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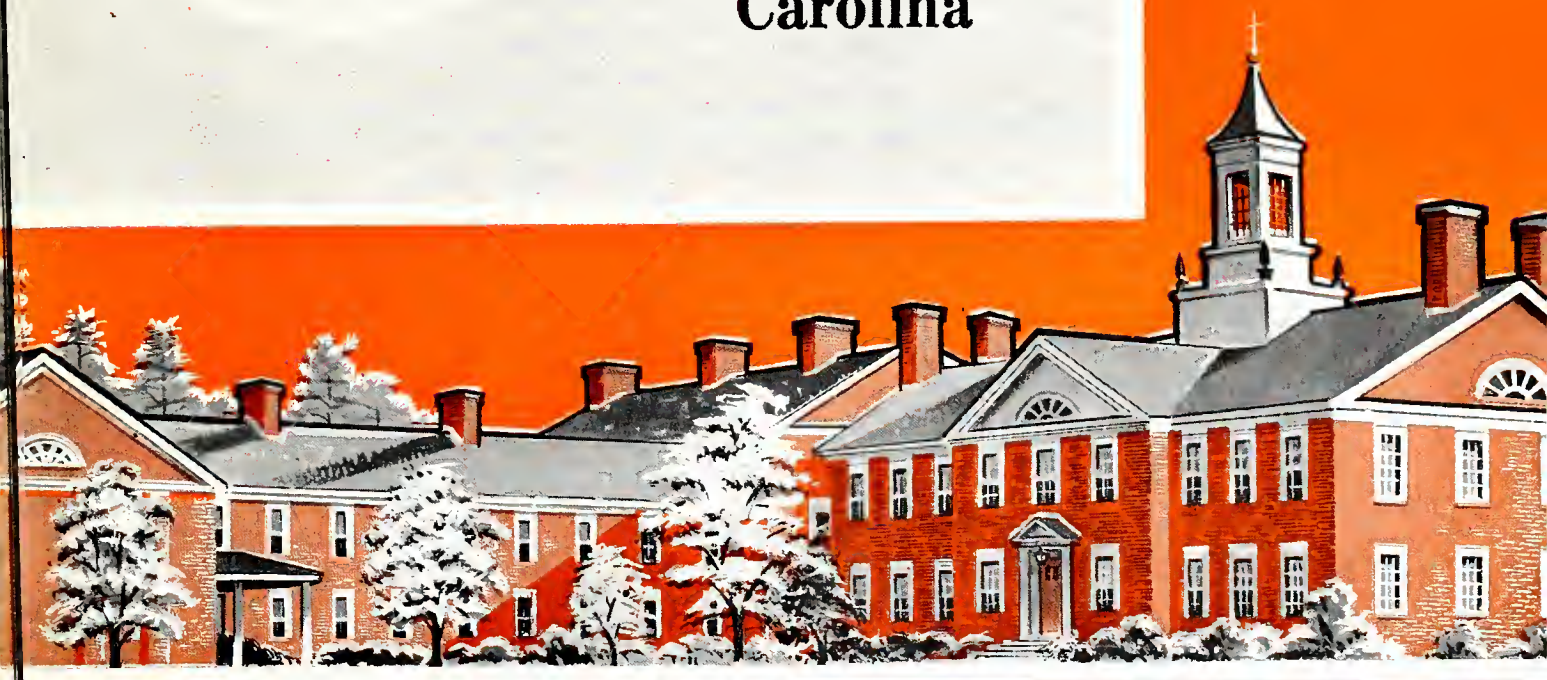
The Proposed Constitution of North Carolina



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THE PROPOSED CONSTITUTION OF NORTH CAROLINA: AN ANALYSIS

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Introduction

For the past year, the ninety year old State Constitution has undergone a thorough examination by the North Carolina Constitutional Commission, a group of 15 distinguished citizens of the State. The object of the Commission has been to determine to what extent and in what ways the Constitution requires revision to adapt it to the needs of today, and to prepare and submit to the Governor and the General Assembly of 1959 recommendations for necessary changes in that instrument.

It is the Commission's conclusion that a completely revised Constitution is necessary, and accordingly it has drafted a proposed new Constitution. So much of the proposed Constitution as the General Assembly sees fit to approve will be submitted to the voters of the State for their ratification or rejection. The popular vote may be held at an the general election in November, 1960, or at an earlier date chosen by the General Assembly.

It is the purpose of this article to examine the proposed Constitution recommended by the Constitutional Commission and to point up its more obvious departures from the present Constitution. Where no material variance from the present Constitution is recommended, that fact is ordinarily not mentioned here unless necessary for a complete discussion of changes proposed.

For the convience of the reader, the full text of the Commission's proposed Constitution is printed as an appendix to this article. Annotations have been inserted after each section of the Commission's text, referring to comparable provisions of the present Constitution.

The Constitutional Commission

In his biennial message to the General Assembly of 1957, Governor Luther H. Hodges said:

> Our State Constitution is old and outmoded. It needs revision and redoing. It should be modernized to meet the needs of our people. I, therefore, recommend that you authorize a Commission to submit recommendations for constitutional changes to the next General Assembly.

In response, the General Assembly created the North Carolina Constitutional Commission, composed of 15 members to be appointed by the Governor, and directed it

> . . . to make a complete and thorough study of the Constitution of North Carolina with a view of determining whether or not there should be an amendment or amendments to the Constitution . . .

and to submit to the Governor and the General Assembly of 1959

> . . . its report, setting forth its conclusions and recommendations for amendments or revisions of the Constitution . . . .

[Session Laws 1957, Res. 33.]

To serve on the Constitutional Commission Governor Hodges appointed Henry P. Brandis of Chapel Hill, Dean of the School of Law of the University of North Carolina; Victor S. Bryant, Sr., of Durham, attorney; Harry B. Caldwell of Greensboro, Master of the North Carolina State Grange; State Senator Claude Currie of Durham, President of Security Building and Loan Association; State Representative W. Ed Gavin of Asheboro, attorney; Hershel V. Johnson of Charlotte, former Ambassador to Brazil; Woodrow W. Jones of Rutherfordton, attorney and former Congressman; State Representative John Kerr, Jr., of Warrenton, attorney and former Speaker of the House; Judge John J. Parker of Charlotte, Chief Judge of the United States Court of Appeals for the Fourth Circuit; Charles A. Poe of Raleigh, attorney; Judge Susie Sharp of Reidsville, Special Superior Court Judge; William D. Snider of Greensboro, Associate Editor of the *Greensboro Daily News;* W. Frank Taylor of Goldsboro, attorney and former Speaker of the House; Lindsay C. Warren of Washington, former Congressman and former Comptroller General of the United States; and State Representative Edward F. Yarborough of Louisburg, attorney. Judge Parker and Mr. Warren served on a similar constitutional revision commission in 1931-32. Following the death of Judge Parker on March 17, 1958, the Governor appointed as his successor Judge Johnson J. Hayes of Wilkesboro, Senior District Judge of the United States District Court for the Middle District of North Carolina.

Mr. Bryant was elected Chair-

man of the Commission and Mr. Taylor was elected Vice-Chairman. As its Executive Secretary, the Commission appointed George W. Hardy III, of the faculty of the School of Law of the University of North Carolina. The Institute of Government was also engaged by the Commission.

Working procedures

The Constitutional Commission began its work early in 1958 with discussions and hearings at which several state officials appeared. Three subcommittees, each composed of four or five Commission members, were then appointed and the work of detailed initial consideration of the various articles of the Constitution was divided among them. After study, each subcommittee reported to sessions of the full Commission its conclusions and recommendations regarding those articles referred to it. Frequently matters were re-referred to subcommittee for reconsideration in the light of discussion in the full Commission. Finally the entire draft of the proposed Constitution was re-examined and revised by the full Commission to eliminate inconsistencies, duplications, and overlaps.

Throughout its detailed consideration of the Constitution, the Commission and its subcommittees had available to them for research and other assistance their Executive Secretary and the staff and facilities of the Institute of Government. State officials and representatives of several other study commissions considering problems relating to the Constitution were consulted by the Commission. Representatives of the League of Municipalities and the Association of County Commissioners were heard on the subject of local government.

Due to time limitations, no public hearings were held in the course of the Commission's study and no interim or tentative drafts were published prior to the release of the final report. The recommended constitutional revision will receive full discussion and examination in committees of the General Assembly, and at that time there will doubtless be ample opportunity for interested persons to express their views on the proposed Constitution before it is acted upon by the General Assembly.

The Commission's report

The report of the Constitutional Commission contains an extensive explanation of its general approach to the task of constitutional revision and of its reasons for specific changes recommended. Included in the report are a draft of the proposed Constitution which it recommends for legislative consideration and a presentation in parallel columns of the proposed Constitution and the present Constitution.

General observations

Before proceeding to a detailed analysis of the proposed constitutional revision, it seems appropriate to venture a few observations on the Constitutional Commission's approach to its work and on its product, the proposed Constitution. With the exception of the judicial article (and to a lesser extent the education article), the proposed Constitution represents in the main more of a work of editorial revision and rearrangement, clarification, and cautious modification of the present constitutional guarantees of personal rights and the framework of state and local government, than of deep-running reform.

Most of the "issues" discussed by newspaper and textbook commentators on constitutonal reform—the veto power for the Governor, authority for the Governor to be re-elected to office for successive terms, the short ballot, home rule for cities and counties, a unicameral legislature, and annual legislative sessions, for instance—got short shrift from the Commission.

This is not to imply that the Commission was unaware of these issues or that it rejected them from any but the highest motives. It would be fairer to say that the members of the Commission, on the basis of long experience in and out of the public service, concluded that except for certain aspects of the court system and a few other areas, the organization and policy of state and local government and the guarantees of personal rights set out in the present Constitution are basically sound and are productive neither of significant hardship nor of wide protest among the citizens of the State. They disclaimed any interest in change for the sake of change. Such material amendments as have been proposed have been offered in response to the specific needs of this State and have been designed in conformity with her traditions as the Commission understands them. Thus there is less of the novel and unfamiliar in the proposed Constitution than might be supposed at a glance.

It was the initial hope of some members of the Commission that it would be possible to make all needful constitutional changes through a series of specific amendments to the existing instrument. It soon became apparent, however, that the desirable changes were so numerous that it would be much more practical to prepare a completely revised Constitution than to try to sew dozens of patches on the old, often-patched fabric. Therefore their proposal is for a complete new instrument

which, while bringing forward a great deal of the content of the present Constitution with little or no material change, can be viewed and voted on by the General Assembly and the people as an internally consistent whole, and which if adopted would entirely supersede the present Constitution.

Statistically speaking, for whatever it may be worth, the Commission found the present Constitution to contain 199 sections (counting the Preamble and the prefatory paragraph of Article I as sections). The proposed Constitution contains 168 sections and subsections. (Subsections are counted here because they often represent the direct equivalent of sections of the present Constitution, which is not divided into subsections.)

In partial explanation of the number of sections altered, it should be recalled that our present Constitution is basically the Constitution of 1868, much amended. Of the 199 sections of the present Constitution, 118 have not been amended at all since 1868, while 81 are either 1868 sections amended or sections which have been added to the Constitution since 1868. In the intervening 91 years, the people have ratified amendments affecting 126 sections, counting all sections amended, substituted, added, or deleted without replacement. A few sections have been amended as many as three or four times in that period. Because of the tendency to make amendments as brief as possible, at times only one section has been amended where two or more should have been amended.

From these facts it is easy to see how there could be deadwood, duplication, conflict, and overlappage between various parts of the present Constitution. Little of this has heretofore given rise to problems serious enough to call for specific amendments, but the Commission felt it sufficiently important that the Constitution say what it means and say it in a concise and orderly manner that a general "clean-up" job of editing was undertaken.

The *editorial* phase of the Commission's work falls roughly into five categories:

(1) Elimination of uncontestably obsolete matter, such as the provision prescribing when the executive officers elected in 1868 were to take office [present Art. III, § 1], and the section fixing the effective date of the 1900 suffrage amendments [present Art. VI, § 9].

(2) Consolidation in a single section of two or three closely related sections sometimes scattered throughout one or more articles, such as the sections concerning habeas corpus [present Art. I, §§ 18, 21], and the sections barring payment of Confederate and Reconstruction debts [present Art. I, § 6; Art. VII, § 12].

(3) Rearrangement of sections within articles and the transfer of misplaced sections to more appropriate articles in the interest of more rational order and exposition—for instance, consolidation of all sections dealing with public finance, debt, and taxes in new Article V. [Present Art. I, § 6; Art. II, §§ 30, 31; Art. V; Art. VII, § 7, 12; Art. XIV, § 3.]

(4) Rephrasing (a) to gain greater clarity in the statement of a provision of undisputed meaning, (b) to embody judicial constructions of present constitutional language, or (c) to embody generally accepted constructions placed on sections in legislative or administrative practice and custom.

(5) Imposition of greater uniformity and formality of style in punctuation, capitalization, use of proper titles (such as "General Assembly" instead of "legislature"), and use of consistent terms where identity of meaning is intended (such as "qualified voters" instead of half a dozen variant terms now used to designate voters).

The *substantive* changes proposed by the Constitutional Commission are less susceptible of categorization, but very generally they consist of:

(1) Changes intended to work definite alterations in existing governmental organization, procedure, or policy—for instance, the increase in the number of Senators from 50 to 60 [proposed Art. II, § 3], and the new procedures for reapportioning the House of Representatives and redistricting the Senate [proposed Art. II, §§ 4, 5].

(2) Changes intended to deal with subjects not covered by the present Constitution—for instance, the guarantee of freedom of speech [proposed Art. I, § 14], and the procedure for determining the incapacity of a Governor to perform the duties of his office [proposed Art. III, § 12].

(3) Changes intended to clarify existing provisions which are vague, incomplete, or confusing, where the proposed change may or may not be one of substance but at least settles an issue of importance—for instance, the new prohibition against delegation by the General Assembly of its power to exempt certain property from taxation. [Proposed Art. V, § 2.]

(4) Elimination of details which can be left to ordinary legislation under general constitutional authorization, such as the sections concerning the levy of poll taxes [present Art. V, §§ 1, 2], and the lengthy list of penal, reformatory, and charitable institutions to be maintained by the

State [present Art. XI, §§ 3, 4, 5, 8, 9, 10].

The bill which the General Assembly will have before it setting out the text of the proposed Constitution will take the technical form of an amendment to the present Constitution. If adopted by the General Assembly it will be put to the people of the State for ratification or rejection as a whole.

The Constitution: An Historical Note

North Carolina has had but two Constitutions in her history as a State: the Constitution of 1776 and the Constitution of 1868.

Constitution of 1776

Drafted and promulgated by the Fifth Provincial Congress in December, 1776, without submission to the people, the Constitution of 1776 and its accompanying Declaration of Rights sketched the main outlines of the new government and secured the rights of the citizen from interference by it. While the principle of separation of powers was explicity affirmed and the familiar three branches of government were provided for, the true center of power lay in the General Assembly. That body not only exercised the legislative power; it chose all the state executive and judicial officers, the former for short terms and the judges for life.

Profound distrust of the executive power is evident. The Governor was chosen by the legislature for a one year term and was eligible for only three terms in six years. The little power granted him was hedged about in many instances by requiring for its exercise the concurrence of a seven member Council of State chosen by the legislature.

Judicial offices were established, but the court system itself was left to legislative design. No system of local government was prescribed by the Constitution, although the offices of justice of the peace, sheriff, coroner, and constable were created.

The system of legislative representation was based on units of local government. The voters of each county elected one Senator and two members of the House of Commons, while six towns each sent a member to the House. It was distinctly a property owner's government, for only land owners could vote for Senators until 1857, and progressive property qualifications were required of members of the House, Senators, and the Governor until 1868. Legislators were the only state officers who were elected by the people until 1836.

Defects in the legislative representation system, which gave no recognition to population, resulted in the Convention of 1835. Constitutional amendments adopted by that Convention and ratified by the people fixed the membership of the Senate and House at their present levels, 50 and 120. The House apportionment formula now in force was devised in 1835, but the Senators were from 1836 until 1868 elected from districts laid out according to the amount of taxes paid to the State from the respective counties.

The Amendments of 1835 also made the Governor popularly elective for a two-year term, greatly strengthening that office; relaxed the religious qualification for office holding; abolished free Negro suffrage; equalized the capitation tax on slaves and free white males; prohibited the General Assembly from granting divorces, legitimating persons, or changing personal names by private act; specified procedures for the impeachment of officers and the removal of judges for disability; made legislative sesions biennial instead of annual; and provided methods of amending the Constitution.

The Convention of 1861-62 took the State out of the Union and into the Confederacy and also adopted several constitutional amendments. The Convention of 1865-66, with popular endorsement, nullified secession and abolished slavery. It also drafted a revised Constitution in 1866. This was largely a restatement of the 1776 Constitution and the 1835 amendments, but with several new features. It was rejected by the people.

Constitution of 1868

The Convention of 1868, called upon the initiative of Congress but with a popular vote of approval, wrote a new Constitution which the people ratified. Drafted and put through the Convention by a combination of native Republicans and a few Carpetbaggers, the Constitution of 1868 long bore—to a small degree yet bears—the odium which attached to its parentage. Yet for its time it was a progressive and democratic instrument of government. In this respect it differs markedly from the proposed Constitution of 1866. The Constitution of 1868 is an amalgam of provisions copied or adapted from the Declaration of Rights of 1776, the Constitution of 1776 and its amendments, the proposed Constitution of 1866, and the constitutions of other states, together with some new material. Although often amended, a majority of the provisions of that document remain intact today.

The Constitution of 1868 added to the old Declaration of Rights several important provisions. To the people was given the power to elect all state executive officers and judges and all county officials, as well as legislators. All property qualifications for voting and office holding were abolished. The Senate was made representative of

people instead of property. Annual legislative sessions were restored.

The executive branch of government was strengthened by popular election for four-year terms of office and the Governor's powers were increased significantly.

A simple and uniform court system was established with the jurisdiction of each court fixed in the Constitution. The distinctions between actions at law and suits in equity were abolished.

For the first time, detailed constitutional provision was made for a system of taxation and for free public schools. Homestead and personal property exemptions were granted, and the maintenance of penal and charitable institutions by the State was commanded. A uniform scheme of county and township government was prescribed.

Despite Conservative threats to repeal the Constitution of 1868 at the earliest opportunity, the changes actually effected by amendments adopted in 1873 and 1876 were more modest in scope. These amendments left to the legislature the method of electing University trustees; gave the General Assembly full power to revise or abolish the form and powers of county and township governments; made legislative sessions biennial again; abandoned the simplicity and uniformity of the court system by giving General Assembly power to determine the jurisdiction of all courts below the Supreme Court and to establish such courts inferior to the Superior Court as it might see fit; reduced the Supreme Court from five to three members; required Superior Court judges to rotate among all judicial districts of the State; disqualified for voting persons guilty of certain crimes; required non-discriminatory racial segregation in the public schools; and simplified the 1835 procedure for constitutional amendment. The rest of the Constitution was left substantialy intact. The main effect was to restore in considerable measure the former power of the General Assembly, particularly as to the courts and local government.

