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Reorganization Commission Reports

by John L. Sanders
Assistant Director of the Institute of Government

The third Commission on Reorganization of State Government has submitted to the Governor and the General Assembly of 1959 eleven reports containing 33 recommendations for changes in state governmental organization and procedure. Perhaps the most noteworthy proposals of the Commission call for the consolidation of the State's water resource management programs in a new Department of Water Resources and for the construction of a new state legislative building to house the General Assembly. Other recommendations cover a variety of topics including state land management, State A.B.C. Board organization, the state accounting system, interstate cooperation, public records management, and the size of the North Carolina Utilities Commission. In addition, the Commission studied several subjects on which it is making no recommendations and filing no reports.

Purpose of the Commission

The current Reorganization Commission is the third which has functioned in this State over the past six years. Established by the General Assembly of 1957, the Commission is quite similar in purpose and scope to the two prior reorganization groups which were active from 1953 to 1955 and 1955 to 1957 respectively. Under the legislative resolution of creation, it is the duty of the Reorganization Commission

> to make a detailed and thorough study of all agencies . . . of State Government with the view of determining whether or not there shall be a consolidation, separation, change or abolition of one or more of these several agencies . . . in the interest of more efficient and economical administration . . . [and] to examine any and all of the several agencies . . . their functions, methods of procedure, activities and the purposes of their creation and establishment.

Membership of the Commission

To the nine-member Reorganization Commission Governor Luther H. Hodges appointed Mr. David Clark of Lincolnton, who also served on the first and second Reorganization Commissions; Mr. Shearon Harris of Raleigh; Representative Addison Hewlett, Jr., of Wilmington; Mr. Richard G. Long of Roxboro; Senator Robert F. Morgan of Shelby, who also served on the second Reorganization Commission; Representative H. Cloyd Philpott of Lexington; Representative George R. Uzzell of Salisbury; Mr. W. W. Wall of Marion; and Mr. Thomas J. White of Kinston. All of these gentlemen have served in the General Assembly in recent years.

Mr. Clark, who was Chairman of the second Reorganization Commission, served in the same capacity with the third Commission until April of 1958, when he relinquished the chairmanship to Mr. Philpott. Mr. Long resigned in June, 1958, upon his appointment to the North Carolina Utilities Commission.

Working procedures

Like its two predecessors, the third Reorganization Commission took the view that far-reaching proposals for change which would drastically affect many state agencies were not likely to find acceptance. This conclusion was based in part on the experience of many other states in reorganizing their governments, and in part on the success achieved by the relatively conservative approach of the first and second North Carolina Reorganization Commissions. All three Commissions have viewed governmental reorganization as a long-term undertaking, best approached on a gradual, step-by-step basis, rather than with dramatic, headline-catching reform proposals of the kind which generally wind up in the legislative waste basket.

With only about a year in which to do its work, the Commission obviously could not study all of the 125 state agencies. Instead it confined its attention to the executive branch of state government and ruled out recommendations requiring constitutional amendment. Within these bounds the Commission focused its attention on a few agencies, related groups of agencies, and functional areas of state government.

Again following precedent, the third Reorganization Commission employed as its research staff the Institute of Government of the University of North Carolina at Chapel Hill.

A fairly standard approach was followed by the Commission in making each of its studies. First, the Commission decided on an

agency, a group of agencies, or an area it wished to examine. Written and oral staff reports were then received. Public officials concerned with the agencies or programs under examination were interviewed. Where matters of general public interest were involved, public hearings were held. Drafts of proposed Commission reports were generally submitted to the officials whose agencies were directly affected and their criticisms and objections were solicited and considered before final action was taken by the Commission. Similarly, drafts of bills prepared by the Commission to implement its recommendations were submitted to the heads of affected agencies for criticism before final Commission approval. In this way most of the potential differences between the Commission and those affected by its recommendations have been discovered and, where possible, eliminated before reports were filed.

As each report has been completed, it has been printed and distributed to the Governor, prospective members of the General Assembly, and the press. Copies of the Commission's reports can be obtained without charge from the Governor's Office or from the Institute of Government in Chapel Hill.

There follows a summary of the findings and recommendations contained in each of the eleven Commission reports.

First Report: Interstate Cooperation

In its initial report, the Commission on Reorganization of State Government examined the agencies and programs through which the states share information and experience gained in dealing with problems common to all and unite their efforts in dealing with challenges too great for individual states to handle. Chief among these agencies is the Council of State Governments, to which North Carolina has belonged since its organization in 1935. The Council is a non-profit service agency which serves as a medium to aid in improving state governmental practices, an agency for cooperation among the states in solving interstate problems, and a means of improving federal-state relations. Its income is derived mainly from annual state contributions based on population.

It is the conclusion of the Reorganization Commission that North Carolina receives its money's worth from the Council of State Governments in terms of the information, service, and assistance which are made available by the Council to our state officials. Fuller utilization of the services of the Council is urged.

The North Carolina Commission on Interstate Cooperation is the main agency through which this State participates in the work of the Council of State Governments and encourages interstate cooperation generally. It consists of the Governor, Lieutenant-Governor, and Speaker of the House of Representatives as honorary members, plus five Senators designated by the President of the Senate, five Representatives designated by the Speaker of the House, and the six members of the Governor's Committee on Interstate Cooperation.

This Commission has been only intermittently active. In the opinion of the Reorganization Commission it should become much more active by studying and making recommendations to the Governor and General Assembly concerning proposed interstate compacts and model legislation, by representing the State in appropriate national and regional conferences of state officials considering interstate problems, and by engaging in like activity aimed at giving North Carolina the full benefit of cooperation and exchange of information with her sister states.

To make the Commission on Interstate Cooperation a more efficient body, it is recommended that it be reduced in size from 19 to 9 members: three Senators appointed by the President of the Senate, three Representatives appointed by the Speaker of the House, and three administrative officials appointed by the Governor.

Because the Governor's Committee on Interstate Cooperation has no duties and carries no activities as a committee, its abolition is recommended.

Second Report: Turnpike Authorities in North Carolina

In the years just after World War II, the toll road seemed to offer the best answer to the nation's growing need for an interstate system of high-speed limited access highways. Sharing the national confidence in the possibilities of the toll road, North Carolina created by legislative act two agencies authorized to build such roads, the North Carolina Turnpike Authority and the Carolina-Virginia Turnpike Authority. The former Authority was established primarily to build a north-south turnpike through the western Piedmont; the latter to build a turnpike along the Outer Banks northward from Nags Head. Both roads were to tie into similar roads at the Virginia line.

Under the statutes each authority is empowered to construct and operate toll roads anywhere in the State, to exercise the power of eminent domain to acquire rights-of-way, and to finance construction by the sale of tax-free revenue bonds.

Since these two agencies were created, the toll road has lost most of its former promise as a road-

building device. In few instances have toll roads proved financially sound. The interstate highway construction program approved by Congress will largely meet the need which the privately financed interstate toll roads were expected to serve. After preliminary surveys, plans for both of the projected North Carolina toll roads were shelved.

In the light of these facts, the Reorganization Commission concluded that the need for the two North Carolina turnpike authorities

> . . . has ceased to exist, and there is no present prospect that either of these authorities will ever be able to carry out the purposes for which it was created.

Accordingly, the Commission recommends the abolition of the two turnpike authorities.

Third Report: State Planning Agencies

The North Carolina State Planning Board was a depression-born agency, created in 1935 to assist the federal government in planning the federal public works program in this State. After an inactive interval of four years, the Board was revived in 1944 to aid with post-war planning and functioned for three years. It has been wholly inactive since 1947.

The nine-member Board is appointed by the Governor, and is authorized by law

> . . . to make studies of any matters relating to the general development of the State or regions within the State or areas of which the State is a part, with the general purpose of guiding and accomplishing a co-ordinated, adjusted, and efficient development of the State.

In view of the fairly broad powers given by the General Assembly of 1957 to the Department of Administration to plan state programs and activities and to the Department of Conservation and Development to provide planning assistance to local governments, the Reorganization Commission concludes that those two agencies possess adequate powers to perform any function which the State Planning Board might now be called on to perform. The abolition of the State Planning Board is therefore recommended.

Fourth Report: North Carolina Utilities Commission

From 1891 until 1949, the Utilities Commission and its two predecessor utility regulatory agencies consisted of three members. In 1949 two additional Commissioners were added. Three of the Commissioners now serve six-year overlapping terms; the two added in 1949 serve four year terms. All are appointed by the Governor, who designates one member as Chairman of the Commission.

The Utilities Commission is granted by law "general power and control over the public utilities and public service corporations of the State," including electric power, gas, and water companies; carriers of freight and passengers by rail, highway, and water; and telephone and telegraph companies. The Commission issues certificates of convenience and necessity and regulates rates and service, accounting systems, and the issuance of securities by utilities. The North Carolina revenues of the 861 holders of authority to engage in electric, gas, water, carrier, and communications utilities services in this State exceeded $500,000,000 in 1957.

No other quasi-judicial agency of the State has as great a measure of responsibility as that borne by the Utilities Commission, the Reorganization Commission observes. The wise exercise of the powers entrusted to the Commission requires men of a high order of ability, men who will stay on the Commission long enough to develop the experience and skill which their duties demand. The reorganization group concludes that

> The vast public interest affected by the Utilities Commission requires, in our opinion, that if the State is to give up the composite judgment of five Commissioners, adequate provision must be made with respect to compensation to assure retention in and attraction to the service of the Commission of personnel of the highest order.

For this reason it conditions a recommendation for the reduction of the Commission from five to three members upon an increase in the compensation and retirement benefits of Commission members which would put them on an equal footing with judges of the Superior Court.

All of the Utilities Commissioners, when interviewed by the Reorganization Commission, indicated that they believe three Commissioners can carry on the work of the Commission satisfactorily so long as it remains at about its present level. They indicated that the volume of their work has diminished somewhat in recent years since the initial overflow of work incident to the adoption of the Truck Act of 1947.

At present, each Governor must appoint three members of the Utilities Commission within a month after taking office and must appoint a fourth member of the Commission during his third year in office. The Reorganization Commission thinks that the independence of the utilities body will be enhanced by the proposed change to three Commissioners serving six-year terms, one term expiring every other year.

As a means of providing some assistance to the Commission in case of an overload of work or in the absence of a Commissioner, the Reorganization Commission recommends that retired Utilities Commissioners be subject to recall by the Governor, on request of the Commission Chairman, for temporary duty with the Commission. For several years, similar provision has been made for the recall of retired Superior and Supreme Court judges for court duty.

It is recommended that the statutes prescribing the duties of the Assistant Attorney General assigned to the Utilities Commission be amended to embody present practice whereunder the assistant, although a subordinate of the Attorney General, is available to the Commission at all times for legal research, drafting, and advice. The possibility of separate counsel for the Commission was rejected.

Fifth Report: State Legislative Building

With a collective total of 33 legislative terms behind them, the members of the Commission on Reorganization of State Government needed no aid in reaching the conclusion that the General Assembly of North Carolina needs new quarters and needs them now.

The present Capitol was completed in 1840. Despite several efforts to have the building enlarged, principally for the benefit of the legislature, it remains structurally almost exactly as it was built. Over the past 75 years, space for other burgeoning state agencies has been provided by the construction of a series of office buildings around and near Union Square.

In the 118 years since the Capitol's dedication, the Commission points out, the population of the State has grown from 750,000 to nearly 4,500,000; the annual state budget has mushroomed from $214,000 to almost $600,000,000; and legislative responsibilities have increased accordingly. In the same period, legislative sessions have lengthened from eight to eighteen weeks; the number of legislative employees has increased nearly twenty-fold, from 11 to 200, while the number of non-legislative state employees working in Raleigh has grown 250-fold, from 15 to 3,700; and the cost of a biennial session has risen from $37,000 to $850,000. Yet today the facilities provided for the exclusive use of the General Assembly are almost exactly the same as in 1840.

The Commission finds that the legislative chambers are crowded and cramped; that there are no office facilities at all for legislators, except for the presiding officers and a handful of committee chairmen; that the working space for clerks and other employees of the two houses is wholly inadequate for the efficient performance of their duties; and that the public galleries are entirely too small. Working space for the press in the Capitol is almost non-existent. The 77 legislative committees have only about ten meeting rooms, temporarily borrowed from other regular uses and scattered among several state office buildings.

"We are firmly convinced," the Commission asserts, "that North Carolina needs and should erect a new building to house the General Assembly and all of its activities." It is recommended that the 1959 General Assembly authorize the construction of such a building at an estimated cost of $7,000,000. This sum would be provided from state bonds, which can be issued by the General Assembly upon its own authority.

To supervise the design and construction of the new state house, it is proposed that the General Assembly create a Legislative Building Commission of seven members. A majority would be persons with legislative experience who could bring knowledge of the special needs of the Legislature into the planning of the General Assembly's new home.

While leaving decisions as to the contents of the new building to the building commission, the Reorganization Commission suggests that it include adequate and comfortable chambers for the two houses, equipped with mechanical aids to expedite legislative proceedings; an adequate number of committee rooms of various sizes; sufficient office space for the presiding officers, committee chairmen, members, and employees of the legislature; appropriate press facilities; and spacious public galleries. Thus the whole legislative process could be carried on under a single roof. No specific site is suggested for the new building.

The Commission goes to some pains to point out that ". . . the Capitol and Union Square should be left intact and unaltered, no matter what provision may be made elsewhere for improved legislative quarters." A tie with century - old legislative tradition would be maintained under the Commission's suggestion that the General Assembly continue to convene and adjourn its biennial sessions in the old Capitol, while doing its work in more modern quarters elsewhere.

