Supreme Court first addressed itself to this question in State v. Powell.[54] The Court held that it was not "a case of double punishment" to exact a $25 penalty from one improperly licensed to conduct business (the license being required by ordinance) and also to prosecute that person under the general laws of the state which made a violation of a municipal ordinance a misdemeanor. Rather, the Court held that such action was "a single and divided punishment enforced by different methods."[55] The holdings in the cases which followed Powell were that in order to constitute double jeopardy the prosecutions must be for the same offense, both in law and in fact.[56]

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[54] 97 N.C. 417, 1 S.E. 482 (1887).

[55] The Court's answer, in part, to the state's contention that the violation of a city ordinance could be enforced both by a civil action for the recovery of the penalty and by a criminal prosecution, is set forth below.

> It is quite apparent that violations of town ordinances not only impose a definite penalty, consisting of a license tax, which ought to be paid, increased by adding twenty-five dollars thereto, recoverable as such, but the quality of a criminal offense is imparted to them by the recited provisions of the incorporating statute.
>
> Statutes are not infrequent in the course of legislation where a penalty is imposed for an act or neglect, and at the same time it exposes the offender to a criminal prosecution by the public, nor do we find the exercise of this power under the Constitution to have been questioned. It presents, not the case of a double punishment for one offense, but a single and divided punishment, enforced by different methods. In an action for an assault and battery where the object is the recovery of damages for the personal injury, a jury adds those that are punitory, while at the same time the wrong-doer may be made to suffer by a public prosecution for the same illegal act. (Emphasis added.) Id. at 419-420, 1 S.E. at 484.

[56] See State v. Stevens, 114 N.C. 873, 19 S.E. 861 (1894), in which the defendant was found guilty of selling liquor without a license in violation of the state revenue laws and police regulations as well as in violation of a city ordinance. The Court held that the sale without a license was one act and that the offenses for which the offender had to answer were different. Since the city ordinance was valid and the violation of it had been made a misdemeanor by statute, the Court held that a prosecution under the ordinance did not conflict with any criminal action pending or that would be instituted against the defendant, on account of the alleged selling, as an act in violation of the general state laws. Id. at 878, 19 S.E. at 865.

Thus, a single act could be an offense against two statutes, or against a statute and an ordinance, and if each action required slightly different evidence to sustain it, an acquittal or conviction under either one would not exempt the defendant from prosecution or suit under the other.[57] Clearly, when a person violating a North Carolina town ordinance is prosecuted by the municipality in the name of the state and also sued by the town for the penalty, the constitutional prohibition against double jeopardy is not invoked.[58]

4. Distinguishing the Civil and the Criminal Action

a. The "Fine"-"Penalty" Distinction

Most of the difficulty in distinguishing between criminal and civil actions in the enforcement of municipal ordinances arises from imprecise use of the terms "fine" and "penalty." In many early North Carolina cases the terms were used interchangeably simply because the Court was not concerned in those cases with whether the monetary sanction of a municipal ordinance was to be recovered in a civil action or criminal prosecution.[59] Rather, it was trying to determine whether the fine or penalty imposed by a municipal ordinance had been inflicted in a civil action and was to be treated as a debt, or had been inflicted upon a party under indictment and being prosecuted

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[57] Ibid. See also State v. Stevens, 116 N.C. 1046, 21 S.E. 701 (1895).

[58] See State v. Abernathy, 190 N.C. 768, 130 S.E. 619 (1925), citing State v. Taylor, 133 N.C. 755, 46 S.E. 5 (1903). The question may be raised whether the Supreme Court's holding in Malloy v. Hogan, 378 U.S. 1 (1964) (that "the Fifth Amendment's exception from compulsory self-incrimination is protected" [by the due process clause of the Fourteenth Amendment] "against abridgment by the states") forecasts a more expansive reading of the Fifth Amendment's double-jeopardy provision and the eventual demise of the "separate sovereignty" concept? See note 52, supra. See also Lauer, Prolegomenon to Municipal Court Reform in Missouri, 31 MO. L. REV. 69, 81-2 (1966), for a discussion of how Missouri treats the "separate sovereignty" issue.