In 1900 the suffrage article was revised to add the literacy test and poll tax requirement for voters. A slate of ten amendments prepared by a constitutional commission was rejected by the people in 1914. With the passage of time and amendments, the attitude towards the Constitution of 1868 had changed from resentment to a reverence so great that until the last 25 years, even the most necessary amendments were very difficult to obtain. During the first third of this century, however, amendments were adopted lengthening the school term to six months, authorizing special Superior Court judges, further limiting the General Assembly's powers to levy taxes and incur debt, abolishing the poll tax requirement for voting, and reducing the residence qualification for voters. Amendments designed to restrict the legislature's power to enact local, private, and special legislation were made partly ineffective by judicial interpretation.

A significant effort at general revision of the Constitution came in 1931-33. A Constitutional Commision created by the General Assembly of 1931 drafted and the General Assembly of 1933 approved a revised Constitution. Blocked by a technicality raised by an advisory opinion of the State Supreme Court, the proposed Constitution of 1933 never got before the people for approval. It would have granted the Governor the veto power; given to a Judicial Council composed of all the judges of the Supreme and Superior Courts power to make all rules of practice and procedure in the courts inferior to the Supreme Court; required the creation of inferior courts by general laws only; removed most of the limitations on the taxing powers of the General Assembly; required the General Assembly to provide for the organization and powers of local governments by general law only; established an appointive State Board of Education with general supervision over the public school system; and set forth an enlightened policy of state responsibility for the maintenance of educational, charitable, and reformatory institutions and programs.

Several provisions of the proposed Constitution of 1933 were later incorporated into the Constitution by individual amendments, and to a limited extent it served as a model for the work of the 1957-59 Constitutional Commission.

During the last quarter-century, the increased receptiveness to constitutional change has resulted in amendments authorizing the classification of property for taxation, strengthening the limitations upon public debt; authorizing the General Assembly to enlarge the Supreme Court, divide the State into judicial divisions, increase the number of Superior Court judges, and create a Department of Justice under the Attorney General; enlarging the Council of State by three members; creating a new State Board of Education with general supervision of the schools; permitting women to serve as jurors; transferring the Governor's power to assign judges to the Chief Justice and his parole power to a Board of Paroles; raising the pay of the General Assembly; and authorizing the closing of public schools on a local option basis and the payment of educational expense grants in certain cases.

For all its faults, real and fancied, the present Constitution of North Carolina is in most ways an adequate if not an ideal charter

of government. Unlike many other states, North Carolina has never loaded her Constitution with a burden of details. Its approximately 19,000 words compare quite favorably with state constitutions several times that length. Now that the people have accepted the idea that the Constitution is not incapable of improvement, essential amendments can be had with relative ease. The next few months will put strong ties of reverence and familiarity in contest with hopes for a more modern Constitution which, while holding fast to much of the old document, offers a substitute which may be better fitted to the needs of these times.

Preamble

The Preamble to the Constitution, which dates from 1868, is redrafted without substantive change.

Declaration of Rights

Twenty-six of the thirty-seven sections of the Declaration of Rights (Article I) have been brought forward with little change from 1776 to date; the other 11 sections were added in 1868 and have not been extensively amended since. Recognizing the importance of the affirmations of basic governmental philosophy and the guarantees of personal and political rights which the Declaration embraces, the Constitutional Commission dealt cautiously with its provisions.

While the sections of Article I have been generally rearranged to gain a more logical grouping, only two changes need to be noted here. The proposed Constitution grants to the people of the State freedom of speech—a right which the State Constitution has never given them, but which the First and Fourteenth Amendments of the United States Constitution forbid the State to deny in any event. [Proposed Art. I, § 14.] It also alters the echo from the Declaration of Independence that the people have the inherent right ". . . of altering or *abolishing* their Constitution and form of government, whenever it may be necessary to their safety and happiness . . .", making it read " . . . altering or *revising*. . . ." [Present Art. I, § 3; proposed Art. I, § 4. Italics added.]

Legislative Department

The proposed Constitution leaves the structure and organization of the General Assembly as they are, except for a 20% increase in the size of the Senate. While the present formulae for reapportioning the House and redistricting the Senate are substantially unchanged, new means are offered for the periodic application of these formulae. With few exceptions, the constitutional procedures and powers of the General Assembly remain as they are today.

Legislative representation

How to achieve equitable legislative representation was an old problem in North Carolina when the Constitution of 1776 tried to settle it by giving one Senator and two members of the House of Commons to each county and one House member to each of six (later seven) borough towns—a representation system based on local units of government, and not on population, property, or area. By the early 1800's, the representation controversy had become a troublesome east-west contest, pitting the richer, older, and politically dominant (because more numerous) counties of the East against the poorer, newer, increasingly populous, but numerically fewer counties of the Piedmont and West.

Sired by discontent mounting to threats of revolution, the compromise formalized in the Convention of 1835 and approved by the people that year fixed the Senate and House membership at the numbers which have ever since obtained—50 and 120, respectively. The present House apportionment formula was devised in 1835, when there were 65 counties and the surplus of 55 seats (after deducting the guaranteed minimum of one seat per county) was sufficient to allow substantial adjustment to take population into account.[1] Senators were, from 1836 to 1868, elected from districts laid out and periodically redrawn on the basis of taxes paid to the State from the respective counties, averaged over the preceding five years. Ideally each Senator represented about the same amount of taxes paid.

This scheme was designed to weight the House somewhat in favor of population to the slight advantage of Piedmont and West, and to weight the Senate distinctly in favor of property to the slight advantage of the East. It abandoned the local governmental unit representation scheme of 1776 except for the guarantee of at least one House member per county.

The Constitution of 1868 made the Senate representative of people instead of property and wrote the senatorial redistricting formula which has prevailed ever since: 50 Senators elected from districts composed of one or more contiguous counties, and so drawn that each district contains "as near as may be" the same number of people. [Present Art. II, § 4.] While a county which is allotted more than one Senator may be divided into districts, no county has two Senators.

In 1835, the 120 House seats were distributed one to each of

[1] "Federal population" was used in the reapportionment formula until 1868, when the change was made to a strict population count minus Indians not taxed and aliens.

the 65 counties, and the remaining 55 seats (46% of the total) were distributed among the more populous counties. In 1868, with 89 counties, one-quarter of the House seats were still distributed according to population. But with 100 counties, five-sixths of the House seats now go to satisfy the guarantee of one seat per county, while only one-sixth of the seats are distributed according to population. Thus the House of Representatives has largely reverted to its pre-1835 status as a chamber representative of counties with a leavening of popular representation, leaving the Senate as the chamber primarily representative of population. When the Senate and House were fixed at their present membership in 1835, the State had about 750,000 residents; today it has nearly 4,500,000, distributed among counties ranging in population from 5,000 to well over 200,000. In consequence, one Representative may now speak for 5,000 people, while another speaks for 50,000. The differential is smaller in the Senate, where one Senator may now represent 50,000 people while another represents over 200,000. Representatives of 30% of the State's 1950 population can constitute a majority in the House, while Senators representing about 40% of the people can constitute a majority in the Senate.

Since 1868 the Constitution has commanded that immediately after each decennial census, the House of Representatives shall be reapportioned and the Senate shall be redistricted by the General Assembly.

Failure to reapportion and redistrict in the 1930's generated pressures which resulted in legislative action in 1941, although a thorough job of Senate redistricting was not done then. Since the 1950 census the General Assembly has failed to reapportion the House or to redistrict the Senate. Under that census there are two counties, each with one House seat to which another more populous county is entitled under the reapportionment formula. Redistricting the Senate under the 1950 census would give one additional Senator each to the one-county districts of Mecklenburg and Guilford and aid other populous areas, to the disadvantage of less populous districts.

The Commission on Legislative Representation, created by the 1955 General Assembly to study this whole problem, offered the General Assembly of 1957 a two-part plan providing for (1) a ten member increase in the House, coupled with a limitation of any one county to a maximum of two of the 50 Senators and any Senate district to a maximum of four counties; and (2) an *ex officio* Legislative Reapportionment Commission to which would have been transferred the General Assembly's power of decennially reapportioning the House and redistricting the Senate. Easily killed in the 1957 Senate, these proposals never got out of committee in the House of Representatives.

What solution does the proposed Constitution offer?

First, partly to ease senatorial redistricting and partly to make the Senate more responsive to population changes, it increases the Senate from 50 to 60 members, effective for the 1964 elections. (The new redistricting could not be done until the 1963 session; hence the 1964 effective date.) The senatorial districts continue to be drawn under the present formula. Each Senator will then ideally represent about 68,000 people instead of the present 81,000 (1950 census). This means that under the 1960 census (which will govern the next redistricting), Mecklenburg County will probably get three Senators, Guilford three, and Forsyth and Wake two each, whereas each of these counties now has but one Senator. While less populous counties might lose little of their present numerical representation, thanks to the ten seat increase, they will become relatively less powerful in the Senate.

Enlargement of the House of Representatives was considered by the Constitutional Commission to be impractical, since any increase large enough to make that body significantly more representative of population would probably make the House too cumbersome for effective operation as a whole and would force increased reliance on committees to do much of the work now done by the whole House.

More significant for the long range are the procedures provided by the proposed Constitution for insuring decennial reapportionment and redistricting. The duty of reapportioning the House of Representatives is transferred from the General Assembly to the Speaker of the House. He is directed to apply the constitutional House reapportionment formula by the 60th calendar day of the first regular session *convening* after the return of each federal census. [Proposed Art. II, § 5.] This is a purely mathematical process in which there is no room for difference of opinion. It will first take effect for the 1964 election.

Senate districting calls for different treatment, involving as it does highly political questions in laying out senatorial districts. Recognizing this fact, the proposed Constitution gives to a committee composed of the President of the Senate as chairman, the President *pro tempore* of the Senate, and the Speaker of the House the duty of making, by the 60th calendar day of the 1963 session and thereafter at the first regular

session *convening* after the return of every federal census, " . . . a proposal for redistricting the State for Senate Districts. . . ." If the General Assembly does not act, ". . . either altering or revising the proposal . . .", upon adjournment of the session the proposal has the force of an act of the legislature and takes effect for the next election for Senators. [Proposed Art. II, § 4.] The General Assembly could pass an act adopting the same districts proposed by the committee, or it could alter the proposal to make it conform to the status quo. The promise of this device is that it places on an agency of the General Assembly the duty of initiating a plan of senatorial redistricting which takes effect in the event of legislative inaction.

While the proposed Constitution contains no mention of the matter, it may be that the Speaker in the one case and the Senate committee in the other would be subject to compulsion by legal process if they should refuse to do their duty under the proposed provisions.

One very minor change is made by the proposed Constitution in the formulae used in reapportioning the House and redistricting the Senate. "Indians not taxed" are now excluded from the population count in both formulae; the proposed Constitution omits this exclusion since there are today very few Indians who are not taxed. [Present and proposed Art. II, §§ 4, 6.]

Legislative pay

The Constitution now grants each member of the General Assembly a salary of $15 a day for not exceeding 120 days of a regular session and 25 days of a special session. The two presiding officers receive $20 a day for like periods. All are entitled to the same subsistence and travel allowances provided by law for members of state boards and commissions generally. [Present Art. II, § 28.] Subsistence is now $8 a day.

Believing that present compensation levels for legislators are inadequate, the Constitutional Commission recommends an increase of $5 a day in the pay of legislators and their presiding officers, with retention of the present limits on the periods for which they can be paid. [Proposed Art. II, § 13.]

Adjournments

At present the two houses of the General Assembly may " . . . jointly adjourn to any future day, or other place. . . ." [Present Art. II, § 22.] The proposed Constitution would also permit either house, of its own motion, to adjourn for a period not exceeding three days. [Proposed Art. II, § 14.] Where one house has cleared its calendar but the other has not, this feature would permit the unengaged house to omit the currently mandatory daily sessions for as much as three days.

President pro tempore

The Lieutenant-Governor is *ex officio* President of the Senate and the presiding officer of that body. [Present Art. II, § 19; Art. III, § 11; proposed Art. II, §15.] Currently the Constitution directs the Senate to elect " . . . a Speaker [or President] (*pro tempore*) in the absence of the Lieutentant-Governor, or when he shall exercise the office of Governor." [Present Art. II, § 20.] It also provides, somewhat inconsistently, that "[i]n every case in which the Lieutenant-Governor shall be unable to preside over the Senate, the Senators shall elect one of their own number President of their body. . . ." [Present Art. III, § 12.]

In practice, the Senate regularly elects a President *pro tempore* at each session. When the office of Lieutenant-Governor is vacant, a President of the Senate is also elected, but the title of "Lieutenant-Governer" lapses. Practice has varied as whether the President *pro tempore* automatically succeeds to the presidency of the Senate when that office becomes vacant, or whether he must be especially elected to that post.

The proposed Constitution will settle the uncertainty, largely by embodying current practice and understanding. It requires the Senate regularly to elect from its membership a President *pro tempore*, who automatically becomes President of the Senate (1) if the Lieutenant-Governor fails to qualify or succeeds to the governorship, or (2) if the President of the Senate (normally the Lieutenant-Governor) dies, resigns, or is removed from office, and who continues in that office until the expiration of his senatorial term. During the absence or incapacity of the President of the Senate, the President *pro tempore* presides over the Senate without assuming the title of President of the Senate. [Proposed Art. II, § 16.]

Local government

The present virtually complete control of the General Assembly over local governmental affairs, county and municipal, is preserved and clarified by the proposed Constitution. [Proposed Art. II, § 25.] The limitations on the power of the General Assembly to enact special, local, and private legislation remain unchanged except as to the courts, where the limitations are tightened. [Proposed Art. II, § 26.] Both of these topics are dealt with in later sections of this article.

Private corporations

Article VIII of the present Constitution prescribes the pow-

ers of the General Assembly with respect to the creation of corporations and defines a "corporation" for the purposes of the article. As a result of restrictions adopted in 1868 and greatly strengthened in 1916 to eliminate numerous legislative acts granting or amending private corporate charters, private corporations can now be created only under general law. [Present Art. VIII, § 1.] These provisions are slightly abbreviated and transferred to Article II of the proposed Constitution as Section 27, making possible the elimination of present Article VIII. Omitted is the present express reservation to the General Assembly of the power to repeal by special act the charter of any corporation, including one created under general law. [Present Art. VIII, § 1.]

Local Government

Constitutional basis

North Carolina has a strong tradition of state legislative control and supervision of local government, both county and municipal. From 1776 until 1868, the Constitution left provision for and control of local government almost entirely in the hands of the General Assembly.

The Constitution of 1868 made a sharp departure from this background by prescribing a uniform scheme of organization and powers for the counties and the newly-established townships. [Present Art. VII.] The township system was an importation from northern states where it had worked well, but was without historical foundations in this State. Along with the enlarged franchise and the greatly-increased number of popularly elected officers, it represented an attempt by the framers of that Constitution to broaden popular interest and participation in government. The General Assembly was also authorized to make provision for the organization and powers of cities, towns, and villages, but uniformity in such provisions was not required. [Art. VIII, § 4.]

Soon after the return of the Conservative Party to power in the State, the Convention of 1875 with popular approval added to Article VII a section giving the General Assembly full power to modify or abrogate all provisions of that article except those relating to taxation and public debt. [Present Art. VII, § 13.] As a result, while the constitutional provisions establishing the structure and powers of county and township governments are still set out in the Constitution and have been little changed in wording since 1868, they have for 82 years had no greater force than an ordinary statute and have been altered by the legislature in various respects.

The power of the General Assembly to provide for the organization and government of the 100 counties and the 400 active municipalities of the State is exercised in two ways: by general act and by local, private, or special act, principally the latter.

It should be observed that the General Assembly has granted a much larger degree of self-government to cities and towns than to counties. While the validity of this distinction is sometimes questioned today as the differences between city and county become progressively less sharply defined, its origins are clear. Historically the county is an agency of the state through which it performs functions essential to the state or for which the State is responsible, but which cannot be effectively performed directly by the state, while the city is chartered as a special corporation to perform functions desired by the residents of heavily populated communities but not essential to all of the people in the state.

"Home rule"

There are occasional demands made in this State for "home rule" for cities, and in response a few constitutional amendments for the purpose have been offered in the General Assembly. While the term "home rule" is variously defined, it generally refers to a delegation of power by a state constitution to cities in order that they may conduct their own governmental affairs without interference from or approval by the state legislature, except in those matters where the welfare of the entire state is involved. Such power has seldom been advocated for the counties.

The legislative response to "home rule" requests has been uniformly negative in North Carolina, partly because there has been no real clamor by local officials for "home rule" powers. For over 40 years, the statute books of this State have offered four optional plans of municipal government, plans which appear to afford a city substantial freedom to run its own affairs without legislative intermeddling. Yet scarcely a dozen cities have adopted any of these plans. The reason, paradoxically, is that these stock plans, by forcing the city adopting one of them into a legislative-fixed standard pattern of organization and powers, deprive the city government of the very flexibility and freedom which "home rule" is said to give. The special legislative act system, just as paradoxically, offers that flexibility and freedom.

City officials in North Carolina actually gain more needed authority under the special act system than is obtainable under "home rule" as interpreted in many

states which have it. Modification of the organization and powers of a city or county can normally be effected by special act with much greater ease than if a popular vote on a charter amendment were necessary. And even if it is decided that "home rule" is desirable, great difficulty is often met in determining what matters are actually local and can be left to the cities and what matters are sufficiently state-wide in character to justify retention of legislative control.

Benefits of present system

Despite its apparent contradition of the concept that local governmental matters should be dealt with locally, the existing system of control by the General Assembly through special act has proved generally satisfactory in this State, both to the cities and the counties. Several reasons may be cited.

Through free use of the special act device, individual cities and counties can obtain needed authority to deal with problems which are peculiar to them and which cannot be dealt with effectively by general state laws applicable to all cities or counties. Many a legislator may be quite willing to vote for a particular city or county to have requested powers which he would not vote to give to his own city or county or to all cities or counties. This flexibility makes possible governmental experimentation on a limited scale.

Not infrequently local officials do not want to take responsibility for an unpopular action if it can be passed on to the General Assembly. Thus it is fairly common for special act authorization to be sought for actions which local governing bodies in "home rule" states would handle themselves.

Whatever the case in other states, there has been no widespread abuse by the General Assembly of its powers over local government here. Few special acts originate from a legislative spirit of meddlesomeness; they are ordinarily introduced at the specific request of local governing bodies. Legislators in recent years generally do not seem to have considered the amount of special legislation which they must act upon to be burdensome enough to justify any constitutional delegation of legislative powers to local governments, or any substantial restriction on special art regulation of local government.

Recommendations

The Constitutional Commission concluded that the present system of legislative control over local governmental affairs should not be disturbed because the system is working well in practice and the Commission could suggest no better. It does propose the elimination from the Constitution of (1) the obsolete language prescribing the system of county and township government, language which has been subject to statutory amendment since 1877, and (2) the present grant of legislative powers with regard to municipalities, and offers in substitution the following:

> The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities, towns, and other governmental subdivisions; may provide for the consolidation and dissolution thereof; and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities, towns, and other governmental subdivisions as it may deem advisable. [Proposed Art. II, § 25.]

In the Commission's opinion, this new section makes no change in substance as to the kind or degree of control and supervision over local governments which the legislature can exercise.