On one point the Commission is especially emphatic: in constructing this building, the State should "go first class" in design and execution. "This will not be just another office building, to be put up as cheaply and quickly as possible," the Commission stresses. "It will, for a long time to come, be the center of state government and the focus of popular interest in that government,

and therefore it should be a building which will do honor to the State both today and in the future."

Sixth Report: Succession to State Executive Offices and Disability of Officers

Extended consideration was given by the Reorganization Commission to the procedures for filling vacancies and for determining questions of disability among the officers of the executive branch of state government. The Commission's interest in these topics derives in part from the importance of continuity of governmental functions at all times, and in part from the special problems of governmental continuity which would arise in the wake of possible enemy attack upon the United States.

Two issues are dealt with in the Commission's report: (1) how to provide for the performance of the duties of an office during a vacancy in that office or during the continued absence or disability of the office holder, and (2) how to determine when a public official is physically or mentally incapable of performing the duties of his office.

While some thought was given to these issues as they affect the elected state executive officers, it was the conclusion of the Commission that any change respecting these officers should take the form of a constitutional amendment. Therefore the Reorganization Commission transmitted its suggestions on this point to the North Carolina Constitutional Commission, established to propose needed changes in the State Constitution, and restricted its printed report to statutory changes affecting only appointive officers.

The law now generally provides that the Governor or the board or commission authorized to appoint the regular holder of an office also appoints to fill for the unexpired term any vacancy occurring in that office. Other provisions of law permit any state officer, elected or appointed, to obtain a leave of absence for reasons of health, military duty, or other cause satisfactory to the Governor. The Governor may then appoint an acting officer to carry on the duties of the officer on leave.

Upon the first issue, the Reorganization Commission recommends that the Governor or the board or commission authorized to appoint the regular holder of an office also be authorized by law to appoint an acting or interim officer to serve (1) during a vacancy in that office and pending the appointment of a person to serve for the unexpired term, or (2) during the disability or extended absence of the regular officer. Such an interim officer would serve only until a successor is regularly chosen, or until the disabled or absent officer is able to resume his duties.

The reasoning behind this proposal is simple. The law often requires that an agency head personally perform certain duties. This means that while the office is vacant, and generally while the officer is incapable of performing his duties, those duties cannot be performed at all. If a person already familiar with the work of the office could be designated to carry on at least the routine duties of the office during a vacancy therein, it would relieve the Governor or other appointing authority of the necessity of acting hastily in filling the vacancy in order to keep the work of the office from bogging down. Similarly, the proposal would provide a means of keeping the work of an office going during the incapacity or extended absence of the incumbent.

But what of the emergency situation which would arise incident to an enemy attack on the United States in which a number of state officials might be killed or incapacitated? The Governor could act promptly to designate acting successors for his appointees. But a numerous board or commission might be unable to meet quickly to appoint a successor to an agency head whose activities are vital to the safety of the State. To provide for that unhappy event, the Reorganization Commission recommends that the Governor be authorized to designate, on an interim basis, persons to perform the duties of the heads of agencies who are ordinarily appointed by a board or commission, such as the Director of Prisons or the Director of Highways. The Governor's appointee would hold only until the proper board or commission could meet and appoint a successor. The Governor's power in this regard would be strictly limited, and could only be exercised in case of war or upon a finding by the Governor and Council of State that there is eminent danger of hostile attack on the United States.

Respecting the disability determination issue, the Commission recommends that the authority—the Governor or a board or commission—whose legal duty it is to appoint an officer be authorized to determine when that officer is physically or mentally incapable of performing the duties of his office, so that an acting officer can be designated to take over his duties. The same authority would determine when the incapacitated officer is capable of resuming his official duties. For any officer so displaced, recourse could always be had to the courts should he consider himself wrongfully treated.

While it is the expectation and the hope of the Commission that

the recommended statutory provisions would seldom be used, still it is the belief of that group that these provisions could in certain important cases serve a useful purpose.

Seventh Report: Public Records Management

In the course of an examination of office space needs of Raleigh agencies, the Reorganization Commission became interested in the current procedures and programs for moving obsolete and semi-current state records out of costly downtown office space. It found that in recent years the State Department of Archives and History, the official archival agency of the State, has been conducting an increasingly active records management program in cooperation with the state agencies in Raleigh.

This program is designed to move seldom-used records out of state offices, while keeping them available in the Department's records center in Raleigh as long as needed for administrative purposes, and to insure the permanent preservation of only those records of permanent value for research or reference. The program entails compilation of an inventory of the records of each agency served, the formulation of schedules fixing the retention periods for records of various types, and the systematic removal of obsolete and semi-current records from agency offices and their destruction or transfer to the Department's records center in Raleigh. There records are held for periods ranging up to 20 years, pending their destruction or transfer to the state archives for permanent preservation. Under this program, about 30,000 cubic feet of records have been destroyed and 18,000 cubic feet are now stored in the records center, with resulting savings to the State in terms of office space and filing equipment freed for other uses than the storage of out-of-date records.

About 23 state agencies are cooperating with the Department of Archives and History in the records management program. Agency participation is now entirely voluntary. The Reorganization Commission recommends that it be made the duty of state agency heads to cooperate with the Department in the development of the records management program as it relates to their respective agencies, but that each agency head retain the final word as to what records he will preserve in the offices of his agency.

The existing authority of the General Services Division of the Department of Administration to operate central records storage facilities has not been exercised and should, according to another Commission recommendation, be repealed. This would eliminate a duplication of authority by making the Department of Archives and History the sole agency in the field of state public records management.

Eighth Report: State Board of Alcoholic Control

Separation of the purely administrative functions from the policy-making and rule-making functions of the State Board of Alcoholic Control is sought by the Reorganization Commission in its eighth report.

To accomplish this separation, the Commission proposes the creation of the post of Director of Alcoholic Control and the transfer to that officer of the administrative duties now performed by the Chairman of the State Board of Alcoholic Control. The Director would be appointed by the Board with the approval of the Governor. At present, the Chairman is both a member of the governing board of the agency and its full-time administrator, while the other two members of the Board serve only part-time. The Chairman and other members of the Board are appointed by the Governor for overlapping three-year terms.

The State A.B.C. Board not only has supervision of the alcoholic beverage control system in 31 counties and eight municipalities; it also regulates the distribution and sale of wine in 43 counties and 15 municipalities and of beer in 50 counties and 18 municipalities. These powers are all vested by law in the Board as a whole, although as a practical matter much of the administrative detail must be handled by the Chairman as the only full-time member of the Board.

In the opinion of the Commission, the Board would be better able to exercise an independent judgment in formulating policies and rules governing the State A.B.C. system and the distribution and sale of wine and beer if the full-time administrator who is to carry out these policies and rules were not a member of the Board. The administrator would be in a better position to deal with the various interests regulated by the Board if he were only the executor of Board policy and not himself one of the policy-makers. There should also be clear authorization for the delegation of the administrative powers of the Board to its executive officer, the Director.

Under the Reorganization Commission's proposals, there would be no change in the size of the A.B.C. Board or in the length of terms served by its members. The chairman would become a part-time official like the other members of the Board, and his present salary would be transferred to the new Director. None of the suggested changes would in any

way alter the laws now administered by the Board or the relationship of the State A.B.C. Board to local A.B.C. boards.

Ninth Report: State Land Management

Among the recommendations of the second Reorganization Commission were several calling for the better administrative supervision of the State's real estate interests. These recommendations were approved by the General Assembly of 1957. Now the third Reorganization Commission has picked up the subject where its predecessor left off, and has proposed changes in additional aspects of state land management responsibility, procedures, and practices.

In the main the current recommendations deal with two types of state land: vacant and unappropriated lands which are held by the State as sovereign and disposed of through the Secretary of State's Office under the entry and grant system, and swamp lands which are under the control of the State Board of Education and the proceeds of which are constitutionally earmarked for the public schools.

The State owns large amounts of both kinds of land, although the exact location, quantity, and boundaries of most of the tracts are unknown. Their value arises chiefly from the timber growing on them. The 1957 legislation required the preparation of an inventory of these lands by the Department of Administration and that task is now underway. It is the underlying thought of the Reorganization Commission that the State should make a positive effort to dispose of so much of this land as the State does not seem likely ever to need and as can be sold to advantage.

The principal Commission recommendations would transfer to the Department of Administration authority to dispose of the vacant and unappropriated lands, relieving the Secretary of State of that responsibility, and would transfer to the Department authority to dispose of the swamp lands, relieving the State Board of Education of that responsibility. (Under 1957 legislation the Department is the principal state land agency.) All land or timber sales would be subject to the approval of the Governor and Council of State, and the net proceeds of all such sales would continue to go into the State Literary Fund, which is administered by the State Board of Education for the benefit of the public schools.

The entry and grant system, according to the findings of the Commission, is obsolete and cumbersome and should be replaced by a more convenient and expeditious method of disposing of vacant and unappropriated lands. The State Board of Education is responsible for supervising the largest enterprise in the State, the public school system, and should not be burdened with the details of selling swamp lands.

It may be due to the shortcomings of the present land disposal systems, suggests the Commission, that the gross proceeds of vacant and unappropriated lands and swamp lands were only about $5,000 a year during the decade 1947-57.

To finance part of the land supervision activities of the State, the Reorganization Commission recommends the creation of a State Land Fund, to be derived from a small service charge on each sale of surplus state land. The Fund would be used to pay expenses incurred in discovering, inventorying, surveying, and disposing of state land. With legislative approval, the Fund could be used for land purchases.

To prepare a full inventory of state lands, extensive discovery activities will be necessary. Particularly is this true of the eastern counties where the great bulk of the vacant and unappropriated lands and swamp lands lie. This will require the mapping of a large portion of the area of some counties. The counties have an allied interest in discovering unlisted taxable lands within their borders. Therefore it is recommended that authority be given to the several boards of county commissioners to enter into contracts with the State providing for the joint financing of county-wide discovery and mapping projects to include both state and private lands. The State's share of the cost of such a project would come from the State Land Fund; the county's share from a suggested special tax not to exceed 5c on the $100 valuation of property.

Other Commission recommendations are intended to provide a more orderly system for the administration of the State's real estate interests. One calls for all legal actions and special proceedings in behalf of the State with regard to lands owned or claimed by the State to be brought by the Attorney General on complaint of the Director of Administration. Another would have the Director of Administration designated as the agent to accept service of process on behalf of the State in all legal actions concerning state lands. To avoid the unnecessary referral of small-scale real estate business to Raleigh for negotiation or approval, the Commission recommends that the Governor and Council of State be permitted to delegate to any state agency the power to negotiate such classes of rental, lease, right-of-way, and easement transactions as the Governor and Council of State may think advisable.

Tenth Report: State Accounting and Disbursement

Because it pervades practically every phase and process of state government, fiscal administration has been a subject of major interest to all three Reorganization Commissions. The concern of the third Reorganization Commission has been solely with the accounting and disbursing functions—the procedures by which some $630,000,000 in public funds are annually paid out and accounted for by the 125 state agencies.

It is now the duty of the Director of the Budget to prescribe the accounting and disbursing procedures to be used by the various state agencies and institutions. The accounting system must not only provide data needed by the operating agencies for their own internal use. It must also provide prompt, accurate, and meaningful fiscal information to the Director of the Budget for use in preparing and administering the state budget, to the General Assembly for use in voting on appropriations, to the State Treasurer who is custodian of state funds, and to the State Auditor who must post-audit state receipts and expenditures.

While the requirement of periodic reports by the spending agencies to the State Budget Division imposes some degree of uniformity on the accounting systems used by the spending agencies, it is the conclusion of the Reorganization Commission that the State does not have a well-coordinated accounting system, capable of producing current and reliable financial information needed by the central fiscal agencies. The development of the accounting systems now used by the various agencies has been piecemeal and has been governed almost wholly by the needs of the individual agencies.

In the opinion of the Reorganization Commission,

> . . . the State needs a coordinated accounting system which is sufficiently uniform in basic respects that financial reports produced by similar agencies and activities for the use of central fiscal offices will not only reflect the financial activities of those agencies, but provide data which is validly comparable from one agency to another.

The Commission considered but rejected the idea of a central accounting office to carry on a large share of the accounting activities now performed by the operating agencies of the State, including the writing of most state checks. Said the Commission,

> For the present, we believe that the sounder approach is the more conservative one of attempting to improve our present decentralized accounting and disbursement systems to the greatest extent practicable.

This can be done, the Commission says, "without hiring large numbers of new state employees or imposing burdensome new requirements upon the operating agencies."

The Commission recommends the establishment of a small accounting section in the Budget Division of the Department of Administration to be staffed with two or three persons skilled in governmental accounting. It would be the duty of this section to design a coordinated state system of accounts, to help the state agencies improve their accounting systems and insofar as practicable to fit them to a statewide pattern which is uniform as to essentials, to develop a new and improved budget manual, to instruct state accounting personnel in their duties, and to determine how machine or electronic data processing can best be used in the state accounting and disbursing processes.

Eleventh Report: Water Resources Management

The proper administrative organization for the sound management of the State's water resources has been an increasingly important subject of executive and legislative study in recent years. With the phenomenal growth in water consumption by municipal, industrial, and agricultural users, it has become obvious that the development of a sound, practical, and coordinated water resources program is essential if the State is to get the full benefit of her abundant but not limitless supply of water.

The water problem is in fact a complex of many smaller problems: purity of water supplies for human consumption; pollution control; irrigation; flood control; research as to quantity, quality, and location of water supplies; water use policy; control and allocation of water supplies in times of drought; and navigation, recreation, and similar uses of water. No less than six state agencies and divisions of agencies have some share of direct responsibility for dealing with one or more aspects of the water problem.