[59] See State v. Stevens, 114 N.C. 873, 19 S.E. 861 (1894).

for the criminal offense of violating a municipal ordinance.[60] However, in Board of Education v. Henderson,[61] the Court drew a distinction between these terms: a "fine" is the sentence pronounced by the Court and the sum of money ordered to be paid to the Court for a violation of the criminal law of the state; a "penalty" is the amount prescribed to be paid for a violation of the statute law of the state, or the ordinance of a town, and is recoverable in a civil action of debt.[62]

b. Why the Distinction is Important

This distinction is important for several reasons other than serving as a means of distinguishing between a criminal prosecution and a civil suit. Because a penalty is in the nature of a debt, and a debt cannot be sued for unless its amount is known, the penalty fixed in the ordinance must be for a fixed sum. When the action is criminal the amount of the fine need not be fixed in the ordinance or statute.[63]

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[60] In other words, the Court was not concerned with distinguishing between fines and penalties as such, but in distinguishing between the nature of the action -- whether it was civil or criminal. See State v. Earnhardt, 107 N.C. 789, 112 S.E. 426 (1890); State v. Stevens, 114 N.C. 873, 19 S.E. 861 (1894).

[61] 126 N.C. 689, 36 S.E. 158 (1900).

[62] Id. at 692, 36 S.E. 158 at 160; see also State v. Abernathy, 190 N.C. 768, 130 S.E. 619 (1925).

[63] See State v. Crenshaw, 94 N.C. 877 (1886), and State v. Cainan, 94 N.C. 880 (1886), in which the Court held that the ordinance which imposed a "fine" was invalid because it did not make certain the amount of the "fine." The Court went on to say that even when no fine had been imposed for a violation of a valid town ordinance, the offender could be convicted of a misdemeanor for a violation of such ordinance under § 3820, now codified as N.C. GEN. STAT. 14-4 (1953).

It is clear that an ordinance which is cited as the basis for a criminal action is not void because it fails to fix the fine imposed for its violation or to refer to the method of enforcement. N.C. GEN. STAT. § 14-4 (1953) is held to be sufficient to support the action. See State v. Razook, 179 N.C. 708, 103 S.E. 67 (1920).

Art. IX, § 5 of the State Constitution also makes it imperative that there be a clear understanding of what constitutes a "penalty" and a "fine," and the nature of the action in which each is to be recovered. This article provides that: "All moneys, stock, bonds and other property belonging to a county school fund: also the net proceeds of the sale of estrays: also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State . . . shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State."[64] (Emphasis added.) In Board of Education v. Henderson[65] the Court held that this section appropriates all fines for violation of the criminal laws of the state to the county school fund, regardless of whether the fines are for municipal ordinance violations made misdemeanors by G.S. § 14-4, or for violations of other criminal statutes. The Court went on to say that these fines are "thus appropriated by the Constitution and . . . can not be diverted or withheld from this fund without violating the Constitution."[66]

This does not apply to penalties, the Court added, "which the defendant may have sued for and collected out of offenders violating its ordinances. These are not penalties collected for the violation of a law of the State,

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[64] See Hightower v. Thompson, 231 N.C. 491, 57 S.E.2d 763 (1950), in which the Court held that "clear proceeds" means the total fines collected less only the sheriff's fee for collection.

[65] 126 N.C. 689, 36 S.E. 158 (1900).

[66] Id. at 692, 36 S.E. at 160, 161.

but of a town ordinance. [Emphasis added.] But wherever there was a fine imposed in a State prosecution for a misdemeanor under § 3820 [now codified as G.S. § 14-4] it belongs to the school fund, and as we have said must go to that fund."[67]

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[67] Ibid.