It should be emphasized that this discussion and proposed Article II, Sec. 25 are not concerned with taxation or public debt. These matters are dealt with in the revenue article, which in several respects limits the power of the General Assembly (1) to deal with this phase of local affairs by special act and (2) to delegate power to local governing bodies, even on a state-wide basis.

Local, Private and Special Legislation

From its beginnings in 1665, the legislative output of the General Assembly of North Carolina has included a large proportion of local, private, and special acts in comparison with the number of acts of general or state-wide application. Despite several efforts to curb its flow, such legislation continues in substantial quantity and in 1957 constituted 70% of the acts adopted by the General Assembly.

Private acts

From 1788 until 1835, local, private, and special legislation accounted for 74% of all the acts passed. The Convention of 1835 adopted and the people ratified constitutional amendments which prohibited private acts (1) granting divorces or securing alimony in individual cases, (2) legitimating persons, (3) changing the names of persons, or (4) restoring to the rights of citizenship any person convicted of an infamous crime, but authorized the General Assembly to enact general laws regulating these subjects. These prohibitions, which effectively abolished private legislation on the designated subjects, were brought forward in the Constitution of 1868 and are preserved

in the proposed Constitution. [Present Art. II, § 10, 11; proposed Art. II, § 26.]

Notice requirement

There was also adopted in 1835 an amendment requiring that 30 days' notice be given prior to the passage of any private act. Although still in the Constitution [present Art. II, § 12], this provision was effectively nullified many years ago by judicial decisions declaring that the ratification of a private act raises a conclusive presumption that the necessary 30 days' notice has been given. Because it is now meaningless, this provision is omitted from the proposed Constitution.

Corporations

The Constitution of 1868 and an amendment adopted in 1916 stopped the passage of numerous acts granting or amending charters of private corporations, leaving this matter to general law. This restriction is preserved in the proposed Constitution. [Present Art. VIII, § 1; proposed Art. II, § 27.]

Local government

The principal subject of local, private, and special legislation has consistently been local government. Of the three amendments adopted in 1916 to restrict the quantity of local, private, and special legislation (which had constituted 81% of the acts passed by the General Assembly of 1915), two related directly to legislation on local governmental matters. One 1916 amendment (that to Article VIII, Sec. 4), directed the General Assembly " . . . to provide by general laws for the organization of cities, towns, and incorporated villages . . ." and for the restriction of their financial powers. The State Supreme Court shortly pulled the teeth of this provision by declaring that it did not prohibit the enactment of local, private, and special laws in addition to general laws. *Kornegay v. Goldsboro,* 180 N.C. 441 (1920). Consequently, local acts with respect to municipal government have continued.

The chief amendment adopted in 1916 added Section 29 to present Article II, listing 14 subjects on which the General Assembly might pass general laws, but on which it was forbidden to pass any local, private, or special act. With few exceptions, these prohibitions related to local governmental affairs. Again the effort of the General Assembly to free itself of the necessity of acting upon a mass of local legislation at every session and so to allow itself more time for the consideration of state-wide measures was partly defeated by judicial construction. And forty years after adoption of the 1916 amendments the General Assembly continues to pass some laws which appear to be in violation of these prohibitions.

It appears that the principal objective of the restrictions imposed on local, private, and special legislation in 1835, 1868, and 1916 was to relieve the General Assembly of the burden of such legislation, rather than to increase local responsibility for local governmental affairs.

Some measure of the effectiveness of the various restraints on local, private, and special acts may be found in the fact that such legislation made up 74% of all acts from 1788 to 1835, 59% from 1836 to 1868, 49% from 1870 to 1915 (but in 1915, 81%), 68% from 1917 to 1947, and 70% in 1957.

Recommendations

The members of the Constitutional Commission, a majority of whom have served in the General Assembly, concluded that the present restrictions on local, private, and special legislation as set out in Article II, Sec. 29, are adequate and should be retained with two exceptions: the prohibitions against local legislation relating to inferior courts and justice of the peace appointments are omitted because specific provisions requiring that all legislation on the judicial system take the form of general laws are being set out in Article IV of the proposed Constitution. No increase in restrictions on local, private, and special legislation is proposed. This decision is consistent wth the Commission's conclusion that, except for certain phases of property taxation where state interests are paramount, the General Assembly should continue to exercise its present powers over local governmental affairs by special or general act as it deems best.

Executive Department

Little change in the present structure, organization, and powers of the Executive Department is proposed by the Constitutional Commission. The most notable changes relate to succession to executive offices and the determination of issues of official disability.

Unlike the Proposed Constitution of 1933, the current proposal offers no veto power for the Governor and so preserves North Carolina's unique position in that respect. Nor did the "short ballot" idea find any favor with the Constitutional Commission. The familiar slate of ten state-wide executive officers will continue to be elected by the people every four years. [Present and proposed Art. III, § 1.] Persons elected Governor or Lieutenant-Governor continue to be ineligible for election to the next succeeding term of the same office [present and proposed Art. III, § 2] (a limitation which in concept dates from 1776), although the other eight elective offi-

cers can be re-elected as often as the voters will return them.

Inauguration of Governor

Since 1868, the Constitution has prescribed that the Governor shall take his oath of office either " . . . [1] in the presence of the members of both branches of the General Assembly, or [2] before any Justice of the Supreme Court. . . ." [Present Art. III, § 4.] By ancient custom he does both at the beginning of a full term: He takes the oath before a Justice of the Supreme Court in the presence of the General Assembly.

A recent complication has arisen from the fact that while the Governor is eligible to take his oath on January 1 after his election, since 1956 the General Assembly does not regularly convene until early February. [Present Art. III, § 1; Art. II, § 2.] If the incoming Governor waits for the legislature to convene, his predecessor holds over and so the State is never without a Governor, but the Governor-elect loses the advantage of a month in office before his first General Assembly convenes.

The proposed Constitution merely omits the express provision that the Governor may take his oath in the presence of the General Assembly. He can still do so, but is relieved of the moral compulsion which mention of this procedure in the Constitution carries. [Proposed Art. III, § 4.]

Succession to office of Governor

In 91 years, five Lieutenant-Governors have succeeded to the office of Governor under the provision that

> In case of the impeachment of the Governor, his failure to qualify, his absence from the State[,] his inability to discharge the duties of his office, or in case the office of Governor shall in any wise become vacant, the powers, duties and emoluments of the office shall devolve upon the Lieutenant-Governor until the disabilities shall cease, or a new Governor shall be elected and qualified. [Present Art. III, § 12.]

Although the governorship and the lieutenant-governorship have never been simultaneously vacant, the order of succession beyond the latter office is provided for as follows:

> In every case in which the Lieutenant-Governor shall be unable to preside over the Senate, the Senators shall elect one of their own number President of their body; and the powers, duties, and emoluments of the office of Governor shall devolve upon him whenever the Lieutenant-Governor shall, for any reason, be prevented from discharging the duties of such office as above provided, and he shall continue as acting Governor until the disabilities be removed or a new Governor or Lieutenant-Governor shall be elected and qualified. Whenever, during the recess of the General Assembly, it shall become necessary for the President of the Senate to administer the government, the Secretary of State shall convene the Senate, that they may elect such President. [Present Art. III, § 12.]

The quoted language is not quite so clear as it seems. For instance, is the President of the Senate provided for in Section 12 the same officer as the "Speaker (*pro-tempore*)" whom the Senate is required to elect " . . . in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor . . ."? [Present Art. II, § 20.] Suppose the lieutenant-governorship is vacant, the Senate elects a President of the Senate (as in 1955) and adjourns, and then the Governor's office becomes vacant: Does the previously-elected President of the Senate become acting Governor, or must the Secretary of State convene the Senate that it may elect a President who becomes acting Governor?

And suppose the offices of Governor, Lieutenant-Governor, and Secretary of State should all be vacant at the same time while the General Assembly is in recess. There would then be no constitutional method provided for filling the Governor's office until (1) January 1 after the next quadrennial election for Governor when the newly elected Governor could take over, or (2) the General Assembly regularly convened and the Senate could elect a President who would become acting Governor.

These are admittedly speculative possibilities, but much less so today than in 1868, for to the normal hazards of modern life must now be added the certainty of enemy atack on the continental United States in any future war and an inevitable large-scale loss of life.

The proposed Constitution distinguishes more carefully than does the present one the circumstances under which the Lieutenant-Governor becomes Governor and those under which he merely becomes acting Governor. If the Governor-elect fails to qualify, or if the Governor dies, resigns, or is removed from office, under the proposed Constitution the Lieutenant-Governor becomes Governor and serves out the balance of his predecessor's four-year term. During the absence of the Governor from the State or during his physical or mental incapacity to perform the duties of his office, the Lieutenant-Governor serves as acting Governor,

relinquishing the office on the Governor's return to duty. [Present Art. III, § 12; proposed Art. III, § 11.]

Another change here is that no longer would the Lieutenant-Governor become acting Governor upon the impeachment of the Governor by the House of Representatives, as at present. An impeached Governor would not give up his office until convicted and removed from office by the Senate.

In the place of the present somewhat uncertain and cumbersome provisions regarding the line of succession to the governorship beyond the Lieutenant-Governor, the proposed Constitution requires the General Assembly to prescribe by law the further order of succession. [Proposed Art. III, § 11.] The line of automatic succession can be as long as the legislature sees fit to make it, and can include legislative or executive officers or both.

Incapacity of Governor

The present Constitution provides that in case of the Governor's ". . . inability to discharge the duties of his office, . . ." it devolves upon the Lieutenant-Governor ". . . until the disabilties shall cease, or a new Governor shall be elected and qualified" [Present Art. III, § 12.] But there is no machinery or procedure for determining when such "inability" exists or when it has terminated. The problems which could arise in the case of an incapacitated Governor who was unwilling or unable to acknowledge the fact are obvious.

The procedure offered by the proposed Constitution is sufficiently cumbersome and safeguarded that it would be almost incapable of abuse and difficult of use, but it would serve in the clearest sort of case of incapacity. Adopting the basic procedure which the Constitution has for 82 years provided for the removal of judges for inability, the proposed Constitution permits the General Assembly, by a vote of two-thirds of the membership of each House, to find that the Governor is physically or mentally incapable of performing the duties of his office, whereupon the Lieutenant-Governor takes over as acting Governor. A finding that an incapacitated Governor has recovered sufficiently to resume his duties can be made by vote of a majority of the members of each House. In either case he is entitled to notice and hearing before action is taken by the General Assembly. If the General Assembly is not in session when a problem of gubernatorial incapacity arises, a majority of the Council of State can convene it for the purpose of acting on the matter. [Proposed Art. III, § 12.]

Succession to other executive offices

The Constitution now provides that if the office of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, or Commissioner of Insurance ". . . be *vacated* by death, resignation, *or otherwise*, it shall be the duty of the Governor to appoint another [to serve] *until the disability be removed* or his successor be elected and qualified." [Present Art. III, § 13. Italics added.] While it makes no change in the substance of this provision, the proposed Constitution states more clearly its intent that during the physical or mental incapacity of any of these eight officers to perform his official duties, the Governor must appoint an acting officer to perform the duties of the disabled officer. [Proposed Art. III, § 13.] Like the Governor, one of these officers would no longer be suspended from office upon impeachment, but could be removed upon conviction by the Senate.

Since 1868, it has been the duty of the Governor to appoint to fill a vacancy in any of these eight elective offices, his appointee serving until the first general election held more than 30 days after the vacancy occurs. A new feature permits (but does not require) the Governor, in the event of a vacancy in one of these eight posts, to appoint an acting or interim officer to carry on the duties of the office going while he seeks the best available replacement—a significant consideration in view of the fact that the Governor's appointees to these positions are virtually assured of election and reelection if they desire it. [Proposed Art. III, § 13.]

Incapacity of other executive officers

At present it appears to be the duty of the Governor to determine when one of the eight elected executive officers above-listed is incapacitated to the extent that an acting successor must be appointed. [Present Art. III, § 13.] The proposed Constitution would empower the General Assembly to prescribe procedures for determining (1) when one of these officers or the Lieutenant-Governor is physically or mentally incapable of performing the duties of his office, and (2) when he has regained sufficient capacity to perform those duties. [Proposed Art. III, § 14.]

Compensation

With the probable intention of enhancing the independence of the executive branch from legislative influence by threat or reward, the Constitution now prescribes that the pay of the elec-

tive state executive officers ". . . shall neither be increased nor diminished during the time for which they shall have been elected. . . ." [Present Art. III, § 15.] Since these officers can accept only the compensation fixed by law at the time they take office and since pay raises are not usually granted two to four years in advance of their effective date, it is not uncommon in an inaugural year for a bill increasing the pay of these officials to be rushed through the General Assembly a few hours before the oaths of office for a new term are taken.

The proposed Constitution eliminates the prohibition against *increasing* the pay of the executive officers during their term, but retains the prohibition against its *reduction* during a term. [Proposed Art. III, § 16.] This is the same provision which has been made with respect to State judges since 1836. [Present Art. IV, § 18.]

Council of State

When the Council of State was enlarged from four to seven members in 1944, the number required for a quorum was left at three. The proposed Constitution increases a quorum to four members. [Present Art. III, § 14; proposed Art. III, § 15.] No other change is made in the Council of State.

Judicial Department

The most far-reaching proposals of the Constitutional Commission concern the courts of the State, and particularly the courts inferior to the Superior Court. Before discussing these changes, a short review of the background of the present court system may be useful.

Background

The Constitution of 1776 established judicial offices but left creation of the court system to the General Assembly. The Constitution of 1868 established a simple and uniform system of courts: (1) a Supreme Court with power to review upon appeal any decision of lower courts on matters of law or legal inference and to issue remedial writs; (2) a Superior Court in each county with exclusive original civil and criminal jurisdiction of matters beyond the scope of the justice of the peace, and appellate jurisdiction of some matters tried in lower courts; (3) justices of the peace with exclusive original jurisdiction of minor civil and criminal matters; and (4) special municipal courts, where necessary, with misdemeanor jurisdiction. Clerks of Superior Court were given jurisdiction of probate and other matters as prescribed by law.

Amendments adopted in 1876 restored to the General Assembly much of its former control over the court system, giving it unlimited power to create courts inferior to the Superior Court, to fix the jurisdiction of all courts below the Supreme Court (except for the contract and criminal jurisdiction of the justice of the peace), to establish a system of appeals, to make procedural rules for the courts other than the Supreme Court, and to change the number of judicial districts. The jurisdiction of justices of the peace was made non-exclusive. Rotation of Superior Court judges was required.

While subsequent amendments have enlarged the number of Supreme and Superior Court judges, separated solicitorial from judicial districts, authorized judicial divisions and a Department of Justices, and made other improvements at the Supreme and Superior Court levels, the basic constitutional framework of the court system has been little altered in 82 years.

Legislative action

In the exercise of its court-creating powers, the General Assembly had by 1917 established by special act a bewildering variety of inferior courts—mayors' courts, recorders courts, county courts, and others—each with its own tailor-made jurisdiction, procedures, fees, costs, records, and methods of selecting and paying court officials. A constitutional amendment effective in 1917 sought to forbid local, private, or special legislation ". . . relating to the establishment of courts inferior to the Superior Court . . .", but permitted general laws on the subject. [Present Art. II, § 29.] Judicial decisions blunted the edge of this amendment by permitting legislative modification of courts established prior to 1917. General laws enacted since 1919 have authorized 12 types of "uniform" courts to be established at local option. Once established, however, these courts can be modified by the legislature to meet local wishes and thus defeat uniformity even as between courts of the same type.

Today there are 150 courts with jurisdiction greater than that of a justice of the peace but less than that of the Superior Court. They vary greatly in the kinds of civil and/or criminal cases which they can try, in organization, in procedure, in personnel, in costs, in records, and in the quality of justice they dispense. In addition, in 1957 there were 940 active justices of the peace, 144 active mayors' courts, 106 juvenile and domestic relations courts, and numerous state agencies exercising quasi-judicial powers. The jurisdiction, organization, procedures, personnel, and costs

of these courts and agencies also differ widely.[2]

Court Study Committee

For the past three years, the courts of this State have undergone intensive examination by the Committee on Improving and Expediting the Administration of Justice in North Carolina, familiarly known as the Court Study Committee. An agency of the North Carolina Bar Association, that Committee was established to study the courts and to make recommendations to the Association, the Governor, and the General Assembly for changes which were found necessary to give the State a modern and efficient judicial system.[3]

The Court Study Committee had substantially finished its work when the Constitutional Commission began consideration of the judicial article of the Constitution. Representatives and subcommittees of the two groups conferred, and the Court Study Committee gave the Commission the published results of its inquiry and the text of its proposed constitutional article implementing its recommendations. Two members served on both the Committee and on the Commission.

The Constitutional Commission did its own thinking however, and while its proposed Article IV follows the Court Study Committee's draft in arrangement and to some extent in concept, the contents of the two plans differ in certain basic respects. These differences will be discussed later in this article.

Objectives of the Commission

The Constitutional Commission sought certain general objectives which largely shaped its specific proposals. It found the present Supreme and Superior Courts basically sound and working efficiently. It found the justice of the peace courts and the legislative-created jumble of courts below the Superior Court entirely inadequate to the demands of the State and in need of replacement. It preferred to establish the framework of the court system and to leave authority to determine the jurisdiction, powers, organization, and financing of the inferior courts to the General Assembly, along with the authority to make rules of procedure for the Superior and lower courts. The Commission thought it essential to require that the General Assembly exercise most of its powers over the courts only on a uniform, state-wide basis. It disfavored detailed constitutional specification of court organizational details, but favored putting authority in the General Assembly to delegate to the judicial department much of the power to regulate its own affairs.

Structure and organization

The judicial power of the State is vested by the proposed Constitution in a General Court of Justice and a Court for the Trial of Impeachments (the Senate). No other courts can be created. [Present Art. IV, § 2; proposed Art. IV, § 1.] However, the authority of the General Assembly to vest judicial powers in administrative agencies which it creates and to provide for appeals to the courts from rulings of those agencies is specifically stated. [Present Art. IV, §§ 2, 12; proposed Art. IV, § 2.]

The proposed General Court of Justice is simply a new collective label for the whole of the regular court system, and comprises an appellate division, a Superior Court Division, and a division of local trial courts. [Proposed Art. IV, § 4.]

The appellate division will consist initially of the Supreme Court, but the General Assembly may on recommendation of the Supreme Court establish within the appellate division a new intermediate Court of Appeals. [Proposed Art. IV, § 5.] The Supreme Court consists, as now, of a Chief Justice and six Associate Justices, but the General Assembly is authorized to enlarge the Supreme Court by adding two more Justices. [Present and proposed Art. IV, § 6 (1).] The never-used power of the Supreme Court to sit in divisions is retained. If a Court of Appeals is established, its structure and organization will be determined by the General Assembly. [Proposed Art. IV, § 7.]

It is anticipated that the work load of the Supreme Court will continue to increase as the State becomes more populous and industrialized. By empowering the General Assembly to add two members to that Court some temporary relief may be had. But for the longer range, it appeared to the Constitutional Commission advisable to authorize the creation, when needed, of an intermediate Court of Appeals which could relieve the Supreme Court of a large share of the appellate work which the latter Court must otherwise handle.