Duplications of function between these agencies and divisions were largely eliminated in 1957, on recommendation of the second Reorganization Commission. While this realignment of function ended jurisdictional overlapping, it did little to bring about a unified water program, for the Commission did not take the ultimate step of proposing the consolidation of all water resource management responsibilities in a single agency where they could be treated as parts of a comprehended whole. The Commission did, however, ask the Board of

Water Commissioners to explore the possibilities of such a consolidation.

In response, the Board of Water Commissioners proposed to the third Reorganization Commission the consolidation in a single new Department of Water Resources of almost all of the water-related functions now assigned to the Department of Conservation and Development, the State Board of Health, the State Stream Sanitation Committee, and the Board of Water Commissioners; and the abolition of the latter two agencies.

The Reorganization Commission adopted this plan, except that it would retain the State Stream Sanitation Committee as an independent body until completion of the classification of all the streams in the State. Then the Committee would be dissolved and its duties be assumed by the Board of Water Resources, the governing body of the new Department. Responsibility for the administrative work of the State Stream Sanitation Committee, which is now performed by the State Board of Health, would be transferred to the Department of Water Resources immediately.

Consolidation of the water resource programs of the State in a single agency is essential, the Reorganization Commission maintains, if the State is to have a unified program for the conservation and development of its water resources, a program adequate to present needs and future demands.

As initially organized, the Department of Water Resources would embrace the water programs now conducted by the Board of Water Commissioners; the Division of Water Resources, Inlets, and Coastal Waterways and the Division of Mineral Resources of the Department of Conservation and Development; the Board of Conservation and Development; and the Division of Water Pollution Control of the State Board of Health. In addition, there would be in the Department of Water Resources a navigable waterways division to promote the development of the navigable waters of the State.

The supervision of public water supplies now performed by the State Board of Health and the wildlife and recreational aspects of the water program would not be brought into the new department.

A Director of Water Resources would administer the work of the Department in accordance with policies laid down by the seven-member Board of Water Commissioners, appointed by the Governor from the groups most directly affected by the Department's activities. The Director would be appointed by the Board with the approval of the Governor.

Proposals for Property Tax Legislation

by Henry W. Lewis
Assistant Director of the Institute of Government

Four commissions established under legislation enacted in 1957 have important things to say about the property tax—its present condition and its future in North Carolina. Three of these commissions have already made reports to the Governor for transmission to the 1959 General Assembly, and a fourth is expected to report shortly, perhaps before this article is printed.* It is the purpose of this article to summarize the recommendations of the four commissions touching upon the property tax and to point to the legislative proposals that may be anticipated with respect to it.

The Commission for the Study

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* The Commission to Study the Constitution of North Carolina had not made its report at the time this article was prepared. The official titles of the reports of the three commissions that had reported when the article was written are as follows: REPORT OF THE TAX STUDY COMMISSION OF THE STATE OF NORTH CAROLINA (referred to herein as TSC), REPORT OF THE MUNICIPAL GOVERNMENT STUDY COMMISSION OF THE STATE OF NORTH CAROLINA (processed edition used herein is referred to as MSC), and REPORT OF THE NORTH CAROLINA COMMITTEE FOR THE STUDY OF PUBLIC SCHOOL FINANCE (referred to herein as SFC). All were published in 1958. Issued simultaneously with TSC was A SUMMARY OF THE REPORT OF THE TAX STUDY COMMISSION OF THE STATE OF NORTH CAROLINA, 1958, by H. C. Stansbury, Director of the Department of Tax Research (referred to herein as Stansbury).

of the Revenue Structure of the State (usually called the Tax Study Commission) devotes the major portion of its report to the taxation of property; the other commissions deal with it as only one aspect—although an important one—of the problems they report on. Thus, this article is primarily a digest of the recommendations of the Tax Study Commission; nevertheless, the findings and recommendations of the other three commissions are discussed and summarized where pertinent.

The Report of the Tax Study Commission, released on October 24, 1958, notes that North Carolina has assumed responsibility for centralized financing of schools and roads to a degree unknown in most of her sister states, thereby shifting much of the financial burden from local units of government to the state itself. "So long as the present allocation of governmental responsibilities remains as it now is," the Tax Study Commission "recommends that there be no re-allocation of sources of tax revenue as between the State and local units." [TSC 17.]. And the Municipal Government and Public School Finance commissions take the same stand, adding that they consider the tax generally adequate and fair. [MSC 51a, 55; SFC 12-13.].

In addition, the Tax Study Commission expresses the belief that taxes on property (other than on intangibles) are better fitted for local administration than most taxes, a point concurred in by the Municipal Government Study Commission. [MSC 63-64.]. The Tax Study Commission further feels that the assessing of property (other than that now assessed by the State Board of Assessment) and the fixing of rates necessary to produce the money needed to finance local governmental obligations are local rather than state functions and should remain so.

Property Tax as a Source of Revenue

Property taxation is one of the oldest revenue sources known to North Carolina government, both at the state level and at the local level. The Tax Study Commission's report notes that as new sources of tax revenue have been tapped to finance responsibilities assumed by the state, the General Assembly has tended to drop taxes on property as a source of state revenue, leaving them for use by local governments. While the state imposes and collects taxes on certain items of intangible personal property, the net revenue collected is returned to the counties and municipalities. Today the local units alone impose taxes on real property and tangible personal property.

The Municipal Government Study Commission points out that in 1955 the property tax accounted for about 27% of all state and local tax revenues in North Carolina as compared with about 46% in the average state. "On a per capita basis the difference is even more marked. Property tax rates in North Carolina cities, based on full market valuation, probably average about $.55 per $100 valuation. Rates of $2.00 and $3.00 in other cities throughout the nation are not uncommon. . . ." [MSC 53-55.]. That same commission's studies indicated that, "relatively, the use of the property tax by North Carolina municipalities has been declining, and that income from other sources has been increasing relatively more rapidly. Among all municipalities of the State, the property tax accounted for about 67% of all *general* revenues in 1950. By 1957, the property tax was producing only 57% of all *general* revenues of municipalities. . . . Total property tax levies . . . increased during this period, but not as much as receipts from other sources. . . ." [MSC 55. Italics added.].

In the same vein, the Public School Finance Study Commission states, "it should be noted that the principal source of school revenue available to the counties, and the only source available to the districts, is the ad valorem property tax. Since 1939-40, ad valorem taxes have carried a generally decreasing portion of the total tax burden. Revenues from this source have not increased so rapidly as revenues from other sources. . . . Our general property tax is relatively light in comparison with corresponding taxes in most other states. In 1953, we ranked 38th from the top in the percentage of the state and local revenue derived from property taxes, 38th in the amount of property taxes in relation to personal income, and 46th in the percentage of total revenue for schools derived from these taxes. . . ." [SFC 8, 13.].

These findings, however, do not conflict with the finding of the Tax Study Commission that the property taxes (including the state-collected tax on certain intangibles) furnished 90% of all local *tax* revenue, including the local portion of shared state taxes, during the 1956-57 fiscal year. Nor do they refute the statement that, "The local property tax provided 96% of the revenue from *taxes* levied by the local governments themselves." [TSC 3. Italics added.].

Property Taxes as Part of Total Tax Load

The Tax Study Commission's report does not concern itself in detail with the property tax's share of the total tax burden being carried by North Carolinians, but both the School Finance and Municipal Government commis-

sions comment on the matter:

"We should point out," says the Municipal Commission's report, "that while property taxes are relatively lower in North Carolina than in other states, individual and corporate income taxes and gasoline taxes are relatively higher here than in other states. Furthermore, the total state and local tax burden in North Carolina, measured by comparing per capita state and local taxes with per capita income, is somewhat higher than in the average state. Thus, any increase in taxes, state or local, will increase the already relatively high proportion of income expended for taxes. . . ." [MSC 55.].

"Money for the schools," says the report of the commission dealing with that subject, "must come largely from taxes. During the last three decades, taxes of the state government in North Carolina have increased far more than local taxes. Indeed, expressed in dollars of the same purchasing power, our local taxes per capita have not risen at all above the level of 1928-29; they have even fallen a little. While the total amounts of state and local taxes have risen substantially, the growth of the economy has outstripped them both since 1939-40. Thus, the total of state taxes as a percentage of personal income was lower in 1956-57 than in 1939-40. Local taxes in relation to personal income were lower in 1956-57 than in 1928-29 or in 1939-40." [SFC 6.].

Classification

The Tax Study Commission points out the way in which the North Carolina Constitution authorizes classification of property for tax purposes, permitting different treatment for different classes, but requiring uniform treatment of all property within a given class. In only one major instance did the Commission find that the General Assembly has consciously exercised its classification power: It has classified the most common types of intangible personal property, as already pointed out, and provided for their taxation in a special way. All other property, unless exempted from taxation, falls into a single class and, under the constitutional rule, is to be assessed and taxed within each county and municipality in a uniform manner. By statute the General Assembly requires that all property other than classified intangibles must be assessed by county officials at true market value and taxed at uniform rates by the local units of the state.

State-Collected Intangibles Tax

With respect to the state-administered Intangibles Tax, the Tax Study Commission stresses two points:

(1) This tax is as much a levy on *property* as are the taxes directly imposed by counties and cities on real and tangible personal property, and

(2) The Constitution's requirement of uniformity applies with as much force to the Intangibles Tax as it does to the locally-administered taxes on property.

After outlining a series of objectives with respect to the breadth, uniformity, and stability of the base for all property taxation, the Tax Study Commission recommends that the General Assembly not permit any form of local option with respect to application of the Intangibles Tax.

Lack of Uniformity

Turning its attention to the taxation of property by local units, the Tax Study Commission found that the constitutional requirement of uniformity is not widely observed; it also found that the statutory requirement of full value assessment is almost universally ignored:

"This disregard is evidenced . . .

—by the admitted application of a percentage less than 100 to the appraised full value in arriving at the assessed value of real estate in making general reassessments,

—by the conscious assessment of certain types of personal property at less than the listed value, and

—by the fact that in 66 counties in which a survey of recently transferred real estate was conducted the average ratio of tax value to sale price was 36 per cent, with the highest county average ratio being 72 per cent." [Stansbury 4.].

Uniformity is damaged by the unauthorized classification of property brought about when different standards of assessment are applied to various items locally taxable, all of which remain in the same class. Thus, "In examining the answers supplied by county tax supervisors of 81 counties to a questionnaire sent out by the [Tax Study] Commission, it was learned that only eight of these counties have a definite policy aimed at equalizing the assessment of all six of the types of property covered by this analysis. Each of the remaining 73 counties apply assessment standards which result in at least two different assessment ratios. In many of the counties it is official policy to apply percentages less than 100 to market value of property in determining the assessed value. In most of these counties different percentages are applied to different types of property such as real estate, merchants' inventories, manufacturers' inventories, machinery and automobiles. For example, one county assesses merchants' inventories at 60 per cent of book value and manufacturers' inventories at 30 per cent of book

value. Another county assesses all inventories at 60 per cent of book value except finished goods inventories which are assessed at 20 per cent of book value. Automobiles are frequently assessed at a higher percentage of market value than other types of property and real estate is frequently assessed at percentages of market value below that of most other types of property." [Stansbury 5.].

The uniformity standard also suffers when exemption is granted property not entitled to exemption under the terms of the Constitution. And lack of uniformity is further aggravated, the Commission found, by the failure of counties to revalue real property at reasonable intervals.

Effect of Improper Exemptions and Assessment Ratios

The Tax Study Commission recognizes that, looked at one-by-one, unconstitutional exemptions and improper assessment differentials may seem small—even desirable in isolated instances—but their cumulative effect in a given county can be substantial in terms of total revenue and in terms of total tax bills paid by individuals. The constitutional standard requires uniformity of treatment, and the Commission points out that when that standard is undermined, owners of property not given preferential treatment are forced to bear a disproportionate share of the costs of government. Variations in ratios of assessed value to true value within individual counties mean that some property owners are paying more than their fair share of the tax load while others are paying less. In addition, the Tax Study Commission's report shows that the same practices that produce *inequity* lead to *ineffectiveness* in the property tax:

> A tax base shot through with exclusions and unconstitutional exemptions, and pared down by reduced assessment and rate differentials, makes a poor major source of governmental revenue. A property tax can be equitable and effective only if the base against which it is applied is broad, uniform, and stable. [TSC 17-18.].

Need for Realistic Assessments and Uniform Tax Base

After familiarizing themselves with the major financial problems of the counties and municipalities, the members of the Tax Study Commission reached the conclusion that more realistic assessments are needed in many counties to improve the marketability of county and municipal bonds and, thereby, to reduce the cost of borrowing. The report of that commission also makes the point that the growing tendency to secure enactment of local laws exempting particular properties or classifying them for preferential treatment in particular localities brings on undesirable competition among counties and places an increasing burden on individuals and properties not singled out for favored treatment. The Municipal Government and Public School Finance Study commissions reach the same conclusions, and there is reason to believe that the Constitutional Study Commission does also. [MSC 63; SFC 8; TSC 15.].

Policy Objectives and Specific Recommendations

The Tax Study Commission proposes three major policy objectives and makes specific recommendations for action by the legislature and local taxing authorities with respect to each objective. They are summarized below, together with pertinent recommendations of the other study commissions bearing on the same points.