The Superior Court is little changed in the proposed Constitution. Judicial districts and divisions and the number of Superior Court judges continue to be fixed by the General Assembly. Regular Superior Court judges must reside in their respective districts, as now. The General Assembly is authorized (but not required) to provide that the judges shall ". . . preside in the

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[2] See Albert Coates, *The Courts of Yesterday, Today and Tomorrow in North Carolina*, POPULAR GOVERNMENT (March 1958 special issue).

[3] For a summary of the recommendations of the Court Study Committee and of the factual findings which underlie them, see POPULAR GOVERNMENT (Nov. 1958).

districts within a division successively." [Present Art. IV, §§ 10, 11; proposed Art. IV, § 8(1).] Thus it is left to the legislature to say whether, and to what extent, rotation of judges shall be kept up. The frequency of rotation, now governed by the Constitution, could be reduced by the legislature. This would tend to give a judge a greater feeling of responsibility for keeping the dockets of his court current, while retaining the main advantages of the rotation system.

Superior Court judges can be assigned by the Chief Justice, whenever he deems the public interest to require it, to hold court in any district, as at present. [Present Art. IV, § 11; proposed Art. IV, § 10.]

A Clerk of Superior Court continues to be elected in each county for a four year term. [Present Art. IV, §§ 16, 29; proposed Art. IV, § 8(3.]

The concept of "terms" of Superior Court is abandoned. "Regular trial sessions" of Superior Court for the trial of jury cases must be held in each county at times fixed by law, but at least twice a year. The Superior Courts continue to be open at all times for the transaction of all business except jury trials. [Present Art. IV, §§ 10, 22; proposed Art. IV, § 8 (2).]

The present assortment of courts inferior to the Superior Court, including the justice of the peace, is abolished by the proposed Constitution by January 1, 1965, and will be superseded by a uniform system of District Courts to which will be transferred all cases then pending in the abolished courts. The General Assembly is directed to provide, prior to the 1965 cut-off date, for the division of each Superior Court judicial district into a convenient number of local court districts and to prescribe where the District Courts shall sit. A District Court must sit in at least one place in each county. [Present Art. IV, §§ 2, 14; proposed Art. IV, § 9 (1).]

For each local court district, a Chief District Judge and one or more Associate District Judges are to be chosen for four year terms, the manner of their selection being left to legislative determination. Whatever method is decided on, however, it must be the same in every local court district in the State. [Present Art. IV, § 30; proposed Art. IV, § 9 (1).]

To replace the present justice of the peace, the proposed Constitution creates the "Trial Commissioner," who is an officer of the District Court and not a court in his own right. [Present Art. VII, § 5; proposed Art. IV, § 9 (1).] There must be at least one Trial Commissioner in each county, appointed for a two year term by the senior regular resident Superior Court judge from nominations submitted by the Chief District Judge of the district in which the Commissioner will serve. In this way the Trial Commissioner can be made administratively responsible to his immediate superior, the Chief District Judge.

The General Assembly determines the number of Associate District Judges and Trial Commissioners. [Proposed Art. IV, § 9 (1).]

Judicial selection and removal

The Justices of the Supreme Court and the regular Judges of the Superior Court under the proposed Constitution continue to be elected by the people for eight year terms, exactly as at present. [Present Art. IV, § 21; proposed Art. IV, § 15.] Judges of the Court of Appeals, if established, will be elected in the same manner. Clerks of the Superior Court continue to be elected [Present Art. IV, § 16; proposed Art. IV, § 8 (3)], but the method of selecting clerks of the District Courts is left to the General Assembly. Solicitors of the Superior Court continue to be elected for four year terms by the voters of the solicitorial districts. [Proposed Art. IV, § 17 (1).] Each county elects a Sheriff for a four-year term [present Art. IV, § 24; proposed Art. IV, § 18], but the offices of coroner and constable are deprived of their constitutional status and their continuation is left up to the General Assembly. [Present Art. IV, § 24.] Selection methods for judges of the District Courts and Trial Commissioners have already been discussed.

Vacancies in the offices of Justice of the Supreme Court, Judge of Superior Court, and Solicitor continue to be filled by appointment of the Governor, pending election of a successor. Removal of Justices of the Supreme Court and Judges of the Superior Court for mental or physical incapacity is by a two-thirds vote of the members of both Houses of the General Assembly, as it has been since 1877. [Present Art. IV, § 31; proposed Art. IV, § 16 (1).] Judges of the Court of Appeals will be removable by the same method. The General Assembly must provide by general law a system whereby judges and clerks of courts inferior to the Superior Court may be removed for misconduct or incapacity. [Present Art. IV, § 31; proposed Art. IV, § 16 (2), (3).] Clerks of the higher courts are removable for misconduct or incapacity by the judges of the courts which they serve. [Present Art. IV, § 32; proposed Art. IV, § 16 (3).]

Jurisdiction

Under the proposed Constitution, the jurisdiction of the Supreme Court is the same as at

present. [Present Art. IV, §§ 8, 9; proposed Art. IV, § 11 (1).] It reviews on appeal decisions of lower courts on matters of law or legal inference, issues writs necessary to give it supervision and control over the proceedings of the lower courts, and has original jurisdiction to hear claims against the State and make recommendations thereon to the General Assembly. Should a Court of Appeals be established, it will occupy a position immediately below the Supreme Court in the judicial structure, and will exercise such share of the appellate jurisdiction of the Supreme Court as the Supreme Court may by rule vest in it. [Proposed Art. IV, § 11 (2).] While the Court of Appeals may be made the highest court to which an appeal may be taken as a matter of right in some kinds of cases, yet the proposed Constitution guarantees that in *all* cases involving a construction of the state or federal Constitutions or in which a sentence of death or life imprisonment is imposed there shall be an absolute right of final appeal to the Supreme Court.

"Except as otherwise provided by the General Assembly, . . ." the Superior Court is the court of general trial jurisdiction, as at present. The legislature is authorized to give the clerks of that court such jurisdiction and powers as it may provide by general and uniform laws. [Present Art. IV, § 12; proposed Art. IV, § 11 (3).]

The jurisdiction and powers of the District Court and Trial Commissioner are to be prescribed by the General Assembly ". . . by general law uniformly applicable in every local court district of the State. . . ." [Present Art. IV, §§ 12, 14, 27; proposed Art. IV, § 11 (4).] To the Trial Commissioner as an officer of the District Court may, for instance, be given jurisdiction to try petty civil and criminal cases, issue warrants, conduct preliminary hearings, and act as a committing magistrate in criminal cases. Trial Commissioners may be appointed in sufficient number to make a court available in every locality.

The jurisdiction of the administrative agencies is also established by the General Assembly, although not necessarily on a uniform basis. [Present Art. IV, § 2; proposed Art. IV § 2.] A system of appeals must be provided by general law, but all appeals from Trial Commissioners must be heard anew in the higher court, with right of jury trial. [Present Art. IV, §§ 12, 27; Proposed Art. IV, § 11(5).]

Procedural rules

The Supreme Court retains the sole power to make rules of procedure for the appellate division just as it now makes its own rules, while the General Assembly retains the power to make rules of procedure for all other courts. [Present Art. IV, § 12; proposed Art. IV, § 12(2).] The grant of this authority is intentionally so phrased, however, that the General Assembly may delegate to the Supreme Court or to another agency the power to make rules of procedure for all courts below the appellate division (as it can now), and may withdraw that power at will.

Juries

The right to jury trial in both civil and criminal cases is preserved without change in the proposed Constitution. [Present Art. I, §§ 13, 19; Art. IV, § 1; proposed Art. I, §§ 23, 28; Art. IV, § 12(1).] While waiver of jury trial by agreement of the parties has been possible in civil cases at least since 1868 [present Art. IV, § 13], it has not been permitted in criminal cases in the Superior Court upon a "not guilty" plea.

The proposed Constitution permits waiver of jury trial in all criminal cases *except* where the offense charged is punishable by death or life imprisonment. [Proposed Art. IV, § 13.] All waivers must be in writing. In all other felony cases a jury may be waived by the accused with the consent of the trial judge and counsel for the accused, while in misdemeanor cases the accused needs only the consent of the trial judge. Where jury trial is waived in civil or criminal cases, the judge's finding upon the facts has the effect of a jury verdict.

The proposed Constitution requires the General Assembly, by general laws uniformly applicable throughout the State, to provide for the listing and drawing of jurors for both trial and grand juries. [Proposed Art. IV, § 14.]

Solicitors

In addition to his duties as prosecutor of all criminal actions in the Superior Courts of his district, the Superior Court Solicitor must under the proposed Constitution perform such duties related to appeals from those actions as the Attorney General may require. [Present Art. IV, § 23; proposed Art. IV, § 17(1).] He is also the adviser of the officers of justice in his district, and additional duties may be placed on him by the General Assembly. To the Attorney General goes the duty of recommending to the General Assembly revision of the solicitorial districts whenever he finds ". . . serious imbalance in the work loads of the solicitors, or . . . other good cause. . . ."

The prosecution of criminal cases in courts inferior to the Superior Court must be provided for by uniform general laws. [Proposed Art. IV, § 17(2).]

Finances

A significant new feature of the proposed Constitution is the requirement that the General Assembly provide for a schedule of court fees and costs which is uniform throughout the State within each division of the General Court of Justice below the appellate division. [Proposed Art. IV, § 20.] This provision is designed to meet the criticism of substantial variances in costs from one court to another of the same kind and even in the same county. The section is so phrased that this power may be delegated to the judicial department or elsewhere if the legislature wishes. The Supreme Court will fix fees and costs for the appellate division.

Fees, salaries, and emoluments of all judicial officers will continue to be fixed by the General Assembly. [Present Art. IV, § 18; proposed Art. IV, § 21.] Judges' salaries are protected from reduction during a term of office.

Perhaps the gravest defect of the present justice of the peace system is that the justice is paid in criminal cases only if he convicts. This kind of situation is eliminated by the proposed provision that

> In no case shall the compensation of any judge or Trial Commissioner be dependent upon his decision or upon the collection of costs. [Proposed Art. IV, § 21.]

Court Study Committee—Constitutional Commission proposals compared

The specific proposals of the Bar Association's Court Study Committee and of the Constitutional Commission are now before the General Assembly and the public. It therefore seems appropriate to compare briefly the two court plans they offer.

As has been noted earlier, the Constitutional Commission had before it the research studies, reports, and draft constitutional article of the Court Study Committee. While the Commission accepted many of the ideas of the Committee, there are several notable points of difference between the proposed court articles drafted by the two groups. It is true that the Constitutional Commission was somewhat less inclined to put details of court organization and powers in its draft of Article IV than was the Court Study Committee, but the main differences between the two groups are not explainable on that basis alone.

Rather, the dividing issue was the much more fundamental one: Which body—the State Supreme Court or the General Assembly—shall be given the power to determine the jurisdiction of the trial courts, make rules of procedure for those courts, devise a system of appeals, establish boundaries of local court districts, set terms or sessions of Superior Court for jury trials, and exercise general supervision over the court system?

The Court Study Committee, believing that these are essentially matters of judicial administration under the unified court concept and that divided authority over the courts discourages prompt and comprehensive action to discover and remedy defects in the system, prefers to give these powers to the Supreme Court.

The Constitutional Commission, while feeling that major difficulties have arisen from legislative "tinkering" with the inferior courts in response to local demand, prefers to leave these powers in the General Assembly, but with two significant qualifications: (1) it restricts the legislative power over the courts so that in most important instances it can only be exercised on a uniform, statewide basis, and (2) it phrases several of the grants of authority to the General Assembly so that body will be able to delegate to (and later withdraw from, if necessary) the Supreme Court or any other agency extensive power to manage the affairs of the judicial department.

This basic difference of viewpoint lies at bottom of most of the specific differences between the Court Study Committee and the Constitutional Commission.

Unified court: While it accepted the goal of a *uniform* court system from top to bottom, the Constitutional Commission did not endorse the concept of a *unified* court, which is an essential element of the Court Study Committee's plan. To the Committee, a unified court means a single court, the General Court of Justice, with power in the Supreme Court to define the jurisdiction of all courts below it, subject to certain limits on the jurisdiction of the District Courts which can be overridden by the concurrence of the Supreme Court and the General Assembly; and with the further power in the Supreme Court by rule to permit the parties in civil cases to waive questions of jurisdiction and agree to the trial of their case in any of the trial courts. The Constitutional Commission gives the General Assembly alone the duty of specifying by uniform, state-wide laws the jurisdiction of the Superior Court, District Court, Trial Commissioner, and Clerk of Superior Court, and includes in its draft no provision for waiver of jurisdiction. It does, however, allow the Supreme Court by rule to delegate a part of its appellate jurisdiction to the Court of Appeals, if established.

Administrative authority: The Court Study Committee's draft of

Article IV gives the Supreme Court administrative authority over all divisions of the General Court of Justice and power to issue rules in that connection, and makes the Chief Justice the executive head of the whole court system. The Constitutional Commission's draft of a proposed Constitution includes no provision for administrative supervision of the judicial system as a whole, and except in the case of the Trial Commissioner and his Chief District Judge, establishes no supervisory relationship within that system.

Court sessions: The Court Study Committee's draft leaves the fixing of regular trial sessions of the Superior Court and the assignment of judges to hold those courts to the Supreme Court and the Chief Justice respectively. The Constitutional Commission's draft provides that regular trial sessions of the Superior Court are to be held at times fixed pursuant to law and retains the present assignment power of the Chief Justice. Both drafts guarantee at least two jury trial sessions of Superior Court in each county annually.

Local court districts: Both groups concur in their conception of the framework of the District Courts with Trial Commissioners (whom the Court Study Committee calls Magistrates) attached as officers of those courts. However, the Court Study Committee's draft allows the boundaries of local court districts and the places where the District Courts shall sit in each county to be fixed by the Supreme Court. The Constitutional Commission's draft leaves these matters to be provided for by the legislature.

Fiscal supervision: The Court Study Committee's draft gives the Supreme Court financial supervision of the entire General Court of Justice, and requires that all fees and costs be paid to the State and that all court personnel be compensated and (as far as practicable) all other expenses of the court system be paid by the State. The Constitutional Commission's draft does not mention financial supervision or responsibility other than that of the General Assembly.

Rule-making: The Court Study Committee's draft provides that procedural rules for the entire court system are made by the Supreme Court with the advice of the Judicial Council, a mixed lawyer and non-lawyer group. The Constitutional Commission's draft leaves procedural rule-making for the appellate division to the Supreme Court alone, and leaves procedural rule-making for all courts below the appellate division to the General Assembly, which may delegate that power to any other agency.

Appeals system: The Court Study Committee's draft authorizes the Supreme Court by rule to establish a system of appeals, while the Constitutional Commission's draft leaves the appeals system to be provided for by law. Both groups agree that appeals from Trial Commissioners (or Magistrates) must be heard anew in the higher court.

District Judge selection: The Court Study Committee's draft requires that District Court Judges be appointed by the Chief Justice from nominations submitted by the senior regular resident Judge of the Superior Court of the district in which the District Court Judge is to serve. The Constitutional Commission's draft requires the General Assembly to provide a method for the selection of District Court Judges, but that selection system must be the same in every local court district.

Magistrate selection: The Court Study Committee's draft has Magistrates appointed by the Chief Justice from nominations submitted by the senior regular resident Superior Court Judge serving the county. The Constitutional Commission's draft has Trial Commissioners appointed by the senior regular resident Superior Court Judge serving the county from nominations submitted by the Chief District Judge under whom the Trial Commissioner will serve.

Inferior court replacement: The Court Study Committee contemplates a gradual replacement of existing inferior courts by the District Courts. The Constitutional Commission abolishes all inferior courts by 1965, which would require almost simultaneous substitution of the District Courts for all existing inferior courts.

Solicitors: The Court Study Committee's draft gives each Superior Court Solicitor, under the supervision of the Attorney General, responsibility for the prosecution of all criminal actions in all the courts within his district, including the lower courts. The Constitutional Commission's draft itself only makes the Solicitor responsible for prosecutions in the Superior Court and for assisting the Attorney General (on request) with appeals therefrom, but allows the General Assembly to add to the Solicitor's duties and to prescribe by general and uniform law for the prosecution of cases in courts below the Superior Court.

This recital of differences should not obscure the fact that there is much common ground shared by the Court Study Committee and the Constitutional Commission. They agree on the necessity for a General Court of Justice, within each division of which there is uniformity of or-

ganization, jurisdiction, powers, procedure, costs, fees, and method of selection of judges.

On several matters, such as the determination of the proper number of judges and of Trial Commissioners or Magistrates, the fixing of fees and costs, the fixing of salaries and fees of all officers of the judicial department, the laying out of Superior Court judicial and solicitorial districts, and generally the filling-in of many of the details regarding the court system, both the Committee and the Commission agree that responsibility must be given to the General Assembly. Which of these basic court plans is to be preferred is for the General Assembly and perhaps ultimately for the people of the State to determine.

Revenue, Taxation, and Public Debt

Article V of the proposed Constitution, dealing with revenue, taxation, and public debt, is revised somewhat more extensively in form than in substance, yet it contains several new provisions which deserve attention. The sections governing the classification of property for taxation and property tax exemptions are modified with the object of preserving a broad, stable, and inclusive tax base and insuring equal treatment for taxation of the same type of property wherever it may be found in the State; changes are made in the income tax exemptions; two sections authorizing poll taxes are omitted; and six sections dealing with public finance are shifted from other articles to the revenue article.

General provisions

The proposed Constitution retains the requirement that taxes may be levied for public purposes only. [Present Art. V, § 3; proposed Art. V, § 1.] Every act levying a tax must state ". . . the public purpose to which it is to be [exclusively] applied . . ." instead of the "special object" of its application. [Present Art. V, §§ 7, 3; proposed Art. V, § 4.]

Property taxation

Because property taxes account for 90% of all local tax revenues in this State and because many local governments are finding it increasingly difficult to finance activities which the people demand without substantial revenue increases, much attention has been given the subject of property taxation during the last two years. Three legislative commissions in addition to the Constitutional Commission have been studying one or more aspects of the subject and have offered recommendations thereon to the 1959 General Assembly, chief among them the Commission for the Study of the Revenue Structure of the State. As a result of consultation, the Tax Study Commission and the Constitutional Commission agree in their recommendations of needed constitutional amendments, and all four commissions concur in basic tax policy objectives.[4]

The State has levied no property tax since 1933 except the intangibles tax, the net proceeds of which go to the counties and municipalities.

The proposed Constitution keeps the requirement that no class of property or other subject of taxation shall be taxed except by uniform rule, meaning that any tax levied must apply equally and uniformly to all subjects in the same class within the taxing jurisdiction, be it State, county, municipality, or special taxing district. [Present Art. V, § 3; proposed Art. V, § 1.]

The General Assembly has had the power to classify property for taxation since 1936, and has exercised it in the classification of intangible personal property. Serious questions still exist, however, over the power of the General Assembly (1) to classify property on less than a statewide basis, and (2) to delegate the classification power to counties and municipalities. The proposed Constitution answers these questions decisively.

The General Assembly's power to classify property for taxation is continued under the proposed Constitution with the addition of three significant restrictions: (1) The classification power ". . . shall be exercised only on a statewide basis . . .", (2) ". . . every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the state . . .", and (3) "[t]he General Assembly's [exclusive] power to classify shall not be delegated . . ." except for the classification of trades and professions for local license tax purposes. [Proposed Art. V, § 1; present Art. V, § 3.]

The object of these three restrictions is to insure state-wide uniformity in the tax base insofar as that can be done by preventing the sort of variation and competition between local taxing jurisdictions which must inevitably accompany either legislative classification on less than a statewide basis, or legislative permission to local governments to create such variations by the local exercise of the classification power.

The proposed Constitution retains the present mandatory exemption from taxation of "[p]roperty belonging to the State or to municipal corporations . . ."

[4] For a discussion of several of the constitutional problems in the field of property taxation, see Henry W. Lewis, *Basic Legal Problems in the Taxation of Property* (Institute of Government, 1958).

[Present Art. V, § 5; proposed Art. V, § 2.] It adds the property of counties to this mandatorily exempt category, reflecting long-standing legislative and administrative interpretations of the term "municipal corporations" as used in this context. [G. S. 105-296 (1), 297 (1).] While the Constitutional Commission was aware of the legislative and judicial view that despite its apparent inclusiveness, this exemption as it relates to municipalities applies *only* to property used exclusively for public or governmental purposes, no attempt was made either to overrule or to embody that view in constitutional language.

The permissive authority of the General Assembly to exempt " . . . cemeteries and property held for educational, scientific, literary, charitable, or religious purposes . . ." remains unchanged. [Present Art. V, § 5; proposed Art. V, § 2.] So does the authority of the legislature to exempt up to $300 worth of personal property. However, the non-exclusive list of items such as "wearing apparel, arms for muster," etc., which may (but need not) be included in this $300 exemption is deleted as surplusage. The power of the General Assembly to exempt from taxation homesteads to the extent of $1,000 in value is preserved.

The most important amendments affecting property tax exemptions remove existing uncertainty as to the legislature's power (1) to grant exemptions on less than a state-wide basis, and (2) to delegate its exemption powers to local governments. It is possible that the General Assembly now can do both. Several recent local acts grant exemptions with respect to specified types of property—particular agricultural products, for instance. In the proposed Constitution, it is affirmatively stated (1) that "[e]very exemption shall be on a state-wide basis and shall be uniformly applicable in every county, municipality, and other local taxing unit of the State . . .", and (2) that the exemption power rests exclusively with the General Assembly and cannot be delegated by it. [Proposed Art. V, § 2; present Art. V, § 5.]

The proposed Constitution imposes no limitation on the apparent power of the General Assembly, either (1) by failing to classify a certain kind of property for taxation, or (2) by classifying it and taxing it at an insignificant rate, effectively to exclude it from taxation even though it is not of such character or ownership as to entitle it to direct exemption.

The proposed Constitution retains the top limit on the combined state and county property taxes which may be levied for general or ordinary governmental purposes at 20c on the $100 valuation (where it was fixed in 1952), and also limits to 5c the maximum share of that 20c which the State can levy. [Present Art. V, § 6; proposed Art. V, § 3.] The power of the General Assembly to grant by special or general act its special approval for the levy of county taxes for special purposes in excess of the 20c limitation is preserved without change.

Property taxes levied by the counties or by the State under general or special legislative act ". . . for the maintenance of the public schools of the State . . ." also remain exempt from the 20c limitation. [Present Art. V, § 6; proposed Art. V, § 3.] The current qualification that such a levy must be " . . . for the [six month school] term required by Article 9, Section 3, of the Constitution . . ." was stricken. The Constitutional Commission concluded that there may in fact now be no "term required," since the local option feature of the "Pearsall Amendment" [present Art. IX, § 12] makes possible the closing of schools in a local option unit.

This deletion also has the effect of making clear that present Article VII, Sec. 7 [proposed Art. V, § 6], requiring a vote of approval by the people of the taxing unit for a tax levy for other than "necessary expenses," does not apply to any tax levied for public school maintenance. If the General Assembly wishes to require a popular vote on school tax levies it may do so, but the proposed Constitution does not command it. (See *Bridges v. Charlotte*, 221 N.C. 472 (1942), where the State Supreme Court reached the same conclusion under the relevant language of the present Contitution.)

It should be noted that the limitations on the power of counties and muncipalities to borrow money without a vote of the people continue to apply to debts incurred for school purposes just as they apply to all other debts. [Present Art. V, § 4; proposed Art. V, § 5.] See *Hallyburton v. Board of Education*, 213 N.C. 9 (1937).

Also unchanged is the "necessary expense" limitation, forbidding counties and municipal corporations to levy taxes or incur debts " . . . except for the necessary expenses thereof . . .", unless approved by a majority of those voting in an election held on the issue. [Present Art. VII, § 7; proposed Art. V, § 6.]

Franchise taxation

The existing express authorization to the General Assembly to ". . . tax trades, professions, [and] franchises . . ." [present Art. V, § 3] is omitted from the proposed Constitution as unnecessary in view of the fact that the

taxing power of the General Assembly is complete except as restricted by the Constitution, state or federal. *Bickett v. State Tax Commission*, 177 N.C. 433, 442 (1919). The existing power of the legislature to classify trades and professions for taxation and to permit the counties and municipalities to do so in levying local license taxes is expressly stated. [Present Art. V, § 3; proposed Art. V, § 1.] The delegability of this power is in deliberate contrast to the policy of non-delegability of the classification power for property tax purposes.

Income taxation

The General Assembly's specific constitutional authority to levy an income tax, which dates from 1868, is omitted from the proposed Constitution since the plenary taxing power of the legislature also embraces that form of taxation. The 10% maximum rate on income tax, adopted in 1936, is preserved. [Present Art. V, § 3; proposed Art. V, § 1.]

Certain modifications in the mandatory income tax exemptions are effected by the proposed Constitution. The present Constitution establishes minimum exemptions of $2,000 for a husband with a wife living with him and $1,000 for ". . . all other persons . . . ." [Present Art. V, § 3.] The General Assembly seems to interpret these provisions to require that a wife with separate income be allowed a $1,000 exemption of her own, despite the $2,000 exemption allowed her husband, on the theory that she is included in the "all other persons" category. [G.S. 105-149(a)(3).] The proposed Constitution grants ". . . the income producing spouse of a married couple living together, where only one spouse has income. . . ." a $2,000 minimum exemption. [Proposed Art. V, § 1.] Where both husband and wife have income, under the new provision each is entitled to a $1,000 minimum personal exemption, but either spouse may allow the other to claim all or any part of that personal exemption. The General Assembly would no longer be obliged to grant a wife with separate income an additional exemption. This change would permit the filing of joint income tax returns by husband and wife, as under federal law. It would also give relief in the situation where the wife is the chief or sole income earner of the family.

No change is proposed in the current $2,000 minimum exemption allowed a widow or widower with a minor child. [Present Art. V, § 3; proposed Art. V, § 1.]

Presently "all other persons" than husbands and widows and widowers with minor children are given a minimum exemption of $1,000, as has been noted. The proposed Constitution would alter that phrase to read "all other natural persons." [Present Art. V, § 3; proposed Art. V, § 1.] The use of the adjective "natural" is intended to relieve the General Assembly of any obligation to allow the mandatory $1,000 exemption to artificial persons, such as corporations and trusts.

It merits emphasis that the General Assembly would, under the proposed Constitution, continue to have authority to grant income tax exemptions in excess of the constitutional minimum figures and to grant exemptions to taxpayers other than those listed in the Constitution.

The General Assembly's discretionary authority to grant income tax deductions (other than for living expenses), ". . . so that only net incomes are taxed . . .", is preserved and clarified. [Present Art. V, § 3; proposed Art. V, § 1.]

Capitation taxation

The proposed Constitution omits as surplusage the express authorization to the General Assembly and to the cities and towns to levy poll taxes and the limitations thereon, thus leaving the levy of such taxes, their amount, and the application of their proceeds within the discretion of the General Assembly. [Present Art. V, §§ 1, 2.]

Public debt

The proposed Constitution consolidates in the revenue article and abbreviates without substantial change the present provisions relating to public debt, both state and local.

No change is made in the current limitations on the authority of the State and of the counties and municipalities to incur or increase public debts without a popular vote of approval. The denial to the General Assembly of the power to give or lend the credit of the State in aid of private parties is strengthened. [Present Art. V, § 4; proposed Art. V, § 5.]

The "necessary expense" limitation is retained, barring any county or municipal corporation from contracting debts, pledging its faith or lending its credit, or levying or collecting taxes, " . . . except for the necessary expenses thereof . . .", without approval by a majority of those voting in a popular election on the issue. [Present Art. VII, § 7; proposed Art. V, § 6.]

All State and local debts incurred in aid of the Confederate cause continue to be barred by the proposed Constitution. [Present Art. I, § 6; Art. VII, § 12; proposed Art. V, § 9.] Similarly, payment of certain repudiated Reconstruction bonds of 1868-70 continues to be barred unless a majority of the qualified voters of the State votes for their redemp-

tion. [Present Art. I, § 6; proposed Art. V, § 9.]

Retirement and sinking funds

The existing prohibitions against use of the funds of the Teachers' and State Employees' Retirement System or of any sinking fund except for the purposes of its creation are retained without change. [Present Art. II, §§ 30, 31; proposed Art. V, § 7, 8.]

Suffrage and Elections

No radical change is to be found in the provisions of the proposed Constitution governing suffrage and elections. The existing literacy requirement for registration is retained but the "grandfather clause," exempting from the literacy test certain persons who registered prior to December 1, 1908, is omitted. [Present Art. VI, § 4; proposed Art. VI, § 4.] This latter provision was deemed by the Constitutional Commission to be obsolete as a practical matter. Similar provisions in other state constitutions were long ago declared void as violative of the Fifteenth Amendment of the United States Constitution. *Guinn v. United States,* 238 U. S. 347 (1915); *Myers v. Anderson,* 238 U.S. 368 (1915).

Under the present Constitution, any person who has, ". . . in open Court upon indictment . . .", confessed his guilt of crime of a certain class (in effect, of felony) is disqualified as a voter. [Present Art. VI, § 2.] One who is found guilty of committing certain crimes ". . . on indictment pending . . ." is ineligible for public office. [Present Art. VI, § 8.] Since 1950 it has been possible for an accused to waive indictment in all except capital cases. [Present Art. I, § 12.] An incongruous situation might arise where a would-be voter or officer who has previously waived indictment and confessed his guilt of felony nevertheless insists that because he did not confess "upon indictment" he is not disqualified. To avoid this possibility, the proposed Constitution disqualifies for voting and for office holding any person who has been convicted or has confessed ". . . upon trial in open court . . ." guilt of disqualifying crime, omitting all reference to indictment. [Proposed Art. VI, §§ 2, 7.]

The Constitution has since 1877 disqualified for voting any person guilty of crime for which the punishment is imprisonment in the State's prison, unless his rights of citizenship have been restored to him under statutory procedures. [Present Art. VI, § 2.] It has since 1868 disqualified for any public office any person guilty of ". . . any . . . felony, or of any other crime for which the punishment may be imprisonment in the Penitentiary, *since becoming citizens of the United States. . . .*" [Present Art. VI, § 8; italics added.] The quoted disqualification the Constitutional Commission deemed to be an obsolete reference to the recently (in 1868) emancipated slaves, and so omitted it from their draft. (While such was probably its original purpose, yet the above-quoted language itself is not so limited in application, and certain sections even more clearly temporary or transitional in original purpose have been construed by the State Supreme Court to have continuing effect — Article XIV, Sec. 5, for instance.) The proposed Constitution provides instead that no person is eligible to *elective* office who cannot vote in an election for that office, thus relying on the disqualification of voters for crime as a barrier to office seekers who have committed ordinary crimes. It also specifically disqualifies for *any* office a person guilty of treason or of corruption or malpractice in office, or who has been impeached and removed from office, unless restored to the rights of citizenship. [Proposed Art. VI, § 7.] But what of the person who has been convicted of an ordinary felony and is ineligible to vote: does the proposed Article VI, Sec. 7 bar him from *appointive* office? Clearly not, but other provisions come into play here.

The present Constitution says that "[e]very voter in North Carolina, except as in this Article disqualified, shall be eligible to office. . . ." [Proposed Art. VI, § 7.] This provision has been construed by the State Supreme Court to mean not only what it says, but also that no one but a voter is eligible for any public office. *State v. Knight,* 169 N.C. 333 (1915). The proposed Constitution expressly embodies this construction as it affects elective offices by disqualifying for office ". . . any person who is not qualified to vote in an election for such office. . . ." [Present Art. VI, § 7.] But resort must still be had to the rule established by the *Knight* case to bar from appointive office persons disqualified from voting on account of ordinary crime or other cause.

Another question is raised by this change: would a felony conviction in the courts of another state or of the United States disqualify a person for state office under the proposed Constitution? It apparently does so under present Article VI, Sec. 8, which bars from office persons guilty ". . . of any . . . felony . . .", seemingly without limitation as to the jurisdiction in which trial was had; but that provision is omitted from the proposed Constitution. Both the present and proposed Constitutions only disqualify as voters those persons guilty of crimes punishable by ". . . imprisonment in the State's prison . . .", imply-

ing that convictions outside this State or in the federal courts have no effect upon one's capacity to vote in North Carolina. [Present Art. VI, § 2; proposed Art. VI, § 2.] Deletion of the "felony" reference in the present disqualification for office provision seems to mean that except for treason, corruption or malpractice in office, or impeachment and removal from office, only North Carolina offenses disqualify one for office.

No change is proposed which would relieve appointive officers, state and local, of the necessity of being voters in this State.

The proposed Constitution omits the present provision barring from office anyone who fights or assists in a duel. [Present Art. XIV, § 2.]

EDUCATION

Public Schools

Among the most significant recommendations of the Constitutitonal Commission, at least insofar as basic changes in constitutional policy of the State are concerned, are two in the proposed education article. [Present Art. IX; proposed Art. VII.] Briefly, these proposals call for the deletion from the Constitution of (1) the mandate that the free public schools for which the General Assembly must provide shall constitute " . . . a general and uniform system . . .", and (2) the authority of the State Board of Education to supervise and administer the public school system and to make rules and regulations for that purpose. Deletion of the administrative authority of the Superintendent of Public Instruction is also proposed.

Present Article IX, Sec 2, reads as follows, with the portions which the Constitutional Commission recommends be deleted set out in brackets:

> The General Assembly [at its first session uder this Constition,] shall provide by taxation and otherwise for [a general and uniform system of] Public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years. [And the children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination made in favor of, or to the prejudice of either race.]

The first sentence of this section was adopted in 1868, the second in 1876. No other proposal to amend this section has ever been submitted to the people. The proposed Constitution also adds to Article VII, Sec. 2, a part of present Article IX, Sec. 3, as is noted later.

This section, and particularly the ninety-one year old requirement of "a general and uniform system of Public Schools," has often been held by the North Carolina Supreme Court to be a mandate to the General Assembly. In *Greensboro v. Hodgin*, 106 N.C. 182, 186 (1890), that Court said of this section:

> . . . [T]he Legislature is required to promote popular education by devising and establishing a plan—a scheme—consisting of necessary and well - appointed constituent parts, and the whole organized into a complete *system* of public schools. Such *system* must be *general*—not local—not limited to one or more places or localities in the State; it must extend and prevail throughout its borders; and so, it must be *uniform* in all material respects as contemplated by the Constitution—that is, the system cannot be so regulated *by statute* that it will apply and operate as a whole in some places . . . and not in the same, but in different ways, in other places . . . . An essential requirement . . . . is that the *system*, whatever it may be, in whatever manner constituted, *must be general and uniform as a whole*, and therefore so in all its material parts, the purpose being to extend to all the children within the prescribed ages, wherever they may reside in the State, the same opportunity to obtain the benefits of education in free public schools—certainly to the extent that the State itself shall supply means to support such schools.[5] [Italics added.]

The reason why the "general and uniform system" mandate is found in the Constitution and not left to statute was explained by Justice Seawell as follows:

> It is no doubt written into the fundamental law so that it may survive political indifference and so that the humblest citizen, speaking for himself and those in like right, may demand its performance. *Bridges v. Charlotte*, 221 N.C. 472, 482 (1942).

In response to this mandate, the General Assembly has adopted three different courses of action at different periods. From 1868 to 1901 it acted by proxy, authorizing the counties and special taxing districts, as agents of the State, to establish schools and levy taxes for their support. From 1901 to 1931 it sought to equalize the financial burden of the counties by appropriating for the public schools funds to be distributed according to need. In 1931 the legislature assumed for the State the full burden of financing public school operations for the consti-

[5] Adoption of the "Pearsall Amendment" in 1956 qualifies the breadth of this language to the extent that the system must be "general and uniform" throughout the State except in those places where the local option procedure has been used to close one or more schools.

tutional six month term (and later for the statutory additional three months of the term), while leaving with the counties the duty of providing school buildings and grounds. It has been the duty of the State Board of Education since 1943 " . . . to apportion and equalize the public school funds over the State. . . ." [Present Art. IX, § 9.] In addition to giving financial support, the State through the Board now regulates the grade, salary, and qualifications of teachers; prescribes courses of study and textbooks to be used; and generally supervises and regulates the public school system. Thus the practice and policy of the State, particularly in the last 28 years, have given increasing meaningfulness to the phrase, "a general and uniform system of Public Schools."

The people of the State in 1956 ratified Article IX, Sec. 12, familiarly known as the "Pearsall Amendment," which (among other things) authorizes the General Assembly "[n]otwithstanding any other provision of this Constitution, . . . [to] provide for a uniform system of local option . . ." enabling the voters of any local option unit to vote to close some or all of the public schools in that unit. Does this Amendment conflict with the General Assembly's constitutional duty to ". . . provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge . . ."?

The Constitutional Commission decided that it may. It recommends retention of the "Pearsall Amendment" without material change. Therefore the Commission concluded that the phrase "a general and uniform system", being perhaps contradictory to that Amendment, should be repealed.

But is this the only reasonable interpretation to be placed on these two provisions? It is a well established rule of construction that a constitution must be read as a whole document and that its provisions should be so construed as to avoid conflict or inconsistency if at all possible. No amendment was made to Article IX, Sec. 2, when the "Pearsall Amendment" was adopted in 1956. Might it not therefore be consistent with the intention of the General Assembly and of the people in adopting that Amendment to view it merely as an authorization to the General Assembly to provide procedures whereby the voters of a local option unit may by majority vote close one or more schools in that unit, and thus eliminate them from the "general and uniform system"? The Amendment does not alter in the least the constitutional duty of the General Assembly towards the public schools which stay open: every one remains a part of the "general and uniform system" for which the General Assembly must provide by taxation and otherwise. The legislature has no authority to close or otherwise to avoid its constitutional obligation to any school within that system. It can be relieved of that obligation only by the action of the voters in the local option units.

Under this view, there is no necessary conflict between the "general and uniform system" requirement and the "Pearsall Amendment:" the former states the general rule, the latter a clear exception to that rule.

When the establishment of high schools was still optional with the counties under general state law, the Supreme Court held that those high schools which were actually set up were a part of the "general and uniform system of Public Schools," although some of the counties had not elected to establish high schools. *Board of Education v. Board of Commissioners,* 174 N.C. 469 (1917). It would seem to be equally true today that all of the public schools which remain open are part of the "general and uniform system" for which the General Assembly must provide, irrespective of the exercise by some localities of the option to close their schools.