1. *The property tax base should be as BROAD and INCLUSIVE as possible.*

If the property tax is to serve most effectively as a source of revenue for local governments it must be applied fairly and equitably in each taxing unit to as many items and classes of property as can be justified. Exemptions should be limited to those specifically allowed by the Constitution, and exclusions from the tax base, as distinguished from exemptions, should be granted with great caution and only by the General Assembly itself.

Specifically, the Tax Study Commission recommends that the General Assembly repeal all exemptions concerning local taxation of property that do not fall within the list authorized by the Constitution. The Municipal Government Study Commission endorses this statement of policy and the specific recommendation; and so does the Public School Finance Study Commission. [MSC 67-68; SFC 8.].

2. *The property tax base should be UNIFORM throughout the state.*

The Tax Study Commission found there is considerable doubt about whether the present language of the North Carolina Constitution restricts the exemption and classification powers to exercise by the General Assembly alone on a state-wide basis. That commission is of the opinion that regardless of the taxing unit in which an item of property happens to be situated, its tax status should be the same; it should be taxable in every county or exempt in every county. All classifications of property for tax purposes, all exclusions from the tax base, and all exemptions should apply uniformly throughout the state. The

General Assembly should not be empowered to delegate to counties and municipalities its power to exempt, classify, or exclude property from the tax base; such decisions, in the Tax Study Commission's view, should be made by the legislature itself for the state as a whole.

Specifically, the Tax Study Commission recommends that the Constitution be amended to remove any doubt that the powers to grant exemptions and to classify property for taxation must be exercised on a state-wide basis only and that they are not to be delegated to local units of government. The Municipal Government Study Commission specifically concurs in this recommendation, and the report of the Public School Finance Study Commission indicates agreement in the desired result. [MSC 67-68; SFC 8.]. In a statement prepared for distribution at the "briefing sessions" for members of the General Assembly held before Christmas at several points throughout the state, the Constitutional Study Commission stated that its recommendations "are expected to coincide largely with those of the Tax Study Commission. They are directed toward insuring that the powers of the General Assembly to classify subjects for and exempt subjects from taxation shall be exercised only on a state-wide basis. In addition, it is the intention of the [Constitutional Study] Commission's proposals to insure that neither of these powers be delegated to local taxing units. In this manner, it is hoped that the property tax base will be given both breadth and uniformity." In line with this, it is understood that the Constitutional Study Commission has tentatively decided to propose changes in constitutional phraseology identical with those suggested by the Tax Study Commission. [TSC 37.].

3. ***The property tax base should be STABLE throughout the state.***

The real and personal property assessments against which local units apply their tax rates should be reasonably current and dependable. The Tax Study Commission's report stresses the fact that revaluation of real property should be made a matter of established routine in every county and that postponement beyond fixed reassessment years should not be permitted. All legislation concerning revaluations should be uniform both in substance and in application throughout the state, and, in that commission's view, such uniformity cannot be obtained by delegating legislative authority in this field to local units of government. Finally, the Tax Study Commission says that the financing of real property revaluations should be placed on a permanent and fixed basis in all counties through uniform state-wide legislation. The Commission makes it clear, however, that it recommends no change in the existing allocation of responsibility for assessing property and for fixing rates for local taxation. With these objectives the Municipal Government Study Commission finds itself in complete agreement, and the School Finance Study Committee seems to say the same thing. [MSC 67-68; SFC 8.].

In the interests of stabilizing the tax base the Tax Study Commission makes the following specific recommendations, all of which are concurred in by the Municipal Government Study Commission except as indicated:

A. *Assessment ratios:* The present law's requirement of full market value assessment should be deleted and, in its place, there should be inserted authority for each county to determine—in a revaluation year—the percentage of market value at which it will uniformly assess all property for taxation until the next fixed revaluation. Annually this percentage would be recorded in the minutes of the board of county commissioners and reported to the State Board of Assessment. On this point the Tax Study Commission's view is that making the ratio a matter of public record will not only enable each taxpayer "to ascertain the percentage of market value at which his property is being assessed," but that it will also "provide a legal status to the percentage to the end that taxpayers [will] be able to rely upon it in appealing assessments to appeal boards and to the courts. The recommendation that the percentage of market value at which property is to be assessed be reported to the State Board of Assessment is made by the Commission in order to provide the State Board of Assessment with official information which the Board may use in assessing certain properties of public utilities, such as rolling stock, and rights-of-way of railroads, and in the performance of its other duties." [Stansbury 4.].

This recommendation of the Tax Study Commission ties in closely with a proposal made by the Public School Finance Study Commission as part of its plan for establishing an incentive plan to aid in financing the schools. "The proposed incentive plan makes the payment of a part of the state government's support of the public schools dependent upon a matching contribution by the counties in accordance with their economic ability. It should take into account the number of pupils and the taxable resources in those counties. The State Board of Education regularly determines the number of pupils. For comparable measurement of the taxable resources of the several counties, however, a step not now a part of

established procedure is necessary. Since ad valorem taxes are the chief source of county school funds, the assessed valuations of the counties must be expressed in some common denominator for valid comparison of one county with another. This may be illustrated by the simplified case of two counties assumed to have identical assessed valuations of $20 million. If one county normally assessed property for taxation at 33⅓ per cent of market value and the other at 50 per cent, a common denominator expressed in the total market values of $60 million and $40 million would provide a better measure of the taxable capacity of the two counties than their $20 million of assessed valuation." With this explanation the Public School Finance Study Commission recommends "that the State Board of Assessment be directed and empowered to prepare each year a table of equalized valuations, approximating as nearly as may be to market values, to be used by the State Board of Education in determining the matching contributions by the counties which will entitle them to incentive funds from the State. When the equalized valuations have been determined, the County Commissioners in each county should be notified and given an opportunity to be heard by the State Board of Assessment." [SFC 9-10.].

With the Tax Study Commission's specific recommendation that counties be left free to pick their own assessment ratios, the Municipal Government Study Commission takes exception and makes the following comment:

"The establishment of exceedingly low assessment ratios by counties has been the source of great difficulty to the municipalities of the State. A number of cities find it difficult to raise adequate revenues within the statutory tax rate limits because of the low assessment ratios. Similarly, the debt picture in other municipalities appears to be most unfavorable because of low valuations. . . .

"We think that the [present Machinery Act] requirement for assessment at true market value is proper and believe that this requirement should be retained and enforced. We do not subscribe to the policy of bringing the statutes into line with common practices. On the contrary, we think that these long-standing practices should be terminated by putting teeth into the law.

"Our study indicates that an assessment ratio of at least 55 per cent of true market value is needed if municipalities are to have sufficient flexibility in the use of property tax revenues. Therefore, we recommend:

"*That if counties are to be given the authority to establish their own assessment ratios, the ratios so established should not be permitted to be less than 55 per cent of true market value.*

"To allow lower assessment ratios is to imperil the financial health of some of our municipalities." [MSC (as revised for printing) 69.].

B. *Standards for revaluation:* The General Assembly should prescribe minimum standards for real property revaluations, including requirements that each parcel being valued be visited by competent appraisers, that all real property be appraised according to written schedules of value prepared prior to the appraisal, and that records be maintained in sufficient detail to enable owners to ascertain the method by which properties were valued.

C. *Time for revaluation:* Since, in the Tax Study Commission's view, the breadth, uniformity, and stability of the tax base are largely governed by the consistency with which counties adhere to a firm policy with respect to the revaluation of real property by actual appraisal, and since the Commission feels that periodic revaluation of real property is more suitable for North Carolina counties than annual or continuous reappraisal, the following plan is proposed.

(1) All counties should be required to arrange to revalue real property by actual appraisal so that not more than eight years shall elapse between revaluations. Initially, the General Assembly should fix a schedule for these revaluations staggered to take into consideration the recency of each county's last revaluation, the ability of counties to finance revaluations, and the probable availability of competent assessing personnel. To this the Public School Finance Committee gives its endorsement in these words: "A revaluation of taxable property in most instances would furnish a basis for more effective support of local governmental services, including the schools. Moreover, revaluation at regular intervals, as recommended by the [Tax Study] Commission, would make the administration of the tax more equitable." [SFC 8.]. While the Municipal Government Study Commission finds itself in agreement with this part of the Tax Study Commission's plan, it would go further: ". . . [I]n light of the past practices of some counties," it recommends: "*That more effective measures be enacted to insure that revaluations are made when they are scheduled.*" [MSC 68.].

(2) In the fourth year following revaluation by actual appraisal each county should be required to make whatever revisions are needed to bring its appraisal values into line with current market value, such revisions to be made by horizontal adjustments rather than by actual appraisal. To the appraisal values thus revised each county should, for tax purposes, be required to apply the

same assessment ratio it used at its last revaluation by actual appraisal.

(3) The present Machinery Act listing of the special circumstances in which specific parcels of real property are to be revalued in non-revaluation years should be left unchanged.

D. *Paying for revaluations:* The permanent financing of revaluations by actual appraisal should be made secure by enacting laws declaring real property revaluation and tax mapping to "special purposes" for which counties may levy a tax in excess of the constitutional limit of 20c on the $100 of assessed valuation for general purposes. Under this authority each county should be required by law to levy annually a tax which—when added to other available funds—is calculated to produce, by accumulation during the period between required revaluations, sufficient money to pay for revaluation of real property by actual visitation and appraisal. All funds raised and set aside for this purpose should be earmarked and not be available for other uses; and any unexpended balance remaining in the earmarked fund following a required revaluation should be retained in that fund for use in financing the next periodic revaluation by actual appraisal.

Commission on the Study of Nursing Homes And Homes for the Aged Makes Recommendations

by Roddey M. Ligon, Jr.
Assistant Director of the Institute of Government

The 1957 General Assembly adopted a resolution providing for the appointment of a Commission by the Governor for the purpose of making a study of the operations and licensing of nursing homes, convalescent homes, boarding homes and homes for the aged and submitting recommendations with respect to a revision of the laws governing the licensing and supervision of such homes. The Governor appointed the following persons to this Commission: Mr. Frank R. Hutton, chairman; Mr. Willard Farrow, secretary; Mrs. L. E. Barnes; Mr. Paul Butler; Mr. Kern E. Church; Dr Ellen Winston; Mr. James H. Clark; and Mr. Eugene Shaw.

In September, 1958, this Commission filed its report with the Governor. After noting the outstanding progress that North Carolina has made in developing the quantity and quality of services available for the aged and infirm outside of their own homes, the Commission recommended the following:

(1) Provision, through necessary appropriations, for adequate staff in the Insurance Department, Medical Care Commission, State Board of Health, and State Board of Public Welfare to carry out their legal responsibilities in the fields of nursing and boarding home care for adults.

(2) Continuation, with resulting economics in administration, of full utilization by the licensing agencies of appropriate resources of other State agencies or development of a plan for use of such resources where it does not now exist.

(3) Any necessary revision of existing licensing standards by the Medical Care Commission to guarantee "continuing planned medical and skilled nursing care," and by the State Board of Public Welfare to guarantee "care of aged and infirm persons whose principal need is a home with such custodial and sheltered care as their age and infirmities require," as provided for in G.S. 131-126.1. Moreover, there should be continuing study and any necessary revisions of the standards in these areas by the Insurance Department and the State Board of Health.

(4) Careful attention to more restricted use of the terms "nursing homes" and "patients" to homes providing truly skilled nursing service under continuing medical supervision. The Commission felt that this would not only encourage development of professional health services but would also clarify the purposes of and services rendered by the much larger number of boarding and rest homes which serve residents who can no longer maintain their own homes.

(5) Amending G.S. 108-3(15) to require all homes serving the aged and infirm to be licensed by the State Board of Public Welfare and to make the operation of such a home without a license a misdemeanor. Under existing law the licensing of such homes is permissive except for those which care for two or more persons who obtain services from the county public welfare department or are supported in whole or in part by public welfare funds.

Report of the Municipal Government Study Commission

This article was adopted from the Summary of The Report of The Municipal Government Study Commission by Mrs. Annette Anderson, Research Associate, Institute of Government.

The Municipal Government Study Commission, authorized under the provisions of Resolution 51 of the 1957 General Assembly, was established to determine the legislative changes needed if municipalities in North Carolina are to provide for "orderly growth, expansion and sound development." The Commission found that legislative changes are needed—now.

The studies which led to the decision that changes are needed in legislation affecting the powers and authority available to municipalities in North Carolina covered two major areas: definition of the problem of future urban development in North Carolina and analysis of the ability of cities and towns to finance adequate municipal services to meet the problems of growth.

In order to define the problems of future urban development most accurately the following information was developed:

1. An analysis of the population growth that could be anticipated in our cities during the next twenty years in relation to the estimated population growth in the state as a whole.
2. An analysis of the governmental services that are considered to be essential in urban areas, whether or not such areas are located within incorporated municipalities.
3. An analysis of the problems that arise when adequate municipal services are not made available in urban areas when and where they are needed.
4. An analysis of the methods by which local governments may anticipate and prevent these problems.

Since ability to finance extension of adequate urban services is essential to provide for "orderly growth, expansion and sound development" of cities and towns, the following financial studies were undertaken:

1. A general examination of the municipal revenue and expenditure pattern in North Carolina based on information available from state agencies and from brief supplementary questionnaires submitted to all cities in the state.
2. An intensive study of 22 cities representative of North Carolina municipalities with respect to size, population, geographical location, economic activity, property valuation, and rate of growth.
3. A general analysis of the municipal tax and revenue structure in North Carolina in comparison with the municipal tax and revenue structure in other states.

Population Patterns

North Carolina is becoming an urban state. Industrial development is making it a state of cities and towns, not just a state of farms. In 1930 only one North Carolinian in every three lived in a city or town. Today more than four out of ten live in cities and towns.

It is estimated that in just twenty years, six out of every ten people will live in and around cities and towns. Between now and 1980 one and a half million people will be living in and around the cities of this state. Why?

The answer is simple. North Carolina is moving from an agricultural to an industrial economy. Industry locates where there are good transportation facilities, an available labor force, access to markets and to raw materials, plentiful electric power, ample

TABLE 1—North Carolina Municipal Population: 1930-1957

Total State Population	1930	1940	1950	1957
(000)	3,170	3,572	4,062	4,469
Total Municipal Population (000)	1,071	1,246	1,521	1,881
Percent Municipal Population of Total State Population	33.8	34.9	37.4	42.1
Population in Places over 10,000 (000)	593	740	952	1,239
Percent Total State Population in Places over 10,000	18.7	20.7	23.4	27.7

Note: Populations are those reported by the Census except for 1957 which are estimates, and cover all municipalities with active governments as of 1957. The State's municipal population is growing at an increasing rate. Between 1930 and 1940 the increase was 16 percent; between 1940 and 1950 it was 22 percent; and between 1950 and 1957 it is estimated at 23 percent.

supplies of water, waste disposal facilities, a fair tax structure, and an attractive and livable community. All of these factors are most likely found in cities and towns. And if industry moves to rural areas, soon new homes and stores and community facilities spring up to create new urban areas. In short, urban development is the inevitable consequence of industrial development.

Consider the probable impact of this urban development in just one area. The four-county area surrounding Winston-Salem, Greensboro, High Point, Thomasville and Lexington had a population of about 450,000 in 1950. Conservative estimates indicate that the same four-county area will have a population of between 900,000 and one million in 1980. What will this area look like in 1980? Will it continue to be a pleasing combination of medium-sized cities and towns separated by stretches of beautiful farm and recreational land? Or will it become a sprawling urban area, that has gobbled up the open space in subdivisions, factories and stores? How can the city and county governments involved prepare themselves to handle this tremendous growth in population without sacrificing those features which make the area attractive to continued development today?

These are the questions which must be answered. The state welcomes industrial growth and urban development. But urban development creates problems just as surely as it produces benefits.

The Problem of Rapid Urban Growth

Rapidly growing urban areas can be pleasant places to live. But they can also be areas where sanitation is inadequate; where new buildings are fire traps; where streets are too narrow to carry essential traffic; where a helter-skelter combination of homes, stores, filling stations and industries produces "new" outlying slums as undesirable as the older downtown slums. Ideal industrial sites may be infiltrated by scattered substandard housing. The fringe area may block off desirable new development from the city, prevent needed extension of water and sewer facilities, and destroy the garden gateways to our cities.

North Carolina does not have to follow the pattern of other parts of the country and permit unsightly and substandard development to smother its cities and towns, to strangle its highways, and to mar the beauty of its rural areas. North Carolina can have good development, can increase its income, provide new jobs and new homes and new business, and still maintain its cities and towns—new and old—as good places in which to live.

The Key to a Solution

The key to the solution is simply to use our common sense, to look ahead, to anticipate our problems, and to take effective action to avoid them. In a word, we need effective community planning.

What is community planning? First of all, planning is and must be part of the governmental process. All through this state we must have:

Planning boards composed of representative citizens to study our communities; seek out their economic strengths and weaknesses; determine how many new people we can expect; anticipate the streets, sanitation facilities and water supplies needed to serve these people; recommend where new business and industry should locate; and see how effective governmental services can be provided.

Technically trained personnel to assist planning boards.

Far sighted city councils and boards of county commissioners to put plans into effect through subdivision ordinances, zoning ordinances, building regulations, street and utility extension policies, and capital improvement programs.

The job is not one for cites alone. It can be done only through the cooperation of cities, counties and the State of North Carolina, working together toward common goals.

Orderly Growth and Expansion —Recommendations

To make effective community planning possible, the Municipal Government Study Commission recommends that:

Cities and towns throughout the state place renewed emphasis on their planning programs.

Counties recognize the need for meeting the problems of rapid urban development in rural areas by putting planning programs into effect.

Cities and towns be given the necessary authority to enact and enforce regulations governing the subdivision of land.

Counties be given the necessary authority to enact subdivision regulations.

All counties be given the authority to adopt zoning ordinances; and since new development may concentrate in small areas rather than throughout the county, that counties have the authority to zone parts or all of the county, in the discretion of the board of commissioners.

Agricultural land be exempted from the effect of zoning ordinances.

Cities of over 2,500—because they have a special and essential interest in the development of land just outside their corporate boundaries — be given authority to zone for one mile beyond their corporate limits, with residents of the outside area being given representation on the planning boards which recommend zoning ordinances and the boards of adjustment which hear appeals in individual cases.

Cities of over 15,000 be authorized to contract with boards of county commissioners for extension of subdivision and zoning controls for distances greater than basic one-mile jurisdiction.

The state make extension of corporate boundaries a matter of state-wide policy through a new annexation procedure.

The Commission members believe that these recommendations, if enacted into law, will give local governments the necessary enabling authority to meet problems of urban development wherever they may arise.

Financing Municipal Government

The problems of financing cities are complex. Cities and towns are characterized by complicated utility and street systems which are essential to sound urban development. All land developed for urban purposes does not need municipal services, but all intensively-developed urban land must have them. If cities are to expand their services and their facilities to serve newly-developed land, they must have the revenues to do the job.

The Commission gave the municipal tax and revenue structure careful and exhaustive study. It discovered that:

Residents of municipalities are paying proportionately only one-half as much of their income for municipal taxes as they did in 1941 and the proportion is not now on the increase.

The property tax in North Carolina is relatively much less important as a source of state and local revenue than it is in other states.

Municipalities of all sizes throughout the state are maintaining an acceptable level of services under the present revenue system and seem able to continue to do so as they grow larger.

The use of special assessments and utility charges in many cities and towns is still below feasible and appropriate levels.

In short, the Commission concluded that the present municipal revenue system, based on the property tax and user charges, is both adequate to produce needed revenue and equitable in the manner in which it raises funds for municipal services — provided that it is properly administered.

The Property Tax—Recommendations

If cities and towns are to do their jobs properly, the present system must be strengthened. Therefore, the Municipal Government Study Commission recommends that:

The recommendations of the Tax Study Commission, designed to result in a more stable tax base and in equitable valuations on all types of property through limitations on exemptions and periodic revaluations, be enacted into law.

The General Assembly adopt measures to insure that re-

TABLE 3—North Carolina Municipal Tax Levies and Per Capita Income for Selected Years

Year	Municipal Population (1,000)	Total Tax Levies ($1,000)	Per Capita Tax Levies	Municipal Property Tax Levies ($1,000)	Per Capita Property Tax Levies	Per Capita Income	Per Capita Taxes as Percent of Per Capita Income	
							All Levies	Property
1940-41	1,197	$15,377	$12.85	$13,779	$11.51	$ 328	3.91	3.50
1950-51	1,522	34,438	22.63	29,433	19.34	1,009	2.24	1.92
1951-52	1,564	38,373	24.53	33,089	21.16	1,114	2.20	1.90
1952-53	1,587	41,308	26.03	35,805	22.56	1,149	2.27	1.96
1953-54	1,625	42,550	26.18	36,656	22.56	1,165	2.25	1.94
1954-55	1,658	43,773	26.40	38,150	23.01	1,173	2.25	1.96
1955-56	1,732	46,514	26.86	40,301	23.27	1,236	2.17	1.88

Source: *Statistics of Taxation*, State of North Carolina, Department of Tax Research, 1956.

Note: Municipal population estimated on basis of rate of growth of urban population for the State. Per capita income figures are averages for the State. Considering the components of the per capita income estimates, it appears likely that per capita income among urban residents is greater than the State average.

valuations are made when they are scheduled.

In order to stabilize the tax base of municipalities at a level sufficient to produce essential revenues, the General Assembly limit the authority of counties to establish their own assessment ratios so that the ratio established in any county shall not be less than 55 per cent.

Pending enactment of these recommendations, municipalities be authorized to levy ad valorem property taxes for certain major capital improvements without regard to the $1.50 statutory tax rate limit.

Financing Major Street Construction

Presently the state has responsibility for constructing and maintaining all extensions of the primary highway system inside corporate limits as well as all streets connecting the secondary highway system with the primary highway system.

Almost every city is faced with both immediate and future needs for new arterial streets capable of moving volumes of traffic into and out from major destinations inside the corporate limits. To meet these needs, the cities have suggested the desirability of new sources of revenue. Rather than allocate new sources of revenue to cities and towns for these purposes, the Commission members believe that it would be in the spirit of the present highway law and administratively more desirable if the State Highway Commission specifically assumed responsibility for such streets as a part of the state-wide highway system, where it has not already assumed such responsibility. That is, the Commission members believe it should be the responsibility of the state not only to move large volumes of traffic between urban areas but also to carry those volumes of traffic to their major destinations within urban areas, wherever those destinations may be. This would leave cities primarily responsible for local access streets necessary for moving residential and business traffic into the state system, a responsibility which can be equitably and adequately carried out from existing gasoline tax, property tax, and special assessment revenues.

Therefore, the Municipal Government Study Commission recommends that:

The General Assembly amend Chapter 136 of the General Statutes to provide that the State Highway Commission have responsibility for constructing and maintaining all streets and highways necessary to move large volumes of traffic efficiently and effectively from destinations outside the corporate limits of municipalities to all major destinations inside the corporate limits.

The State Highway Commission assume all responsibility for purchasing rights of way for the state-maintained highways, except that municipalities may retain the right, in their discretion, to help acquire rights of way for state highways inside their boundaries.

Fiscal Management

Finally, the Commission made some general recommendations concerning fiscal management of our cities and the availability of information on municipal finance.

The Commission recommends that our municipal governing boards make better use of available revenues through (a) more effective long-range planning for expansion and development of capital facilities; (b) periodic review of user charges and special assessment policies to insure that the municipality is not meeting from general revenues expenditures which should be borne by customers and benefitted property owners; and (c) more effective use of annual appropriations for capital improvements to supplement the use of bonds for such improvements so that the credit of our municipalities may be strengthened.

The Commission also recommends (a) that the General Assembly appropriate the necessary funds to permit the Director of Local Government to provide accounting assistance to cities and towns so that more accurate information on municipal finance will be available in each municipality; and (b) that the Department of Tax Research enlarge its annual reporting questionnaires for municipalities to obtain additional information on municipal finance throughout the State.

General Statutes Commission Program

by Thomas L. Young
Revisor of Statistics

At the present time, the General Statutes Commission is composed of: Mr. Robert F. Moseley, Chairman and an attorney of Greensboro who has served the Commission as its chairman since the beginning; Mr. Frank W. Hanft, vice-chairman and Professor of Law of the University of North Carolina School of Law; Mr. James H. Pou Bailey, attorney of Raleigh; Mr. Buxton Midgette, attorney of Jackson; Mr. E. C. Bryson, Professor of Law at Duke University School of Law; Mr. J. W. Hoyle, attorney of Sanford; Mr. E. K. Powe, attorney of Durham; Mr. James A. Webster, Professor of Law of the Wake Forest College School of Law; and Mr. R. G. Kittrell, Jr., attorney of Henderson. Mr. Thomas L. Young, Revisor of Statutes and a member of the staff of the Attorney General, serves the Commission as ex officio secretary.

During the biennium, the General Statutes Commission has approved sixteen bills for submission to the 1959 General Assembly, and is still considering the possibility of submitting several other matters which have not been approved as yet. A list of these bills with a brief explanatory note regarding the intended purpose and effect of each follows:

(1) AN ACT TO REWRITE THE INTESTATE SUCCESSION LAWS OF NORTH CAROLINA. Recognizing the great need for a general revision of certain portions of North Carolina's Intestate Succession Laws, the 1957 General Assembly provided the Commission with funds to finance a study of the State's inheritance laws and to draft legislation to cure the defects of that area of the law. The Commission appointed a committee of experts in the field of inheritance and intestate succession laws to make a study of the inadequacies, inequities and useless antiquities in the present North Carolina intestate succession laws, and to draft legislation to cure these defects found. Appointed to that committee were Professors of Law Frederick B. McCall of the University of North Carolina School of Law, Bryan Bolich of the Duke University School of Law, and Norman A. Wiggins of the Wake Forest College School of Law.

The committee carried out its assigned duties and reported back to the Commission at a special meeting called on September 26-27, 1958. Since that time, the Commission working closely with the committee has prepared a carefully worded and tightly drafted bill to rewrite the North Carolina Intestate Succession Laws. This work covered many days of concentrated study and drafting and to summarize the results of that work in a few words would be an impossible task. An exploration of the bill, complete with comments and examples of what the bill is designed to effect is in process of preparation by the committee, which explanation will be submitted to the General Assembly along with the bill when it is introduced.

Suffice it to say that this bill does not attempt to deal with administration of estates, wills, trusts, guardianships or any of the many related areas of the law, but in a few closely drafted paragraphs would establish one scheme of descent and distribution of both real and personal property, unlike the present law which provides separate, dissimilar schemes for the descent of real property and the distribution of personal property; and would spell out in clear detail the shares that those persons entitled to inherit shall receive from that property left by one dying without a will. In this connection, a particularly important aspect of this bill would be to provide a more adequate, fee simple share of both the real and personal property for the surviving husband or wife than has heretofore been provided under the antiquated doctrines of curtesy and dower, which would be abolished by this bill. In addition to these major changes to be effected, the Commission feels that the bill goes far toward correcting many other defects and inequities in the North Carolina intestate succession law and toward eliminating many of the unfortunate antiquities in this area of the law which although once worthwhile and justifiable are no longer needed or justified in our modern economy.