What is the effect of the recommended deletion of the "general and uniform system" standard for the public schools? The General Assembly clearly could continue to maintain the schools as it does today. It would also appear to gain leeway to provide such schools as it sees fit, so long as they are "public" and free and at least one school is maintained in every school district for at least six months a year. Subject to the limitations imposed by public demand, by the Fourteenth Amendment of the United States Constitution, and by the state constitutional prohibition against special privileges except in return for public services [present Art. I, § 7], it would seems to be within the legislature's power under the proposed Constitution to make wide variations from place to place in the kind and quality of free public schools it provides for and in the level of financial support it gives them.

There is a distinct possibility that the cited constitutional provisions and others, state and federal, might be applied to reach the same result that the "general and uniform system" requirement now commands, in which case repeal of that requirement would have been in vain. Yet it might be difficult for a future state court to ignore the deliberate deletion of the "general and uniform system" requirement and to avoid the apparent intent of that deletion by applying other constitu-

tional provisions to reach the same end.

Repeal of the requirement of racial segregation in the public schools is recommended by the Commission because it has been declared invalid by the North Carolina Supreme Court in *Constantian v. Anson County*, 244 N.C. 221 (1956).

Currently, Article IX, Sec. 3 reads as follows:

> Each County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least six months in every year; and if the Commissioners of any County shall fail to comply with the aforesaid requirement of this section, they shall be liable to indictment.

This section has been amended only once, in 1918, when the school term was increased from four to six months.

With the assumption by the State in 1931 of the duty of financing the operation of the public schools, the duty of the county commissioners has been largely restricted to providing for the construction and equipment of adequate school buildings in each school district. *Marshburn v. Brown*, 210 N.C. 331 (1936).

It has never been the duty of the county commissioners to divide their counties into school districts. That duty was in 1943 vested in the State Board of Education by constitutional amendment. [Present Art. IX, § 9; proposed Art. VII, § 5.]

The proposed Constitution retains and makes a part of Article VII, § 2, the requirement that

> . . . each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year.

It strikes out the constitutional obligation of the county commissioners to maintain the public schools and their liability to indictment for failure to do so. [Present Art. IX, § 3.] This change recognizes the fact that the extent of the county commissioners' responsibility for school maintenance is now defined by the General Assembly and that the commissioners have progressively been relieved of that responsibility as the State has taken over more and more of the burden of school support and management. It should be recalled, too, that the county commissioner system has existed by leave of the General Assembly for 82 years. [Present Art. VII, § 13.]

The authority of the General Assembly to require school attendance is retained in the proposed Constitution. The total minimum attendance period of 16 months is dropped as meaningless, since legislation now requires attendance by all children from seven to sixteen for the full regular term. [G.S. 115-166.]

State Board of Education

Prior to 1943, various phases of the State's power of supervision and control of the public school system were divided among several agencies, including the old State Board of Education, State School Commission, State Textbook Commission, and State Board of Vocational Education.

In 1943, all of these agencies were abolished. Effective the same year, a constitutional amendment vested in the reorganized State Board of Education "[t]he general supervision and administration of the free public school system . . .", and the authority to ". . . make all needful rules and regulations in relation thereto." [Present Art. IX, §§ 8, 9.]

The proposed Constitution omits these constitutional grants of authority altogether, leaving it to the General Assembly to determine whether such authority will continue to be exercised by the Board or by some other agency or not at all. [Proposed Art. VII, §§ 4, 5.] The Board retains all its other specific powers set out in the present Constitution. [Present Art. IX, §§ 8, 9; proposed Art. VII, §§ 4, 5.]

The current provision that the State Board of Education shall succeed to ". . . all the powers and trusts . . ." of certain predecessor agencies is changed to read ". . . all the property rights and trusts . . . ." [Present Art. IX, § 9; proposed Art. VII, § 5.] This change is intended to limit the scope of this provision to the interests of the Board as trustee of the State Literary Fund and other state assets dedicated to school purposes.

The proposed Constitution authorizes the General Assembly to establish procedures governing confirmation by the General Assembly of the Governor's appointees to the State Board of Education—to provide, for instance, that appointments must be submitted to the General Assembly by a certain day of each regular session. [Proposed Art. VII, § 4.]

Superintendent of Public Instruction

Article IX, Sec. 8, as amended in 1944, provides:

> The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be secretary of the Board.

Should the General Assembly see fit to continue in the State Board of Education by statute the powers of "general supervision and administration" of the public school system which the Constitutional Commission would delete

from the Constitution, the present possibility of conflict of administrative authority between the Superintendent and the Board would persist. To make clear what may now be the case—that the Superintendent is supposed to be the administrative agent of the Board—the Commission recommends revision of the constitutional statement of the Superintendent's duties to read:

> The State Superintendent of Public Instruction shall be the secretary and chief administrative officer of the Board.

[Proposed Art. VII, § 4.]

This change further frees the legislature to make such disposition of the power of general administration of the public schools as it may from time to time deem appropriate.

Higher education

The present provisions with respect to the University of North Carolina are preserved unchanged in the proposed Constitution. [Present Art. IX,§§ 9, 10.] Unlike the Proposed Constitution of 1933, it does not take account of the dozen other institutions of higher education which the State now maintains. They are left entirely to the discretion of the General Assembly, as at present. An 1868 provision requiring the establishment and maintenance in connection with the University of ". . . a department of agriculture, of mechanics, of mining, and of normal instruction . . ." (apparently inserted to insure compliance with the Morrill Act of 1862), is omitted as unnecessary legislative detail.

Homesteads, Exemptions, and Married Women's Property

No change in substance and only slight changes in wording and order have been made by the Constitutional Commission in present Article X (proposed Article VIII), dealing with the personal property exemption, the homestead exemption, and the rights of married women in their own property. The section protecting insurance on the husband's life and the proceeds thereof, where for the sole benefit of his wife and children, from the claims of his creditors and representatives has been redrafted for needed clarification, but without intended change in meaning. [Present Art. X, § 7; proposed Art. VIII, § 6.]

Penal Institutions and Public Charities

Present Article XI is much abbreviated but little changed in essential respects in the proposed Constitution. [Proposed Article IX.] In place of a lengthy list of types of penal, correctional, and charitable institutions called for under provisions dating from 1868, there is proposed a single, broadly-phrased section requiring the State to establish and maintain

> [s]uch charitable, benevolent, sanitary, reformatory, and penal institutions as the claims of humanity and the public good may require . . . .

[Present Art. XI, §§ 3, 4, 5, 8, 9, 10; proposed Art. IX, § 1.] Such institutions must continue to be ". . . as nearly self-supporting as is consistent with the purposes of their creation." [Present Art. XI, § 11; proposed Art. IX, § 3.]

The 1868 language giving the Board of Public Welfare (formerly the Board of Public Charities) ". . . supervision of all charitable and penal State institutions . . ." is omitted from the proposed text. [Present Art. XI, § 7; proposed Art. IX, § 2.] It is the Commission's view that these provisions are more appropriate for legislative than for constitutional prescription.

Punishments for Crime

Current provisions prescribing the five kinds of punishment for crime which are permitted in North Carolina and authorizing the General Assembly to prescribe the death penalty only for murder, arson, burglary, and rape are retained without significant alteration. [Present Art. XI, §§ 1, 2; proposed Art. IX, § 4.] Detailed provisions adopted in 1876 to govern the farming out of convict labor are eliminated because essentially legislative in character. [Present Art. XI, § 1.]

Militia

The present militia article, the only article which has survived 91 years without amendment, is continued with only slight and immaterial change. [Present Art. XII; proposed Art. X.]

Constitutional Revision

Since 1835 the Constitution of North Carolina has provided two alternative methods of constitutional amendment or revision. [Present Art. XIII.] First, a convention of the people may adopt a new or revised Constitution or constitutional amendments, without necessarily submitting them to the people for approval. Second, the General Assembly may propose constitutional amendments to the people for approval. The proposed Constitution preserves both procedures, but the provisions governing their exercise are stated in much fuller and more informative fashion than in the present Constitution.

Convention

The present Constitution merely prescribes the procedure for calling a Convention of the People: A two-thirds favorable vote by the members of each house of the General Assembly, and approval by a majority vote in a popular election on the issue. Nothing is said of the powers and func-

tions of the Convention, or of how delegates are to be chosen and apportioned. Answers to these questions are only to be derived from the nature and theory of the convention and the history of its use in this State. No convention has been held in North Carolina since 1875.

In preparing its recommended provisions concerning the Convention of the People, the Constitutional Commission drew heavily upon established and accepted practices which have grown up around the Convention in this State. Under the proposed Constitution, the calling of a Convention of the People continues to require an affirmative vote of two-thirds of the members of each house of the General Assembly and a favorable vote by a majority of those voting on the convention issue in a popular referendum, as it now does. [Present Art. XIII, § 1; proposed Art. XI, §1.] It is also made clear that this is the exclusive method of calling a Convention. In the act submitting the convention proposition to the voters, the General Assembly must (1) fix the time of the election, (2) fix the convening day, and (3) propose limitations on the authority of the Convention, which limitations become binding instructions by the voters if a Convention is held. These limitations may be as slight or as extensive as the legislature sees fit to make them. (Such limitations have frequently been imposed heretofore without express constitutional authorization.)

Delegates to the Convention are elected by the qualified voters, are equal in number to the membership of the State House of Representatives, and are apportioned among the counties as are the members of House of Representatives of the General Assembly submitting the convention proposition. (All conventions called since 1861 have consisted of 120 elected members, and those called upon the initiative of the legislature have been apportioned as was the House of Representatives at the time.) The Convention is specifically prohibited from enacting any ordinance not necessary to the purpose for which it is called, so that it will not stray into fields of ordinary legislative activity.

While the convention is preserved as a general purpose instrument for the exercise of popular sovereignty, its function in the amendment and revision of the Constitution is stated for the first time. [Proposed Art. XI, § 3.] New to the Constitution but familiar in practice is the requirement that any new or revised Constitution or constitutional amendment adopted by a Convention be submitted to the qualified voters of the State for approval or rejection. A constitutional amendment or revision so approved takes effect the following January 1, unless the Convention provides otherwise.

Legislative initiation

The provisions governing the procedure whereby the General Asembly proposes constitutional amendments to the voters for their ratification or rejection are elaborated somewhat in the proposed Constitution. [Present Art. XIII, § 2; proposed Art. XI, § 4.] A three-fifths vote of all the members of each house continues to be required to submit an amendment, and popular ratification is by a majority of those voting on the issue. Amendments may be voted on by the people at any time fixed by the General Assembly.

The present Constitution imposes no restriction on the number, form, or scope of amendments which the General Assembly may submit to the voters at any one time, nor does it specify the Convention as the device for general constitutional revision. Thus it is clear by implication that the legislature may submit amendments in such number and form as to accomplish complete constitutional revision at one stroke by this procedure. That there may be no question on this point in the future, the proposed Constitution states specifically that "[p]roposals of a new or revised Constitution, or of an amendment or amendments to this Constitution, may be initiated by the General Assembly . . . ." An amendment adopted under this procedure will take effect the following January 1 unless the act submitting the amendment provides otherwise.

Double Office Holding

The present basic prohibition against the holding by any officer of the State of North Carolina of any other ". . . office or place of trust or profit . . .", state or federal, is retained in the proposed Constitution. The list of offices exempt from this dual office holding ban is modified (1) by deleting justices of the peace and commissioners of public charities, and (2) by adding commissioners and trustees of public charities and institutions, school committeemen, United States Commissioners, and delegates to a Convention of the People. [Present Art. XIV,§ 7; proposed Art. XII, § 3.]

The reference to justices of the peace is deleted because that office is abolished by the proposed Constitution. United States Commissioners are exempted from the ban in order that a state Trial Examiner may also hold the office of United States Commissioner.

The expansion of the list of exempt offices is in part intended to embody present understanding of the meaning of the dual office holding prohibition (for instance, as to trustees of the state institutions of higher education) ; in part to depart from the present under-

standing (as to school committeemen).

Miscellaneous

Few changes have been made in the miscellaneous article [Present Art. XIV; proposed Art. XII] by the Constitutional Commission. The designation of Raleigh as the seat of government is modified to make it the "permanent" seat of government, permitting a temporary move elsewhere in emergencies. [Present Art.XIV, § 6; proposed Art. XII, § 1.] Intermarriage between white persons and Negroes continues to be prohibited. [Present Art. XIV, § 8; proposed Art. XII, § 5.]

The one new feature of the miscellaneous article is proposed Article XII, Sec. 6, a temporary provision to bridge the transitional gap between the present and proposed Constitutions. Except as expressly provided in the proposed Constitution, no holder of public office will be ousted by its adoption. All state laws not repugnant to the new Constitution remain in force. And except as inconsistent with the proposed Constitution, all provisions of the present Constitution not inconsistent with the new instrument remain in force as statutory law, subject to the power of the General Assembly to amend or repeal them. The object here is to insure that omission from the proposed Constitution of any present provision which it is intended should be dealt with by legislation will not leave the subject uncared for in the meantime.

The purpose of a state constitution is two-fold: (1) to protect the rights of the individual from encroachment by the State; and (2) to provide a framework of government for the State and its subdivisions. It is not the function of a constitution to deal with temporary conditions, but to lay down general principles of government which must be observed amid changing conditions. It follows, then, that a constitution should not contain elaborate legislative provisions, but should lay down briefly and clearly the fundamental principles upon which the government shall proceed, leaving it to the people's representatives to apply these principles through legislation to conditions as they arise.

JUDGE JOHN J. PARKER
Chief Judge of the United States Court of Appeals
for the Fourth Circuit, 1931-1958, and member
of the North Carolina Constitutional Commissions
of 1931-1932 and 1957-1958.

ERRATA

Page 5, column 1, pargraph 5, lines 20 and 21: "Superior" should read "Supreme".
Page 14, column 2, paragraph 2, line 6: "Superior" should read "Supreme".
Page 28, column 3, paragraph 3, lines 6 and 7: "Examiner" should read "Commissioner".

PROPOSED CONSTITUTION OF NORTH CAROLINA

EDITOR'S NOTE TO TEXT OF PROPOSED CONSTITUTION OF NORTH CAROLINA

In the following pages is set out the complete text of the proposed Constitution of North Carolina as recommended by the North Carolina Constitutional Commission.

Annotations have been inserted in brackets following each section or subsection of the proposed text, showing the article and section of the present Constitution to which the proposed section or subsection most nearly relates. The following annotation scheme has been used:

(1) Where a proposed section or subsection represents any change in the *wording* of the related section of the present Constitution, irrespective of whether any change in meaning results, the signal "compare" is used.

(2) Where a proposed section or subsection represents no change in the related section of the present Constitution other than in the section number, caption, spelling, punctuation, or capitalization, the signal "identical with" is used.

(3) Where a proposed section or subsection has no comparable provision in the present Constitution, that fact is stated.

The articles of the Proposed Constitution follow the same order, and Articles I through VI have the same numbers, as in the present Constitution. Through consolidation and deletion, Articles VII and VIII of the present Constitution have been eliminated as separate articles, necessitating the renumbering of all subsequent articles.

It should be observed that the captions of the sections of the present Constitution are, with a few exceptions, mere editorial insertions and are not properly a part of the Constitution. The captions of the sections in the Proposed Constition are, however, a part of the text as recommended by the Constitutional Commission.

PREAMBLE

We, the people of North Carolina, acknowledging our dependence upon Almighty God and our allegiance to the United States of America, do, for the more certain assurance of the blessings of liberty and freedom, and for the better government of the State, ordain and establish this Constitution:

[*Compare present Preamble.*]

ARTICLE I, DECLARATION OF RIGHTS

To insure recognition and establishment of the essential principles of liberty and free government, and to define and affirm the relations of this State and its people to the government and people of the United States, we do declare that:

[*Compare present prefatory statement in Art. I.*]

Section 1. The equality and rights of persons. We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

[*Compare present Art. I, § 1.*]

Section 2. Political power and government. All political power is vested in, and derived from, the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

[*Compare present Art. I, § 2.*]

Section 3. Other rights of the people. The enumeration of rights in this Constitution shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.

[*Compare present Art. I, § 37.*]

Section 4. Internal government of the State. The people of this State have the inherent, sole, and exclusive right of regulating the internal government and policies thereof, and of altering or revising their Constitution and form of government whenever it may be necessary for their safety and happiness; but every such right should be exercised in pursuance of law and consistently with the Constitution of the United States.

[*Compare present Art. I, § 3.*]

Section 5. Allegiance to the United States. This State shall ever remain a member of the American Union; every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

[*Compare present Art. I, §§ 4, 5.*]

Section 6. Exclusive and hereditary emoluments. No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services; and no hereditary emoluments, privileges, or honors ought to be granted or conferred in this State.

[*Compare present Art. I, §§ 7, 30.*]

Section 7. Perpetuities and monopolies. Perpetuities and monopolies are contrary to the genius of a free state, and ought not to be allowed.

[*Identical with present Art. I, § 31.*]

Section 8. Of the power of suspending laws. All power of suspending laws or the execution of laws, by any authority, without the consent of the representatives of the people, is injurous to their rights, and ought not to be exercised.

[*Identical with present Art. I, § 9.*]

Section 9. Representation and taxation. The people of the State ought not to be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in General Assembly, freely given.

[*Identical with present Art. I, § 23.*]

Section 10. Elections. For redress of grievances and for amending and strengthening the laws, elections should be often held. All elections ought to be free.

[*Compare present Art. I, §§ 10, 28.*]

Section 11. Property qualifications. Political rights and privileges are not dependent upon, or modified by, prop-

erty; therefore, no property qualification ought to affect the right to vote or hold office.

[*Compare present Art. I, § 22.*]

Section 12. Right of the people to assemble together. The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances. But secret political societies are dangerous to the liberties of a free people and should not be tolerated.

[*Compare present Art. I, § 25.*]

Section 13. Religious liberty. All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatsoever, control or interfere with the rights of conscience.

[*Identical with present Art. I, § 26.*]

Section 14. Freedom of speech and of the press. Freedom of speech and of the press are two of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same.

[*Compare present Art. I, § 20.*]

Section 15. Involuntary servitude. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the parties shall have been duly convicted, shall exist within this State.

[*Compare present Art. I, § 33.*]

Section 16. Education. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

[*Identical with present Art. I, § 27.*]

Section 17. Ex post facto laws. Retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore, no *ex post facto* law ought to be made. No law taxing retrospectively sales, purchases, or other acts previously done, ought to be passed.

[*Identical with present Art. I, § 32.*]

Section 18. Courts shall be open. All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law and right and justice administered without favor, denial, or delay.

[*Compare present Art. I, § 35.*]

Section 19. Right to due process of law. No person ought to be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.

[*Identical with present Art. I, § 17.*]

Section 20. Habeas corpus. Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed; and the privilege of writ of habeas corpus shall not be suspended.

[*Compare present Art. I, §§ 18, 21.*]

Section 21. Rights of accused. In all criminal prosecutions every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not to be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

[*Compare present Art. I, § 11.*]

Section 22. Answers to criminal charges. No person shall be put to answer any criminal charge, except as hereinafter allowed, but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in all except capital cases.