(2) AN ACT TO PROVIDE FOR THE CREATION OF AND TO LIMIT THE CONVEYANCE OF FAMILY HOMESITES. A companion bill to the proposed new intestate succession act, this suggested legislation is closely geared to the intestate succession act and is designed to enable any married person to convey his or her separately held real property free and clear of the other spouse, unless the property sought to be conveyed constitutes the family homesite, the place where the family lives. The bill would effect greater freedom of alienation of real property while at the same time protect the family from having the homeplace sold out from under it by the owning spouse as his or her whim might dictate. The bill is designed to replace the partial protection against this sort of thing heretofore provided by the estates of curtesy and dower, but goes further toward the protection of the family, and

would operate this way: either spouse who owns real property can sell it as he or she sees fit, upon the joinder of the other spouse in the conveyance; if the other spouse will not join in the conveyance the property can still be conveyed by obtaining an order from the clerk of superior court that the property to be conveyed does not lie within the homesite; if the clerk finds the property sought to be conveyed does lie within the homesite, he will so find and the property can not then be conveyed without joinder of the other spouse. Machinery is also provided to spell out procedures to be followed and to allow married persons or persons about to be married to enter into an agreement electing a principal homesite, so that thereafter the owning spouse may convey his or her realty without joinder and without resort to the clerk. This bill changes the present law which allows an owning husband to convey away any property, including the homeplace, subject only to the dower estate of his wife which would arise only on his death and which is of no present value to the family in protecting the place where it lives.

(3) AN ACT TO REWRITE THE STATUTES ON DISSENT FROM WILLS. This bill is also a companion bill to the proposed new intestate succession act and like the homesite statute is geared closely thereto. Whereas the right to dissent from the will of a deceased person now extends only to the widow, this bill would allow either a surviving husband or wife to dissent from the will and take an intestate share in the estate. Also, whereas the present dissent statutes contain no limitation on the right to dissent and would allow a dissenting spouse to completely frustrate a fair, equitable, well-thought-out testamentary scheme by dissenting therefrom, this bill would slightly limit the right of dissent to prevent such an unfortunate and unjustified result of the worthwhile right to dissent. In addition to these substantive changes, the dissent statutes are rewritten in more readable and less technical language, following the policy of the General Statutes Commission to make the General Statutes easily understandable by the lay-public, the bar and the bench.

(4) AN ACT TO AMEND CHAPTER 47 OF THE GENERAL STATUTES BY INSERTING THEREIN A NEW ARTICLE RELATING TO SHORT FORMS OF WARRANTY DEEDS, QUITCLAIM DEEDS AND REGISTRATION OF LEASES. In view of the high and increasing costs of recordation fees, in view of the increasing problem of housing real estate transfer records in many of our counties, and in response to an expression of interest by numerous members of the lay-public and the bar, the General Statutes Commission has drafted this bill to provide short statutory forms of deeds, quitclaim deeds and memoranda of leases. If used in substantially the form prescribed by the bill, these forms will be deemed to contain certain covenants and bear those incidents set out in the bill, without recitation of such covenants in the deed or memorandum of lease actually recorded. Forms of warranty deeds, quitclaim deeds and memoranda of leases are provided which are of sufficient flexibility as to cover substantially every situation and combination of parties involved in the conveyance of real property. Of course, the use of such forms as are prescribed is clearly made optional and there is no requirement that such forms be used to the exclusion of other forms sufficient at law. If this legislation is enacted, North Carolina will join the ranks of a number of other states which have heretofore provided for short form registration.

(5) AN ACT TO AMEND CHAPTER 55 OF THE NORTH CAROLINA GENERAL STATUTES. Since 1955, when the new Business Corporation Act was enacted by the General Assembly, various groups have proposed minor amendments to that act in the light of experience with its operation. Recognizing that such a large item of legislation, drafted to represent the best thinking in the field of business corporation law and borrowing from such a broad and diverse field of statutory sources must of necessity have some minor flaws and ambiguities which only come to light through experience with the law, the General Statutes Commission has taken these suggested amendments under advisement. During the past year, a committee of experts in this field, composed of Professors of Law E. R. Latty of the Duke University School of Law and M. S. Breckenridge of the University of North Carolina School of Law, was appointed by the Commission to study the proposed amendments and to work with the Revisor of Statutes in preparing legislation to effect needed changes. This has been done. As a result of careful study by the committee and the Revisor, suggested changes were submitted to the General Statutes Commission which scrutinized them closely and recommends their enactment as worthwhile. Needless to say, almost all of the suggested amendments to Chapter 55 are clarifying in nature, designed to remove ambiguities and uncertainties and to effect smoother reading and tighter drafting of the Business Corporation Act. The only real substantive changes in the law to be effected by this bill will be to allow preferred,

non-voting, shareholders to elect some directors in the event of default of payment of dividends for two or more years; and to allow a business corporation to change into a non-profit corporation or cooperative organization by amendment of its charter rather than by dissolution and reorganization as is required in the present act.

(6) AN ACT RELATING TO THE EXERCISE OF POWERS OF JOINT PERSONAL REPRESENTATIVES BY ONE OR MORE THAN ONE. When co-executors, co-administrators, or testamentary co-trustees are appointed, what either of such joint personal representatives can do individually and what they must do jointly often presents perplexing problems. This bill provides that if a will expressly makes provision for the execution of any of the powers of these personal representatives by one or all of them, the provisions of the will shall govern; but, if there is no will, or if the will is silent on the question, the personal representatives may agree that any one or more of them shall exercise any of certain specified powers enumerated in the bill. It should be noted that those powers which can be by agreement delegated to one or less than all of the joint personal representatives are in general those of a ministerial nature while those powers calling for the exercise of discretion are in general reserved to all the joint personal representatives acting together.

(7) AN ACT TO AMEND G. S. 24-2 SO AS TO MAKE ITS PROVISIONS APPLY WHERE A DEBTOR OR OTHER PERSON SEEKS EQUITABLE RELIEF. The General Statutes Commission has drafted this bill to amend G. S. 24-2 so as to overturn the present law which requires that the debtor tender the principal and legal interest in a suit to restrain foreclosure of a mortgage given to secure a usurious loan. It is felt that this requirement of tender of legal interest under usurious loan circumstances is inconsistent with the other North Carolina statutes dealing with usury which prohibit a greater rate of interest than 6% and which allow an injured person to sue for twice the usurious interest paid, since the creditor can escape the usury penalties by bringing foreclosure rather than sueing on the debt. It is true that the debtor can pay the usury and then sue under the statute to recover twice the interest paid, but not all debtors have money to do this. It is felt that there is no logical justification for this rule which thwarts the statutory policy of penalizing usury, and this bill is accordingly designed to change the rule by providing that in suits to restrain the foreclosure of mortgages given to secure usurious loans, no tender of principal or interest shall be required as a condition to the equitable relief sought.

(8) AN ACT TO PERMIT JOINDER OF THE PRINCIPAL DEBTOR AS A PARTY DEFENDANT WHEN A SURETY IS SUED BY A CREDITOR. Under the present law a surety is entitled to all the legal and equitable defenses of his principal provided they are connected with the debt sued on, but he may not take advantage of other defenses of the principal debtor unless the principal debtor is a party to the action. At present there is no provision of law which specifically permits the joinder of the principal debtor. This bill is designed to make it clear that when a surety is sued by the holder of an obligation, the court, on motion, may join the principal as an additional party, provided he is found to be or can be made subject to the jurisdiction of the court. On such joinder, the surety can then avail himself of all rights, defenses, counterclaims, and setoffs which would have been available to him if the principal and surety had been originally sued together.

(9) AN ACT TO AMEND CHAPTER 26 OF THE GENERAL STATUTES RELATING TO THE TRANSFER OF AN OBLIGATION TO THE PAYING SURETY. Under the present North Carolina law, contrary to that in other jurisdictions, when a surety pays the written obligation of the principal but fails to obtain an assignment of the obligation to some third party for his benefit, the surety is reduced to the position of a simple contract creditor of the principal and may only sue for reimbursement on the implied promise of the principal. This is based on the theory that by payment of the obligation without assignment for his benefit, the surety utterly exhausts the obligation both in law and equity. It is felt that this is a refined technicality of law, disregarding the equity of subrogation and amounts to a trap for unsuspecting paying sureties. Accordingly, the Commission has prepared this bill to provide that on payment of a principal's written obligation, the surety may sue the principal either for reimbursement or on the instrument and that no assignment for the surety's benefit is required.

(10) AN ACT TO AMEND CHAPTER 39 OF THE GENERAL STATUTES, ENTITLED "CONVEYANCES," SO AS TO DETERMINE THE RISK OF DESTRUCTION OR CONDEMNATION AS BETWEEN VENDOR AND PURCHASER OF REAL PROPERTY. Contrary to the general understanding, the majority rule, which would probably be followed in this State, is that where there is pending a purchase and sale of real property

and the buildings thereon are destroyed or otherwise taken without fault of either of the parties, the loss will fall on the one who is the "owner" at the time of the loss. Thus, if the negotiations have resulted in an enforceable contract to convey, the courts will consider the buyer as the owner even though he may not have received either title or right of possession. Since this theory is so foreign to common understanding, particularly where title as well as possession are to be delivered in the future, it is felt that the better rule would place the risk of loss on the seller until either title or possession is transferred to the purchaser. This bill to effect this theory follows the Uniform Vendor and Purchaser Risk Act, heretofore adopted by six states and provides: where neither title nor possession has been transferred and all or a material part of the subject matter of the contract is destroyed or taken without fault of the buyer, the seller cannot enforce the contract and the buyer can recover back anything he might have paid on the price; but where either title or possession has been transferred, the purchaser is not relieved of the contract by reason of the destruction or taking of all or a material part without fault of the seller.

(11) AN ACT TO AMEND ARTICLE I OF CHAPTER 45 OF THE GENERAL STATUTES SO AS TO ESTABLISH THE RIGHT OF INSTALLMENT BUYERS UNDER CONDITIONAL SALES AND PURCHASE MONEY CHATTEL MORTGAGES TO POSSESSION BEFORE DEFAULT. Contrary to popular conception, the law in this State is that where a chattel is bought and sold and all or part of the purchase price is to be paid by installments, secured by conditional sale or purchase money chattel mortgage, the seller by virtue of the security instrument holds the title to the goods and along with it the right to possession both before and after default. This is entirely out of accord with the understanding and practice of the business economy. This bill brings the law into accord with the business practice and common understanding by providing that where an installment sale is secured by a conditional sale, purchase money chattel mortgage, or similar security, and possession is by consent placed in the buyer, it shall be deemed to be the intention of the parties, in the absence of express agreement to the contrary, that the buyer shall be entitled to retain possession until default. The bill in no way interferes with the security of the vendor.

(12) AN ACT TO AMEND G. S. 47-18 SO AS TO MAKE IT CORRESPOND WITH G. S. 47-20 AND G. S. 47-20.1 WITH REGARD TO LIEN CREDITORS AND PLACE OF REGISTRATION. The sole purpose of this bill is to cause G. S. 47-18 to conform in language to G. S. 47-20 and G. S. 47-20.1, for the sake of uniformity. No substantive change in the law is effected thereby.

(13) AN ACT TO AMEND CHAPTER 1 OF THE GENERAL STATUTES SO AS TO STATE THE EFFECT ON A COUNTERCLAIM OF THE GRANTING OF A NONSUIT AS TO THE PLAINTIFF'S CAUSE OF ACTION. North Carolina cases hold that when the defendant, at the close of the plaintiff's evidence, moves for judgment dismissing the plaintiff's action as nonsuit, he in effect submits to a voluntary nonsuit on his own counterclaim. This results in penalizing a defendant who has a valid counterclaim because the plaintiff had a poor cause of action and compels him to either try out the plaintiff's poor cause or move himself out of court on his own valid cause. It would appear that once the defendant has been brought into court, and has gone to the trouble and expense of defending plaintiff's action, he has some equitable right to have his claims in the matter determined regardless of the validity of the plaintiff's claims and without bringing a new action. This bill would give effect to this hypothesis by overturning the present rule and providing that defendant's motion for dismissal as of nonsuit as to plaintiff's cause of action shall not amount to the taking of a voluntary nonsuit as to any counterclaims he may have been permitted to plead.

(14) AN ACT TO AMEND G. S. 108-30.1 RELATING TO ACTIONS TO FORECLOSE OLD AGE ASSISTANCE LIENS. Whereas there is presently much confusion throughout the State as to the proper manner in which old age assistance liens should be enforced, this bill lays such confusion at rest by providing a uniform procedure by which these liens shall be enforced, namely by foreclosure and judicial sale, and in addition spells out how the proceeds of the sale shall be applied.

(15) AN ACT TO AMEND SECTION 391 OF CHAPTER 14 OF THE GENERAL STATUTES. As now written, G. S. 14-391, dealing with criminal penalties for usurious loans on household and kitchen furniture and assignment of wages, is unclear in meaning and confusing in terminology. This bill is designed to correct these defects by amendments to the language of the statute, and by making specific how this statute ties-in with the provisions of G. S. 24-2, which provides a civil remedy from usury.

(16) OMNIBUS BILL. This bill provides for several changes of minor importance in miscellaneous non-related statutes.

Recommendations of the North Carolina Committee for the Study of Public School Finance

by Corydon P. Spruill
Executive Director, North Carolina Committee for the Study of Public School Finance

The North Carolina Committee for the Study of Public School Finance was created by the 1957 General Assembly "to study any and all problems involved in the financing of public schools in this State, including vocational education, and to study particularly the methods of public school financing to the end that a better public school system may be developed for North Carolina."