[*Identical with present Art. I, § 12.*]

Section 23. Right of jury. Subject to the provisions of Article IV of this Constitution, no person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. The General Assembly may, however, provide other means of trial for petty misdemeanors, with the right of appeal.

[*Compare present Art. I, § 13.*]

Section 24. Excessive bail. Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

[*Identical with present Art. I, § 14.*]

Section 25. General warrants. General warrants, whereby any officer or other person may be commanded to search suspected places, without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

[*Compare present Art. I, § 15.*]

Section 26. Imprisonment for debt. There shall be no imprisonment for debt in this State, except in cases of fraud.

[*Identical with present Art. I, § 16.*]

Section 27. Treason against the State. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture

[*Identical with present Art. IV, § 5.*]

Section 28. Controversies at law respecting property. In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable. No person shall be excluded from jury service on account of sex.

[*Identical with present Art. I, § 19.*]

Section 29. Militia and the right to bear arms. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power. Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against said practice.

[*Identical with present Art. I, § 24.*]

Section 30. Quartering of soldiers. No soldier shall, in time of peace, be

quartered in any house without the consent of the owner; nor in time of war but in a manner prescribed by law.

[*Identical with present Art. I, § 36.*]

Section 31. Recurrence to fundamental principles. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

[*Identical with present Art. I, § 29.*]

Section 32. Separation of powers. The legislative, executive and supreme judicial powers of government ought to be forever separate and distinct from each other.

[*Compare present Art. I, § 8.*]

ARTICLE II, LEGISLATIVE DEPARTMENT

Section 1. Two branches. The legislative authority shall be vested in two distinct branches, both dependent on the people, to-wit: a Senate and House of Representatives.

[*Identical with present Art. II, § 1.*]

Section 2. Time of assembly. The Senate and House of Representatives shall meet biennially on the first Wednesday after the first Monday in February next after their election, unless a different day shall be provided by law; and when assembled, shall be denominated the General Assembly. Neither house shall proceed upon public business unless a majority of all the members are actually present.

[*Identical with present Art. II, § 2.*]

Section 3. Number of Senators. Beginning with the regular session of 1965, the Senate shall be composed of sixty Senators, biennially chosen by ballot. Until such time, the Senate shall be composed of fifty Senators.

[*Compare present Art. II, § 3.*]

Section 4. Regulations in relation to districting the State for Senators. The Senate Districts shall be so altered at the regular session of the General Assembly in 1963 and thereafter at the first regular session convening after the return of every enumeration by order of Congress, that each Senate District shall contain, as near as may be, an equal number of inhabitants, excluding aliens, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory. No county shall be divided in the formation of a Senate District, unless such county shall be equitably entitled to two or more Senators.

At the regular session of the General Assembly in 1963 and thereafter at the first regular session convening after the return of every enumeration by order of Congress, a committee, composed of the President of the Senate as chairman, the President *pro tempore* of the Senate, and the Speaker of the House of Representatives, shall make a proposal for redistricting the State for Senate Districts. The proposal shall be presented to the General Assembly on or before the sixtieth calendar day of the session. If the General Assembly has not acted, either altering or revising the proposal, upon adjournment of the session the proposal shall have the force and effect of an act of the General Assembly and shall become effective at the next election for members of the General Assembly.

[*Compare present Art. II, § 4.*]

Section 5. Regulations in relation to apportionment of Representatives. The House of Representatives shall be composed of one hundred and twenty Representatives, biennially chosen by ballot, to be elected by the counties respectively, according to their population, and each county shall have at least one Representative in the House of Representatives, although it may not contain the requisite ratio of representation. This apportionment shall be made by the Speaker of the House of Representatives at the first regular session of the General Assembly convening after the return of every enumeration by order of Congress. The formula set out in Section 6 of this article shall be applied by the Speaker and the new apportionment entered on the journal of the House of Representatives on or before the sixtieth calendar day of the session. When so entered, the new apportionment shall have the same force and effect as an act of the General Assembly, and shall become effective at the next election for members of the General Assembly.

[*Compare present Art. II, § 5.*]

Section 6. Ratio of representation. In making the apportionment in the House of Representatives, the ratio of representation shall be ascertained by dividing the amount of the population of the State, exclusive of that comprehended within those counties which do not severally contain the one hundred and twentieth part of the population of the State, by the number of Representatives, less the number assigned to such counties; and in ascertaining the number of the population of the State, aliens shall not be included. To each county containing the said ratio and not twice the said ratio there shall be assigned one Representative; to each county containing twice but not three times the said ration there shall be assigned two Representatives, and so on progressively; and then the remaining Representatives shall be assigned severally to the counties having the largest fractions.

[*Compare present Art. II, § 6.*]

Section 7. Qualifications for Senators. Each member of the Senate shall be a qualified voter of the State, shall be not less than twenty-five years of age, shall have resided in the State as a citizen for two years, and shall have resided in the district for which he was chosen one year immediately preceding his election.

[*Compare present Art. II, § 7.*]

Section 8. Qualifications for Representatives. Each member of the House of Representatives shall be a qualified voter of the State, and shall have resided in the county for which he is chosen one year immediately preceding his election.

[*Compare present Art. II, § 8.*]

Section 9. Election for members of the General Assembly. The election for members of the General Assembly shall be held for the respective districts and counties, at the places where they are now held, or may be directed hereafter to be held, in such manner as may be prescribed by law, on the first Tuesday after the first Monday in November, 19—,[1] and every two years thereafter. But the General Assembly may change the time of holding the elections.

[*Compare present Art. II, § 27.*]

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[1] The date will be filled in by the General Assembly, and will depend upon the date fixed for the election upon ratification of the proposed Constitution.

Section 10. Terms of office. The terms of office for Senators and members of the House of Representatives shall commence at the time of their election.
[*Identical with present Art. II, § 25.*]

Section 11. Oath of members. Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States, and the Constitution of the Sate of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.
[*Identical with present Art. II, §24.*]

Section 12. Vacancies. If a vacancy shall occur in the General Assembly by death, resignation, or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election.
[*Identical with present Art. II, § 13.*]

Section 13. Pay of members and presiding officers of the General Assembly. The members of the General Assembly for the term for which they have been elected shall receive as a compensation for their services the sum of twenty dollars per day for each calendar day of their session for a period not exceeding one hundred and twenty days. The compensation of the presiding officers of the two houses shall be twenty-five dollars per day for a period not exceeding one hundred and twenty days. Should an extra session of the General Assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty-five days. The members and presiding officers shall also receive, while engaged in legislative duties, such subsistence and travel allowance as shall be established by law: Provided, such allowances shall not exceed those established for members of State boards and commissions generally. The Lieutenant-Governor shall receive, for his non-legislative duties, such compensation as shall be fixed by the General Assembly.
[*Compare present Art. II, § 28; Art. III, § 11.*]

Section 14. Powers of the General Assembly. Each House shall be judge of the qualifications and election of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be passed into laws; and the two Houses may also jointly adjourn to any future day, or other place: Provided, either House may, of its own motion, adjourn for a period not in excess of three days.
[*Compare present Art. II, § 22.*]

Section 15. President of the Senate. The Lieutenant-Governor shall be President of the Senate, but shall have no vote unless the vote in the Senate be equally divided.
[*Compare present Art. II, § 19; Art. III, § 11.*]

Section 16. Other senatorial officers. The Senate shall choose from its membership a President *pro tempore*, who shall become President of the Senate upon the failure of the Lieutenant-Governor-elect to qualify, or upon succession by the Lieutenant-Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President *pro tempore* shall preside over the Senate. The Senate shall elect its other officers.
[*Compare present Art. II, § 20; Art. III, § 12.*]

Section 17. Officers of the House. The House of Representatives shall choose its Speaker and other officers.
[*Compare present Art. II, § 18.*]

Section 18. Election of officers. In the election of all officers whose appointment shall be conferred upon the General Assembly by the Constitution, the vote shall be *viva voce*.
[*Identical with present Art. II, § 9.*]

Section 19. Bills and resolutions to be read three times. All bills and resolutions of a legislative nature shall be read three times in each House before they pass into laws, and shall be signed by the presiding officers of both Houses.

No law shall be passed to raise money on the credit of the State, or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each House of the General Assembly and passed three several readings, which readings shall have been on three different days, and agreed to by each House respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal; the first reading of such a bill in one House may be had on the same day on which the third reading was had in the other House.
[*Compare present Art. II, §§ 23, 14.*]

Section 20. Style of the acts. The style of the acts shall be: "The General Assembly of North Carolina do enact:".
[*Identical with present Art. II, § 21.*]

Section 21. Journals. Each House shall keep a journal of its proceedings which shall be printed and made public immediately after the adjournment of the General Assembly.
[*Identical with present Art. II, § 16.*]

Section 22. Yeas and nays. Upon motion made and seconded in either House by one-fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.
[*Identical with present Art. II, § 26.*]

Section 23. Protest. Any member of either House may dissent from, and protest against, any act or resolve which he may think injurious to the public, or any individual, and have the reasons of his dissent entered on the journal.
[*Identical with present Art. II, § 17.*]

Section 24. Entails. The General Assembly shall regulate entails in such a manner as to prevent perpetuities.
[*Identical with present Art. II, § 15.*]

Section 25. Local government. The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities, towns, and other governmental subdivisions; may provide for the consolidation and dissolution thereof; and,

except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities, towns, and other governmental subdivisions as it may deem advisable.
[*Compare present Art. VII, §§ 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13; Art. VIII, § 4. Present Art. VII would be eliminated as a separate article.*]

Section 26. Limitations upon power of General Assembly to enact private or special legislation. The General Assembly shall not pass any local, private, or special act or resolution altering the name of any person; legitimating any person not born in lawful wedlock; restoring to the rights of citizenship any person convicted of an infamous crime; granting a divorce or securing alimony in any individual case; relating to health, sanitation, and the abatement of nuisances; changing the names of cities, towns, and townships; authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys; relating to ferries or bridges; relating to non-navigable streams; relating to cemeteries; relating to the pay of jurors; erecting new townships, or changing township lines, or establishing or changing the lines of school districts; remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury; regulating labor, trade, mining, or manufacturing; extending the time for the assessment or collection of taxes or otherwise relieving any collector from the due performance of his official duties or his sureties from liability; giving effect to informal wills and deeds; nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law, but the General Assembly may at any time repeal local, private, or special laws enacted by it. Any local, private, or special act or resolution passed in violation of the provisions of this section shall be void. The General Assembly shall have power to pass general laws regulating matters set out in this section.
[*Compare present Art. II, §§ 11, 10, 29.*]

Section 27. Corporations. No corporation shall be created, nor shall its charter be extended, altered, amended, or revoked by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general and special acts may be altered from time to time or repealed.

The term "corporation" as used in this section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.
[*Compare present Art. VIII, §§ 1, 3. Present Art. VIII would be eliminated as a separate article.*]

ARTICLE III, EXECUTIVE DEPARTMENT

Section 1. Officers of the Executive Department. The Executive Department shall consist of a Governor, in whom shall be vested the supreme executive power of the State; a Lieutenant-Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agiculture, a Commissioner of Labor, and a Commissioner of Insurance, who shall be elected for a term of four years by the qualified voters of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their terms of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified.
[*Compare present Art. III, § 1.*]

Section 2. Qualifications of Governor and Lieutenant-Governor. No person shall be eligible for election to the office of Governor or Lieutenant-Governor, unless he shall have attained the age of thirty years, shall have been a citizen of the United States five years, and shall have been a resident of this State for two years next before election; nor shall a person elected to either of these two offices be eligible for election for the next succeeding term of the same office.
[*Compare present Art. III, § 2.*]

Section 3. Returns of elections. The return of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the Secretary of State. The return shall be canvassed and the result declared in such manner as may be prescribed by law. Contested elections shall be determined by a joint ballot of both Houses of the General Assembly in such manner as shall be prescribed by law.
[*Identical with present Art. III, § 3.*]

Section 4. Oath of office for Governor. The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States, and of the State of North Carolina, and that he will faithfully perform the duties appertaining to the office of Governor.
[*Compare present Art. III, § 4.*]

Section 5. Duties of the Governor. The Governor shall reside at the seat of government of this State, and he shall, from time to time, give the General Assembly information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient.
[*Identical with present Art. III, § 5.*]

Section 6. Reprieves, commutations, and pardons. The Governor shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall biennially communicate to the General Assembly each case of reprieve, commutation, or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, pardon, or reprieve, and the reasons therefor. The terms "reprieves," "commutations," and "pardons" shall not include paroles. The General Assembly is authorized and empowered to create a Board of Paroles, provide for the appointment of the members thereof, and enact suitable laws defining the duties and authority of such Board to grant, revoke, and terminate paroles.
[*Compare present Art. III, § 6.*]

Section 7. Commander-in-Chief. The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the service of the United States.

[*Identical with present Art. III, § 8.*]

Section 8. Extra sessions of the General Assembly. The Governor shall have power, on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation, stating therein the purposes for which they are thus convened.

[*Identical with present Art. III, § 9.*]

Section 9. Officers whose appointments are not otherwise provided for. The Governor shall nominate, and, by and with the advice and consent of a majority of the Senate, appoint all officers whose offices are established by this Constitution and whose appointments are not otherwise provided for.

[*Compare present Art. III, § 10.*]

Section 10. Biennial reports from officers of the Executive Department and of public institutions. The officers of the Executive Department and of the public institutions of the State shall, at least thirty days previous to each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly; and the Governor may, at any time, require information in writing from the officers in the Executive Department upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

[*Compare present Art. III, § 7.*]

Section 11. Succession to office of Governor. The Lieutenant-Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant-Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant-Governor shall be acting Governor. The further order of succession as acting Governor shall be prescribed by law.

[*Compare present Art. III, § 12.*]

Section 12. Incapacity of Governor. The physical or mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each House of the General Assembly. Thereafter, the physical or mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a majority of all the members of each House of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper, and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of the members concurring, may convene it in extra session for the purpose of proceeding under this section.

[*No comparable provision in present Constitution.*]

Section 13. Other executive officers; succession. The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance shall be prescribed by law. If the office of any of these officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until a successor be elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article: Provided, that when a vacancy occurs in the office of any of the officers named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section to fill the vacancy and is qualified.

During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to Section 14 of this article, the duties of his office shall be performed by an acting officer appointed by the Governor.

[*Compare present Art. III, § 13.*]

Section 14. Incapacity of other executive officers. The General Assembly shall by law prescribe, with respect to those officers, other than the Governor, whose offices are created by this article, (1) procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and (2) in the event of temporary physical or mental incapacity, procedures for determining whether an officer has sufficiently recovered his physical or mental capacity to perform the duties of his office.

[*No comparable provision in present Constitution.*]

Section 15. Council of State. The Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance shall constitute, *ex-officio*, the Council of State, who shall advise the Governor in the execution of his office, and four of whom shall constitute a quorum. Their advice and proceedings in this capacity shall be entered in a journal, to be kept for this purpose exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such journal shall be placed before the General Assembly when called for by either House. The Attorney General shall be, *ex officio*, the legal adviser of the Executive Department.

[*Compare present Art. III, § 14.*]

Section 16. Compensation for executive officers. Each officer mentioned in this article shall at stated periods receive for his services a compensation to be established by law, which shall not be diminished during the time for

which he shall have been elected or appointed, and the said officers shall receive no other emolument or allowance whatever.

[*Compare present Art. III, § 15.*]

Section 17. Department of Justice. The General Assembly is authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the State.

[*Identical with present Art. III, § 18.*]

Section 18. Department of Agriculture. The General Assembly shall maintain a Department of Agriculture under such regulations as may best promote the agricultural interests of the State.

[*Compare present Art. III, § 17.*]

Section 19. Seal of State. There shall be a seal of the State, which shall be kept by the Governor, and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina." All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with The Great Seal of the State, signed by the Governor, and counter-signed by the Secretary of State.

[*Identical with present Art. III, § 16.*]

ARTICLE IV, JUDICIAL DEPARTMENT

Section 1. Division of judicial powers. The judicial power of the State shall, except as provided in Section 2 of this article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the Judicial Department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this article.

[*Compare present Art. IV, §§ 2, 12; see Court Study Committee Draft (hereinafter cited as C.S.C. Draft), Art. IV, § 1.*][2]

Section 2. Judicial powers of administrative agencies. The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from rulings of administrative agencies shall be taken in a manner prescribed by law.

[*Compare present Art. IV, §§ 2, 12; see C.S.C. Draft, Art. IV, § 2.*]

Section 3. Court for the Trial of Impeachments. The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant-Governor is impeached, the Chief Justice shall preside over the Court. A majority of members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

[*Compare present Art. IV, §§ 3, 4; see C.S.C. Draft, Art. IV, § 3.*]

Section 4. General Court of Justice. The General Court of Justice shall consist of an appellate division, a Superior Court division, and a division of local trial courts.

[*No comparable provision in present Constitution; see C.S.C. Draft, Art. IV, § 4.*]

Section 5. Appellate division. The appellate division of the General Court of Justice shall consist of the Supreme Court. However, the General Assembly may, upon recommendation of the Supreme Court, establish within the appellate division an intermediate Court of Appeals.

[*No comparable provision in present Constitution; see C.S.C. Draft, Art. IV, §5.*]

Section 6. Supreme Court.

(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. The General Assembly may provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

[*Compare present Art. IV, § 6; see C.S.C. Draft, Art. IV, § 6.*]

(2) Divisions. The Supreme Court shall have power to sit in divisions when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by a majority of all the justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court *en banc*.

[*Compare present Art. IV, § 6; no comparable provision in C.S.C. Draft.*]

(3) Terms of the Supreme Court. The terms of the Supreme Court shall be held in the City of Raleigh, unless

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[2] The annotations under each section of proposed Article IV include, in addition to references to comparable sections of the present Constitution, references to comparable provisions in the draft of a new Article IV which has been prepared by the Committee on Improving and Expediting the Administration of Justice in North Carolina. That Committee, familiarly known as the "Court Study Committee," is an agency of the North Carolina Bar Association. It has been instructed by the Association to submit to the Governor and the General Assembly of 1959 recommendations for state court reform, together with the necessary constitutional amendments to carry out those recommendations. The amendments recommended by the Court Study Committee are a substitute for the whole of present Article IV. Wide distribution has already been given the text of the Court Study Committee's proposed Article IV, and to assist the reader who wishes to compare its provisions with those recommended by the Constitutional Commission, references to the Court Study Committee's draft are included here. The close correspondence of section numbers in the two drafts is due to the fact that the Constitutional Commission had before it, when preparing its own proposals, the text of the Court Study Committee's proposed Article IV, and the Commission so arranged the contents of its own text as to facilitate comparison of the provisions of the two drafts. For a comparison of the principal features of the two drafts, see page 18, above.

otherwise provided by the General Assembly.
[*Compare present Art. IV, §§ 6, 7; no comparable provision in C.S.C. Draft.*]

Section 7. Court of Appeals. The structure and organization of the Court of Appeals, if established, shall be determined by the General Assembly. Jurisdiction of the Court of Appeals shall be determined by the Supreme Court, as provided in Section 11 of this article; and sessions of the Court of Appeals shall be held at such times and places as may be fixed by rules of the Supreme Court. The General Assembly may provide for the retirement of members of the Court of Appeals and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.
[*No comparable provision in present Constitution; see C.S.C. Draft, Art. IV, § 7.*]

Section 8. Superior Courts.