The Governor appointed the following persons to the Committee: Mr. O. Arthur Kirkman, High Point, Chairman; Mr. L. Stacy Weaver, Fayetteville, Vice-Chairman; Mr. Faison W. McGowen, Kenansville, Secretary; Mr. Lloyd C. Amos, Greensboro; Mr. H. Clifton Blue, Aberdeen; Mr. Cecil W. Gilchrist, Charlotte; Mrs. Charles E. Graham, Linwood; Mr. Watts Hill, Jr., Durham; and Mr. H. A. Mattox, Murphy. Mr. Corydon P. Spruill, Chapel Hill, has served the Committee as executive director.

The Committee filed its report with the Governor on November 1, 1958. In its report the Committee takes the position that increased financial support of the public schools is essential now and that further increases will be needed in the future.

The report states that there should be no reduction in the financial responsibility of the state government for the schools and that both the state and local governments should provide increased support, with counties and districts continuing to pay for the construction of school buildings as at present.

The Committee recommends an incentive plan by which the State would provide state funds to encourage additions to local supplements. Acceptance of the plan would be strictly optional with the counties. By providing additional local funds in accordance with their economic ability, the counties would obtain up to ten million dollars from the State in addition to any other appropriation.

It is the position of the Committee that the present plan of school support is a fair and equitable basis for a more adequate program and it recommends that there be no reduction in the responsibility of the State or replacement of State support by support from any other unit of government. Increased State support of the public schools will require additions to the State's revenues from present and new sources and the ad valorem property tax, which is the main source of local support of the schools, can provide greater support at the local level.

Senator O. Arthur Kirkman, Chairman of the Committee, stated that "while there are school problems which money will not solve, it is equally true that some inherent problems in the schools cannot be solved without more money. Money for the schools must come largely from taxes. In spite of notable efforts to date, North Carolina's schools in some respects have a low position among the schools of the nation. In 1957-58 we had more pupils enrolled per classroom teacher than forty-three of the states. Our current expenditure per pupil in 1956-57 was the lowest of all but three of the states."

As to policy and procedure the Committee recommends: (1) That the State continue to collect money where it is and spend it where the children are. Our present plan of school support for current expense from State funds provides that the State shall collect the money throughout North Carolina on a uniform tax basis and distribute these funds to the children on an equal basis. (2) That provisions for local support be liberalized. Liberalization could be accomplished by amending the School Machinery Act to authorize the County Commissioners to levy taxes for the purpose of supplementing any item in the county-wide current expense budget at their discretion. (3) That districts retain the right to supplement further the current expense funds available to the schools by vote of the people. (4) That there be established a State incentive fund of approximately $10,000,000 per annum to be used in a way which will encourage additions to local school supplements. This could be disbursed as a supplemental fund, subject to the condition that it be paid to the counties by the State Board of Education in accordance with a proposed plan which the Committee's report outlines in full. The proposed incentive plan makes the payment of this part of the state government's support ($10,000,000) of the public schools dependent upon a matching contribution by the counties in accordance with their economic ability. Where a county exercises its option to match dollars the

range of its contribution could be, according to the Committee's calculations, from ten dollars of local funds for ten from the State to below two dollars of local funds for ten from the State. Table 9 of the Report shows in detail how the incentive plan would work in relation to each county.

In general, the Committee recommends that the State levy sufficient taxes to furnish the additional revenue needed to provide the proposed State incentive funds and other necessary school support.

As to sources of revenues, the Committee calls attention to current analyses which show that the corporation income tax in North Carolina is heavier than similar taxes in most other states. North Carolina's individual income tax, also, is relatively heavy and no increase of the state income taxes is recommended. The Committee does recommend study and consideration of adoption by North Carolina of withholding under the individual income tax.

North Carolina's collections per capita from both the individual income tax and the corporation income tax in 1956-57 were substantially greater than the average of all the states. The average of all the states was $9.39 per capita as against North Carolina's $12.00. The amount of corporation net income taxes per capita nationwide was $5.91 and for North Carolina was $10.35.

The report states that while the ad valorem property tax is less burdensome in North Carolina than in most other states, and can be made to provide more revenue, it will be needed by the local governments to meet their increasing responsibilities and the Committee recommends that the exclusive use of this tax by the local governments to be continued. The Committee concludes that "It is reassuring to note that for the foreseeable future most local governments in North Carolina will be able to meet large and growing obligations, using the general property tax as the main source of revenue. Our general property tax is relatively light in comparison with corresponding taxes in most other states. In 1953 we ranked 38th from the top in the percentage of state and local revenue derived from property taxes, 38th in the amount of property tax in relation to personal income, and 46th in the percentage of total revenue for schools derived from these taxes." In somewhat different ways the Tax Study Commission and the Municipal Study Commission have reached a similar conclusion.

Recognizing that the general sales tax is an established part of our tax system but that numerous exemptions have made it the least productive of revenue per capita in the entire nation, with the exception of one state, the Committee recommends reduction of the exemptions and elimination of discriminatory levies within the structure of the general sales tax.

Study of the effects of the thirty - eight exemptions and exclusions under the Retail Sales and Use Tax and nine under the Wholesale Tax caused the Committee to conclude: "These exemptions have so limited the effect of the tax that, among thirty-three states which have the general sales tax, North Carolina with next to the highest rate is next to the lowest in collections per capita. We shall probably be the lowest in 1959 when Maryland, now the lowest, raises her sales tax rate from two per cent to three per cent. With the exception of Virginia, which does not have a general sales tax, all the southeastern states derive from it considerably more per capita than North Carolina and general sales tax collections in these states represent larger proportions of personal income.

"As a percentage of total tax revenue, also, North Carolina's general sales tax collections in 1957 were smaller than the average of the 33 states imposing this tax. Among seven southeastern states, we obtained from it the lowest percentage of total tax revenue."

The Committee submits for consideration by the General Assembly an illustrative list of additional revenues which may be obtained from sales, luxury, and excise taxes.

The concluding recommendations are:

1. That the counties and districts continue to have responsibility for construction of school buildings.
   If, however, the General Assembly should again authorize an issuance of bonds by the State to finance construction of school buildings, it is recommended that the proceeds be allocated generally in accordance with the incentive plan proposed for current expense funds.
   Further, the Committee recommends that the State Literary Fund be used more effectively in supplying loans for school construction.
2. That vocational education and educational television be the subjects of further study.
3. That the Curriculum Study Commission and the Policy Committee of the State Board of Education give special attention to:
   a. Promotion policies in relation to school costs.
   b. The determination of district lines and attendance areas.
   c. Unit costs of school construction.
4. That "the General Assembly provide for a continuing study of public school finance."

Legislative Proposals of the Commission for The Study of a Uniform Map Law

by Robert Montgomery, Jr.
Assistant Director of the Institute of Government

Introduction

Mapping practices in North Carolina have been thoroughly examined since the 1957 session of the General Assembly by a Commission composed of Henry M. Von Oesen, P.E., Chairman; Robert G. Bourne, P.E., Vice-Chairman; James H. Findlay, Land Surveyor, Secretary; Roscoe L. Blue, Cumberland County Commissioner; Garland Garriss, Attorney at Law; Charles P. Vincent, State Highway Commission Engineer; and J. Atwood Whitman, Land Surveyor. Out of the Commission's deliberations have come legislative proposals of importance to state and local officials as well as to surveyors and land owners.

Official Survey Base

Findings: The Commission found that work on the North Carolina Co-ordinate System, an official survey base authorized by Chapter 102 of the General Statutes, has lain dormant since the days of the Works Progress Administration. It concluded that completion of the system offers the most satisfactory method of obtaining a desirable state-wide uniformity in land surveying and mapping methods.

Recommendation: Recognizing that the problem in this area is primarily one of implementation, the Commission nevertheless recommends that G.S. 102-10 and 102-12 be amended to provide a completion date for work on the survey base; to provide for necessary revisions relating to the base from time to time; and to concentrate control and responsibility in this connection in the Department of Conservation and Development.

Testing of Surveying Instruments

Findings: A refreshing finding of the Commission in times of multiplying laws is that the ancient North Carolina statutes (Laws of 1899, Chapter 665) dealing with the performance of tests, and the registration of results thereof, in connection with surveyors' chains and compasses are no longer of practical value because of advancements in surveying techniques.

Recommendation: The Commission advocates the repeal of G.S. 81-59 through G.S. 81-66, which embody the testing and recording requirements.

Control Corners in Real Estate Developments

Findings: Control corners required by law in connection with real estate developments (G.S. 39-32.1 through G.S. 39-32.4) lose substantial value unless they are of a permanent nature, according to the Commission.

Recommendation: Permanent control corner monumentation at intersecting center lines of two or more streets, or offset therefrom, is proposed by the Commission. This would be accomplished by amending G.S. 39-32.1.

Preparation and Recording of Maps

Findings: While technical standards for surveying (General Statutes, Chapter 89) are adequate, concluded the Commission, drafting standards are neither adequate nor uniform. A material finding of the Commission asserts that the methods of filing and recording maps vary considerably in the several counties. Uniformity, both in drafting standards and in methods of recordation, is desirable in order to make mapping serve its intended purpose with regard to land titles.

Recommendation: Detailed requirements and procedures are proposed by the Commission in this aspect of its program. Size of maps, material, and specific drafting data are covered, as well as a form of probate and order of registration, indexing, filing, and transcribing. Provision for the production of photographic copies of maps used in special proceedings is included. The specific requirements of the proposed legislation would replace the existing, rather broad and ambigious, requirements of G.S. 47-30 and G.S. 47-32.

Registration and Practice of Land Surveyors

Findings: The Commission concluded that the language ". . . Nothing in this chapter (Chapter 89, which contains regulatory measures applicable to engineers and land surveyors) shall prohibit any person from doing land surveying, provided that he does not represent himself to be a registered Land Surveyor." in G.S. 89-15 renders the law covering the registration of Land Surveyors ineffective as a measure to protect the public against incompetent service.

Recommendation: Repeal of the provision quoted is proposed. The Commission would also establish a statutory system of periodical review of technical standards for surveying practice.

County Surveyors

Findings: The Commission is of the opinion that county surveyors should be appointed at the option of county commissioners and qualified by registration under Chapter 89 of the General Statutes.

Recommendation: The Commission proposes that G.S. 154 (County Surveyors) be rewritten to provide for optional appointment, but not optional registration of County Surveyors.

Commission Report

The final report of the Commission was issued in September, 1958. Reference is made to the report for further explanation and specific statutory proposals.

Department of Motor Vehicles Recommends Changes in Motor Vehicle Laws

by Robert Montgomery, Jr.
Assistant Director of the Institute of Government

Biennially, the North Carolina Department of Motor Vehicles, as one aspect of its general program of highway safety, requests and receives suggestions for changes in the motor vehicle laws from judges, solicitors, enforcement and administrative officers of the Department of Motor Vehicles and other officials, State and local, concerned with the motor vehicle laws. Based on an analysis and evaluation of recent suggestions, the following changes in the law have been recommended by the Department for consideration by the General Assembly as a major part of the Department's legislative program for 1959:

Major Proposals

Scientific Tests for Intoxication:

Laws in connection with chemical tests to determine intoxication now stare at North Carolina from all of its neighbor states—Virginia, Tennessee, Georgia and South Carolina. Twenty - seven states now have chemical test legislation. Although evidence of the result of such tests is now admissible in North Carolina courts, expert testimony is, in the absence of legislation, necessary in order to interpret adequately the test results. This presents a serious handicap to the use of test evidence in court, particularly in small cities and towns, some of which employ or seek to employ chemical test devices. The Department proposes legislation which would establish a statutory scale of evidentiary values material to the adequate and proper interpretation of test results. The legislation is virtually identical to that recommended by the Uniform Vehicle Code. It would provide for three evidentiary "zones" relating to the question of intoxication: (1) If there were 0.05 per cent or less by weight of alcohol in the defendant's blood, it would be *prima facie* evidence that the defendant was not under the influence of intoxicating liquor; (2) if there were in excess of 0.05 per cent but less than 0.15 per cent by weight of alcohol in the defendant's blood, such fact would be relevant evidence, but it would not be given *prima facie* effect in indicating whether or not the defendant was under the influence of intoxicating liquor; (3) if there were 0.15 per cent or more by weight of alcohol in the defendant's blood, it would be *prima facie* evidence that the defendant was under the influence of intoxicating liquor. The introduction of other competent evidence bearing on the question of intoxication would not be limited in any way by the proposal. Companion legislation would establish an "implied consent" law, one under which the operation of a motor vehicle upon the highways of the state would constitute consent of the operator to submit to a chemical test for intoxication when an officer has reasonable grounds to believe that the operator is driving under the influence of intoxicating liquors. Refusal to submit to a chemical test under the prescribed circumstances would constitute grounds for revocation of the operator's license to drive; however, the operator in such a case would be given an opportunity for a hearing. The law would make tests results available to the subject tested upon request and would restrict the persons authorized to administer blood tests to physicians acting at the request of police officers; nevertheless, the subject would be entitled to have a physician of his own choice conduct a test in addition to the one administered by the "police" doctor.

Mechanical Inspection Law

Statistics indicate that roughly 5% of all vehicles involved in accidents in North Carolina in 1957 had mechanical defects which were, or could have been causal factors in the accidents. Nineteen states now provide for official programs of periodic mechanical inspection by statutory provision.

The Department of Motor Vehicles proposes a Mechanical Inspection law which would be, essentially, an expansion of a "pilot" program of inspection of "foreign" vehicles, administered by the North Carolina State Highway Patrol under the authority of G. S. 20-53(d). The Act would utilize state - licensed private garages as inspection stations. Every vehicle registered, or required to be registered, in North Carolina when operated on the highway would have to display a current approval sticker indicating that it had been inspected and approved during the current inspection period. Items subject to inspection would be limited to: brakes, lights, tires, horn, steering mechanism, windshield wiper and registration. Every firm or person demonstrating satisfactory ability to perform the mechanical inspection of motor vehicles according to standards established by the Commissioner within the requirements of the motor vehicle equipment statutes would be licensed as an inspection station and the license would be renewable once each year. Inspection stations would be authorized to charge a fee of 75c for performing each inspection, and when the motor vehicle inspected was approved the motorist would pay a fee of 25c for an approval sticker. The sticker would actually be purchased from the state, through the inspection station.

Rules of the Road

Overtaking or Passing School and Church Buses

The duties incumbent upon the driver of a vehicle overtaking or passing a school or church bus as specified by G. S. 20-217 appear to be unrealistic when related to certain modern types of highway facilities, and in some circumstances may possibly constitute a hazard, both to bus passengers and to occupants of other vehicles.

In essence the provisions of the Uniform Vehicle Code are proposed by the Department in this connection to bring the statutory requirements in step with the practical situation. The proposal would strike the duty of a motorist to stop upon meeting or passing a school bus which is on a different roadway or on a controlled access highway where the bus is stopped in a specified loading zone adjacent to the highway and where pedestrians are not permitted to cross the highway.

Drunken Driving and Narcotic Drugs

While motor vehicle laws are generally applicable only to conduct which occurs on the streets and highways, their effect has been extended from time to time to adjacent areas by the General Assembly, particularly in the case of the so-called "serious" offenses. An example of this was the extension in 1955 of the reckless driving statute, G. S. 20-140, to service stations, supermarkets, office buildings, and other areas of a similar nature. The Department now suggests that the application of the drunken driving statutes, G. S. 20-138 and G. S. 20-139, be extended to cover the same types of areas as those to which the reckless driving statute was extended in 1955.

Related to the extension proposal is the matter of the prohibition of drunken driving by the habitual user of narcotics on streets and roadways of schools, hospitals and other public institutions. When the drunken driving statute was made applicable to such places in 1951, the ". . . habitual user of narcotic drugs . . ." was not included with the more conservative bon vivants as an offender. The complete proposal would make the drunken driving law, including offenders who are habitual users of narcotic drugs, applicable to service stations, supermarkets, office buildings and other similar areas as well as to the drives and roadways of schools, hospitals and other public institutions.

Reckless Driving

Some ambiguity apparently exists in the provisions of North Carolina's reckless driving law as found in G. S. 20-140. Although the general interpretation placed on the statute is that *two* separate and distinct offenses are specified, a number of officials construe the language of the statute as constituting one offense. The result is a variation in the culpability necessary to constitute a violation of the law. Confusion on the part of motorists, enforcement officers and others as to the effect and application of the statute is, or will be, an ultimate result.

The Department proposes legislation that would remove the ambiguity complained of by setting forth specifically two offenses, which is generally considered the better interpretation of the present statute.

Speed of Towing Vehicle

Present North Carolina law permits passenger-type vehicles and "small" pick-up trucks (less than one ton capacity), to tow other vehicles at speeds up to 55 miles per hour (60 miles per hour on some highways). It is generally acknowledged that the towing of another vehicle decreases the driver's control over the towing vehicle to such an extent that a reduction in maximum statutory speed limits is desirable. This is now provided in the case of trucks customarily employed as towing vehicles (one ton or more capacity).

The proposal of the Department in this area involves legis-

lation that would limit to 45 miles per hour the maximum lawful speed of all vehicles engaged in towing, drawing or pushing another vehicle.

Driver Licensing

Definition of "Conviction"

The North Carolina Supreme Court has held that in connection with the suspension of drivers' licenses, a plea of *nolo contendre* does not constitute a "conviction" as defined by G. S. 20-24(c), where the intended suspension of license is discretionary with the Department of Motor Vehicles. *Winesett v. Scheidt,* 239 N. C. 190 (1954).

The Department suggests legislation that would make the plea of *nolo contendre* equivalent to a conviction for purposes of discretionary license suspensions. A valuable by-product of the proposal would be the achievement of uniformity in the definitions of "conviction" in the Uniform Drivers License Act and the Motor Vehicle Safety and Financial Responsibility Act of 1953 (the latter Act already includes the plea of *nolo contendre* as a "conviction" under G. S. 20-279.1(12).

Discretionary Suspensions

G. S. 20-16(a) (9) now authorizes the Department of Motor Vehicles to suspend the drivers license of an individual when the records of the Department or other satisfactory evidence show that the individual has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 miles per hour and not more than 75 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 miles per hour and not more than 75 miles per hour. Recognition that the dates of the *commission of the offenses,* if convictions result, are the relevant points in time, not the dates of trials which may be governed by a number of irrelevant factors, prompts the proposal that G. S. 20-16(a) (9) be amended to provide for suspension upon conviction of the two specified offenses *committed* within a period of 12 months.

Mandatory Suspensions

In 1957, the State Highway Commission was empowered by G. S. 20-141(b) (5) to establish maximum speed limits (limited to 60 miles per hour) in excess of the statutory limits prescribed in G. S. 20-218 (35 MPH—loaded school buses), G. S. 20-141 (b) (3) (45 MPH—most trucks and regular carrying vehicles) and G. S. 20-141 (b) (4) (55 MPH—passenger cars and some pick-up trucks). G. S. 20-16.1 provides for mandatory license suspension upon conviction of the offense of speeding more than 15 miles per hour in excess of the prescribed statutory limits mentioned, but does not cover the situation of increased speed limits established pursuant to G. S. 20-141 (b) (5). A proposal of the Department would extend the provisions of G. S. 20-16.1 to cover cases of violations involving limits established under G. S. 20-141 (b) (5).

Registration and Certificate of Title

Transfer of Registration

A characteristic of the North Carolina statutory procedure for the transfer of registration and certificate of title of a vehicle is what might be termed the "plate follows the car." There are of course some exceptions to this procedure but generally the transferor of a vehicle transfers his license plates to a purchaser along with the vehicle. This is the type of transfer procedure followed by about one-half of the states. The others follow a type of procedure under which the transferor of a vehicle *retains* his license plates upon a transfer and either transfers them to a newly acquired vehicle or surrenders them to the Department of Motor Vehicles for retirement. In recent years, particularly since the advent of the Vehicle Financial Responsibility Act of 1957, the Department has perceived the necessity of re-evaluating the respective advantages and disadvantages of the two types of transfer procedures in order to determine which one offers the better opportunity for benefits in the implementation of related laws as well as the vehicle transfer laws.

Out of the re-evaluation process has come a departmental legislative proposal that would establish the type of transfer system under which the transferor of a vehicle would retain his license plates for transfer to another vehicle or surrender to the Department. Companion legislation is proposed under which "transporter" license plates could be issued by the Department to cover certain operations not previously a matter of special concern from a licensing standpoint under existing transfer procedure.

"For Hire" Operations

Under present North Carolina statutes a vehicle is classified as a "for hire" vehicle, *regardless of the frequency of use as such,* if it is used for the transportation of persons or property for compensation. A higher license fee is required for vehicles of this classification than for vehicles classified as "private" passenger or property carrying vehicles. Nevertheless, the penalty provision, G. S. 20-86, for utilizing a vehicle in a "for hire" operation within the definition of G. S. 20-38(q) (2), which sets up the classification, is applicable only

where the operator of the vehicle is "*engaged in the business* of transporting persons for compensation." The Department suggests that this statutory situation is to some extent contradictory and proposes legislation under which a single "for hire" operation would subject an operator to the penalty.

Use of "Dealer" License Plates

The General Assembly in 1957 made provisions for the use of a "temporary marker" by motor vehicle dealers in connection with the sale of new vehicles. G. S. 20-79 has long provided for use of a "dealer's" plate for that purpose. Certain aspects of the Financial Responsibility Act of 1957, plus the duplicatory nature of the two provisions, has prompted the legislative proposal that the provision for use of the "dealer's" plate in connection with the sale of new cars be repealed, and that the 1957 "temporary marker" requirements, which do not interfere with the implementation of the Financial Responsibility Act, be retained as the sole acceptable procedure in this connection.

Forging Applications for Title

Experience of the Department of Motor Vehicles indicates that many forgeries involve the use of *applications* for registration and certificate of title, as contrasted with forgeries of the actual registration and certificate of title documents. G. S. 20-71 prohibits the latter but not the former. Consequently, the Department proposes legislation that would extend the express prohibition of G. S. 20-71 to forgeries involving applications.

Equipment, Anti-Theft and Weight

Windshield Wipers

Although G. S. 20-127(b) requires that every permanent motor vehicle windshield be equipped with a windshield wiper, it makes no specific requirement as to the working condition of the wiper. Concluding that a worthless windshield wiper is worth no more than no wiper, the Department recommends legislation that would require wipers to be maintained in good working order.

Tires

The condition of tires, conceded to be one of the most essential items of equipment on a vehicle from a safety standpoint, is not covered by legislation in North Carolina. The Department suggests legislation that would prohibit the operation of vehicles equipped with any tire in a condition that endangers, or would be likely to endanger, persons or property.

Reporting Unclaimed Vehicles

North Carolina's automobile anti-theft program, as administered by the License and Theft Enforcement Division of the Department of Motor Vehicles, is sometimes rendered less effective by the storage of stolen vehicles with innocent operators of public garages and other places of storage, under circumstances that do not come to the attention of the Department for a substantial period of time. The Department proposes legislation similar to that now existing in thirteen states, and identical to that of the Uniform Vehicle Code, in this connection. The law would require the operator of a place of storage to report any vehicle which has remained unclaimed for a period of 30 days. A vehicle left by its owner whose name and address are known to the operator of the place of storage would not be considered unclaimed.

Seizure of Vehicles

The Department of Motor Vehicles is authorized under G. S. 20-96 to seize vehicles when they are found to be overloaded and to hold them until all overload penalties have been paid. Apparently this authority exists under current law only at the time of the original weighing and assessing. Under certain circumstances, the Department may find it expedient or desirable to release the vehicle and rely on a citation to prompt the payment of penalties. However, in the event the citation is later found to be ineffective, power to reactivate the authority for seizure of the vehicle seems desirable to aid in collecting the established penalties. The Department seeks legislation which would extend the seizure authority, but allow its use only within a limited time period of 30 days starting from the day the penalty is assessed.

Weight Penalties

A combination of circumstances has resulted since 1957 in different and somewhat inconsistent statutory penalties for axle weight violations on primary roads on one hand and secondary roads on the other. Violations on primary roads are punished by monetary penalties—criminal action is expressly forbidden. Violations on secondary roads carry no monetary penalties but are punishable solely by criminal prosecution. The Department of Motor Vehicles seeks to make both types of violation subject only to monetary penalties, generally thought to be the most effective manner of enforcement. No increase of amounts in the schedule of monetary penalties is sought.

Financial Responsibility Act of 1957

Vehicles Subject to Act

The Vehicle Financial Responsibility Act of 1957 as now written applies only to vehicles *registered* in North Carolina. Although

it may be desirable to exclude certain vehicles from the coverage of the Act, it appears illogical to exclude vehicles which, although not actually registered in North Carolina, are required to be registered under the registration laws of the state. In this connection, the Department proposes legislation that would extend the coverage of the Act to vehicles ". . . registered, or required to be registered . . ." in North Carolina.

Revocation of Registration

G. S. 20-311 appears to require the Department of Motor Vehicles to revoke the registration of a vehicle when its owner fails to maintain the financial responsibility required by the 1957 Act. The statute in point is subject to more than one interpretation because of the use and context of the term "revocation." The Department's legislative proposal on this point would define specifically the appropriate action to be taken where evidence of responsibility is not maintained. The action proposed would involve revocation in the strict sense of the word and relicensing when evidence of responsibility was again adduced.

Certificates of Insurance

Beginning in 1959, it will not be necessary under the Financial Responsibility Act of 1957 for the owner of a vehicle seeking a straight renewal registration to present the now widely-known Form FS-1, if he has the required financial responsibility and so certifies on the Department's renewal card form applicable to his vehicle. Although this procedure will serve the convenience of many North Carolina motorists, it is thought that in order to preserve the adaptability of procedures to constantly changing records of insurance, cancellations and renewals, and in order to confirm the current value of documents relating to the administration of the Act, the Commissioner of Motor Vehicles should be authorized to call for and require the presentation of a certificate of insurance applicable to each vehicle registered during the license renewal period of any particular registration year designated in advance. Legislation establishing such authority is recommended by the Department.

Miscellaneous

Driver Training Schools

Commercial driver training schools, relatively new institutions in North Carolina, have a close relationship to a state's general program of highway safety. The connection has been recognized in several other states by the enactment of regulatory licensing, for the purpose of maintaining standards of training equipment and competence of training personnel.

The Department of Motor Vehicles suggests legislation that would allow the Commissioner of Motor Vehicles to establish reasonable standards of instruction, with the assistance of the State Superintendent of Public Instruction, for commercial driver training schools; to inspect the qualifications of applicants for license; and to enforce the maintenance of established standards by powers of suspension or revocation of license where violations arise.

The Institute of Government

1959

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Clyde Ball, at left, checks copy turned over to him by Joe Hennessee during the 1957 legislative session.

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