(1) Superior Court districts and divisions. The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may divide the State into a number of judicial divisions, and may provide for judges to preside in the districts within a division successively. The General Assembly may provide by general laws for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.
[*Compare present Art. IV, §§ 10, 11; see C.S.C. Draft, Art. IV, § 8 (1).*]

(2) Open at all times; sessions for trial of cases. The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to law. At least two sessions for the trial of jury cases shall be held annually in each county.
[*Compare present Art. IV, §§ 10, 22; see C.S.C. Draft, Art. IV, § 8(2).*]

(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. If the office of Clerk of Superior Court becomes vacant otherwise than by expiration of the term, or if the people fail to elect, the senior regular resident Judge of Superior Court for the county shall appoint to fill the vacancy until an election can be regularly held.
[*Compare present Art. IV, §§ 16, 29; see C.S.C. Draft, Art. IV, § 8(3).*]

Section 9. Local trial courts.

(1) District Courts; Trial Commissioners. The General Assembly shall provide for the division, from time to time, of each Superior Court judicial district into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. A Chief District Judge and, if necessary, one or more Associate District Judges shall be selected for each district for a term of four years, in a manner provided by general law uniformly applicable in every local court district of the State. Every District Judge shall reside in the district for which he is selected. As officers of the District Courts, one or more Trial Commissioners shall be appointed in each county for a term of two years by the senior regular resident Superior Court Judge fom nominations submitted by the Chief District Judge of the district in which the Trial Commissioner will serve. The number of Associate District Judges and Trial Commissioners shall, from time to time, be determined by the General Assembly.
[*Compare present Art. IV, §§ 2, 14, 30; Art. VII, § 5; see C.S.C. Draft, Art. IV, § 9.*]

(2) Vacancies. Vacancies in the office of District Judge shall be filled, for the unexpired term, in a manner provided by general law uniformly applicable in every local court district of the State. Vacancies in the office of Trial Commissioner shall be filled for the unexpired term by appointment of the senior regular resident Superior Court Judge.
[*Compare present Art. IV, § 28; see C.S.C. Draft, Art. IV, § 9.*]

(3) Courts to continue until 1965. All existing courts, not created or authorized by this Constitution, including courts of justices of the peace, shall be continued only until the first day of January, 1965, or until such earlier date as the General Assembly may fix. The General Assembly shall provide for the transfer of all cases then pending in such courts.
[*No comparable provision in present Constitution or in C.S.C. Draft.*]

Section 10. Assignment of judges. The Chief Justice when, in his opinion, the public interest so requires, may assign any Superior Court Judge to hold one or more sessions of Superior Court in any district. In the absence or temporary incapacity of the Chief Justice, the powers granted in this section may be exercised by the senior Associate Justice.
[*Compare present Art. IV, § 11; see C.S.C. Draft, Art. IV, § 10.*]

Section 11. Jurisdiction of the General Court of Justice.

(1) Supreme Court. The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Constitution, and the Court shall have the power to issue any remedial writs necessary to give it general supervision and control over the proceedings of courts inferior to it.

The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the decisions shall be reported to the next session of the General Assembly for its action.
[*Compare present Art. IV, §§ 8, 9; see C.S.C. Draft, Art. IV, § 11(1).*]

(2) Court of Appeals. The Court of Appeals, if established, shall exercise such part of the appellate jurisdiction granted to the Supreme Court by this Constitution as the Supreme Court may by rule vest in it: Provided, that in all cases involving a construction of the Constitution of this State or of the United States, and in all criminal cases in which a sentence of death or life imprisonment has been imposed, there shall be an absolute right of final appeal to the Supreme Court.
[*No comparable provision in present Constitution; see C.S.S. Draft, Art. IV, § 11(2).*]

(3) Superior Courts. Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of Superior Court shall have such jurisdiction and powers as the General Assembly shall provide by general law uniformly applicable in every county of the State. [*Compare present Art. IV, § 12; see C.S.C. Draft, Art. IV, § 11(3).*]

(4) District Courts; Trial Commissioners. The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Trial Commissioners.
[*Compare present Art. IV, §§ 12, 14, 27; see C.S.C. Draft, Art. IV, § 11 (4).*]

(5) Appeals. The General Assembly shall, by general law, provide a proper system of appeals: Provided, that appeals from Trial Commissioners shall be heard *de novo*, with the right of trial by jury as defined in this Constitution and the laws of this State. [*Compare present Art. IV, §§ 12, 27; see C.S.C. Draft, Art. IV, § 11(6).*]

Section 12. Forms of action; rules of procedure.

(1) Forms of action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense for the punishment of the same, shall be termed a criminal action.
[*Compare present Art. IV, § 1; no comparable provision in C.S.C. Draft.*]

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure for the appellate division. The General Assembly shall provide by law for the regulation of the methods of proceeding of all courts below the appellate division in the exercise of their jurisdiction and powers.
[*Compare present Art. IV, § 12; Art. I, § 8; see C.S.C. Draft, Art. IV, § 12.*]

Section 13. Waiver of jury trial. The right of trial by jury may be waived in all criminal cases except those in which the offense charged is a felony punishable by death or life imprisonment. In other felony cases waiver of the right of trial by jury shall be permitted only with the consent of the trial judge and counsel for the accused. In misdemeanor cases in which the right of trial by jury is granted, waiver of the right shall be permitted only with the consent of the trial judge. All waivers in criminal cases shall be in writing. The parties in any civil case may waive jury trial. In the event of waiver of jury trial, in either criminal or civil cases, the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.
[*Compare present Art. I, § 13; Art. IV, § 13; see C.S.C. Draft, Art. IV, § 13(1).*]

Section 14. Listing and drawing of jurors. The General Assembly shall, by general law uniformly applicable throughout the State, provide for the listing and drawing of jurors for both petit and grand juries.
[*No comparable provision in present Constitution; see C.S.C. Draft, Art. IV, § 14.*]

Section 15. Term of office and election of Judges of Supreme Court, Court of Appeals, and Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, if established, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts as the General Assembly may provide.
[*Compare present Art. IV, § 21; see C.S.C. Draft, Art. IV, § 17.*]

Section 16. Removal of judges and clerks.

(1) Judges of Supreme Court, Court of Appeals, and Superior Court. Any Justice of the Supreme Court, Judge of the Court of Appeals, if established, or Judge of the Superior Court may be removed from office for mental or physical incapacity upon the joint resolution of two-thirds of both Houses of the General Assembly. Any justice or judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereon. Removal from office for any other cause shall be by impeachment.
[*Compare present Art. IV, § 31; see C.S.C. Draft, Art. IV, § 18(1).*]

(2) Judges of courts inferior to the Superior Court. The General Assembly shall provide by general law for the removal of judges of courts inferior to the Superior Court for misconduct or mental or physical incapacity.
[*Compare present Art. IV, § 31; see C.S.C. Draft, Art. IV, § 18(2).*]

(3) Clerks. Any clerk may be removed from office for misconduct or mental or physical incapacity: the Clerk of the Supreme Court by the Justices of that Court; the Clerks of the Court of Appeals by the Judges of that Court; and the Clerks of the Superior Court by the senior regular resident Judge of the district. Any clerk against whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges. Clerks of courts inferior to the Superior Court shall be removed for such causes and in such manner as the General Assembly may provide by general law. Any clerk so removed from office shall be entitled to an appeal as provided by law.
[*Compare present Art. IV, § 32; see C.S.C. Draft, Art. IV, § 18(3).*]

Section 17. Solicitors and solicitorial districts.

(1) District Solicitors. The General Assembly shall, from time to time, divide the State into a convenient number of solicitorial districts, for each of which a Solicitor shall be chosen for a term of four years by the qualified voters thereof, as is prescribed for members of the General Assembly. When the Attorney General determines that there is serious imbalance in the work loads of the Solicitors, or that there is other good

cause, he shall recommend redistricting to the General Assembly. The solicitor shall advise the officers of justice in his district; and shall be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, for performing such duties related to appeals therefrom as the Attorney General may require, and for such other duties as the General Assembly may prescribe.

[*Compare present Art. IV, § 23; Art. III, § 18; see C.S.C. Draft, Art. IV, § 19.*]

(2) Prosecution in inferior courts. Criminal actions in courts inferior to the Superior Court shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

[*No comparable provision in present Constitution; see C.S.C. Draft, Art. IV, § 19.*]

Section 18. Sheriffs. In each county a Sheriff shall be elected by the qualified voters thereof as is prescribed for members of the General Assembly, and shall hold his office for a period of four years. In case of a vacancy existing for any cause in any Sheriff's office, the governing authority of the county shall appoint to such office for the unexpired term.

[*Compare present Art. IV, § 24; see C.S.C. Draft, Art. IV, § 20.*]

Section 19. Vacancies. Unless otherwise provided in this article, all vacancies occurring in the offices provided for by this article shall be filled by the appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices: Provided, that when the unexpired term of any of the offices named in this article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of such offices shall hold until their successors are qualified.

[*Compare present Art. IV, § 25; see C.S.C. Draft, Art. IV, § 21.*]

Section 20. Uniform schedule of fees and costs. The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice below the appellate division. The Supreme Court shall fix fees and costs for the appellate division.

[*No comparable provision in present Constitution; see C.S.C. Draft, Art. IV, § 22.*]

Section 21. Fees, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this article; but the salaries of judges shall not be diminished during their continuance in office. In no case shall the compensation of any judge or Trial Commissioner be dependent upon his decision or upon the collection of costs.

[*Compare present Art. IV, § 18; see C.S.C. Draft, Art. IV, § 23.*]

ARTICLE V, REVENUE, TAXATION, AND PUBLIC DEBT

Section 1. State taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away. Only the General Assembly shall have the power to classify property and other subjects for taxation, which power shall be exercised only on a state-wide basis. No class or subject shall be taxed except by uniform rule, and every classification shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. The General Assembly's power to classify shall not be delegated, except that the General Assembly may permit the governing boards of counties, cities, and towns to classify trades and professions for local license tax purposes. The rate of tax on income shall not exceed ten per cent, and there shall be allowed the following minimum exemptions, to be deducted from the amount of annual incomes: to the income producing spouse of a married couple living together, where only one spouse has income, two thousand dollars; to a husband and wife living together, where both have income, a personal exemption of one thousand dollars each, and either spouse may allow the other to claim all or any part of said personal exemption; to a widow or widower with minor child or children, natural or adopted, two thousand dollars; and to all other natural persons, one thousand dollars. There may also be allowed deductions (not including living expenses), so that only net incomes are taxed.

[*Compare present Art. V, § 3.*]

Section 2. Property exempt from taxation. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, charitable, or religious purposes, and, to a value not exceeding three hundred dollars, any personal property. The General Assembly may exempt from taxation not exceeding one thousand dollars in value of property held and used as the place of residence of the owner. Every exemption shall be on a state-wide basis and shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this section.

[*Compare present Art. V, § 5.*]

Section 3. Taxes levied for counties. The total of the State and county tax on property shall not exceed twenty cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied pursuant to general or special act of the General Assembly for the maintenance of the public schools of the State: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property.

[*Compare present Art. V, § 6.*]

Section 4. Acts levying tax shall state purpose. Every act of the General As-

sembly levying a tax shall state the public purpose to which it is to be applied, and it shall be applied in no other purpose.

[*Compare present Art. V, §§ 3, 7.*]

Section 5. Limitations on State and local debt. The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to contract debts and pledge their faith and credit, for the following purposes: To fund or refund a valid existing debt; to borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per cent of such taxes; to supply a casual deficit; to suppress riots or insurrections, or to repel invasions. For any purpose other than these enumerated, the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to the qualified voters of the State; and, for any purpose other than these enumerated the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to the qualified voters of the particular county or municipality. In any election held in the State or in any county or municipality under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, unless the subject be submitted to the qualified voters of the State, and be approved by a majority of those who shall vote thereon.

[*Compare present Art. V, § 4.*]

Section 6. Debts and taxation for other than necessary expenses. No county, city, town, or other municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose.

[*Identical with present Art. VII, § 7.*]

Section 7. Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which said sinking fund has been created.

[*Identical with present Art. II, § 30.*]

Section 8. Retirement funds. The General Assembly shall not use, or authorize to be used, nor shall any agency of the State, public officer, or public employee use or authorize to be used the funds, or any part of the funds, of the Teachers' and State Employees' Retirement System except for Retirement System purposes. The funds of the Teachers' and State Employees' Retirement System shall not be applied, diverted, loaned to or used by the State, any State agency, State officer, or public officer or employee except for purposes of the Retirement System: Provided, that nothing in this section shall prohibit the use of said funds for the payment of benefits, administrative expenses, and refunds as authorized by the Teachers' and State Employees' Retirement Law, nor shall anything in this provision prohibit the proper investment of said funds as may be authorized by law.

[*Compare present Art. II, § 31.*]

Section 9. Certain debts declared invalid. Neither the State nor any county, city, town, or other governmental subdivision shall assume or pay, or authorize the collection of any debt or obligation, express or implied, incurred in aid of the War between the States; nor shall any tax be levied or collected for the payment of any such debt or obligation.

The General Assembly shall never assume or pay, or authorize the collection of any tax to pay, either directly or indirectly, express or implied, any debt or bond incurred or issued by authority of the Convention of the year 1868, or any debt or bond incurred or issued by the General Assembly of the year 1868, either at its special session of the year 1868, or at its regular sessions of the years 1868-69 and 1869-70, except the bonds issued to fund the interest on the old debt of the State, unless the proposal to pay the same shall have first been submitted to the people and by them ratified by the vote of a majority of all the qualified voters of the State at an election held for that purpose.

[*Compare present Art. I, § 6; Art. VII, § 12.*]

Section 10. Drawing money from Treasury; publication of accounts. No money shall be drawn from the Treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

[*Identical with present Art. XIV, § 3.*]

ARTICLE VI, SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Who may vote. Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

[*Identical with present Art. VI, § 1.*]

Section 2. Qualifications of voters. Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward, or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this article, shall be entitled to vote at any election held in this State: Provided, that removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which such person has removed until thirty days after such removal. No person who has been convicted, or who has confessed his guilt upon trial in open court, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's prison, shall be permitted to vote, unless the said person shall first be restored to citizenship in the manner prescribed by law.

[*Compare present Art. VI, § 2.*]

Section 3. Voters to be registered. Every person offering to vote shall be at the time a legally registered voter as

herein prescribed, and in the manner hereafter provided by law, and the General Assembly shall enact general registration laws to carry into effect the provisions of this article.
[*Identical with present Art. VI, § 3.*]

Section 4. Qualifications for registration. Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.
[*Compare present Art. VI, § 4.*]

Section 5. Elections by people and General Assembly. All elections by the people shall be by ballot, and all elections by the General Assembly shall be *viva voce.*
[*Identical with present Art. VI, § 6.*]

Section 6. Eligibility to office: official oath. Every voter in North Carolina, except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office he shall take and subscribe the following oath:

"I . . . . , do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as . . . . , so help me, God."
[*Identical with present Art. VI, § 7.*]

Section 7. Disqualification for office. The following shall be disqualified for office: First, all persons who shall deny the being of Almighty God; second, any person who is not qualified to vote in an election for such office; third, any person who has been convicted or has confessed upon trial in open court guilt of treason, or corruption or malpractice in any office, or has been removed by impeachment from any office and who has not been restored to the rights of citizenship in a manner prescribed by law.
[*Compare present Art. VI, § 8.*]

ARTICLE VII, EDUCATION

Section 1. Education shall be encouraged. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.
[*Compare present Art. IX, § 1.*]

Section 2. General Assembly shall provide for schools. Subject to, and except as provided in, Section 6 of this article, the General Assembly shall provide by taxation and otherwise for public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years; each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year.
[*Compare present Art. IX, §§ 2, 3.*]

Section 3. Children must attend school. The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability shall attend the public schools during the period between the ages of six and eighteen years, unless educated by other means.
[*Compare present Art. IX, § 11.*]

Section 4. State Board of Education. The State Board of Education shall supervise and administer the educational funds provided for the support of the free public schools, except those mentioned in Section 8 of this article. The State Board of Education shall consist of the Lieutenant-Governor, State Treasurer, Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session under such procedures as the General Assembly may provide. The General Assembly shall divide the State into eight educational districts, which may be altered from time to time by the General Assembly. Of the appointed members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. All appointments shall be for terms of eight years. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The Board shall elect a chairman and vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members shall be provided by the General Assembly.

The State Superintendent of Public Instruction shall be the secretary and chief administrative officer of the Board.
[*Compare present Art. IX, § 8.*]

Section 5. Powers and duties of the Board. The State Board of Education shall succeed to all the property rights and trusts of the President and Directors of the Literary Fund of North Carolina, and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary, and qualifications of public school teachers; to provide for the selection and adoption of the textbooks to be used in the public schools; to apportion and equalize the public school funds over the State; and to exercise such powers and perform such duties as the General Assembly may from time to time prescribe. All the powers enumerated in this section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly.
[*Compare present Art. IX, § 9.*]

Section 6. Education expense grants and local option. Notwithstanding any other provision of this Constitution, the General Assembly may provide for payment of education expense grants from any State or local public funds for the private education of any child for whom no public school is available or for the private education of a child who is assigned against the wishes of such child's parent, or the person having control of such child, to a public school attended by a child of another race. A grant shall be available only for education in a nonsectarian school, and in the case of a child assigned to a public school attended by a child of another race, a grant shall, in addition, be available only when it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race.

Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local option whereby any local option unit, as defined by the General Assembly, may choose by a majority vote of the qualified voters in the unit who vote on the question to suspend or to authorize the suspension of the operation of one or more or all of the public schools in that unit.

No action taken pursuant to the authority of this section shall in any manner affect the obligation of the

State or any political subdivision or agency thereof with respect to any indebtedness heretofore or hereafter created.

[*Compare present Art. IX, § 12.*]

Section 7. Property and funds devoted to educational purposes. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also all moneys, stocks, bonds, and other property now belonging to any State fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, or devises that have been or hereafter may be granted to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury, and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools, and for no other uses or purposes whatsoever.

[*Compare present Art. IX, § 4.*]

Section 8. County school fund. All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State. The amount collected in each county shall be annually reported to the Superintendent of Public Instruction.

[*Compare present Art. IX, § 5.*]

Section 9. Election of trustees; provisions for maintenance of the University. The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises, and endowments thereof in any wise granted to or conferred upon the trustees of the University; and the General Assembly may make such provisions, laws, and regulations from time to time as may be necessary and expedient for the maintenance and management of the University.

[*Identical with present Art. IX, § 6.*]

Section 10. Benefits of the University. The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also, that all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.

[*Identical with present Art. IX, § 7.*]

ARTICLE VIII, HOMESTEADS AND EXEMPTIONS

Section 1. Exemption of personal property. The personal property of any resident of this State, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court, issued for the collection of any debt.

[*Identical with present Art. X, § 1.*]

Section 2. Homestead exemptions.

(1) Exemption from sale; exceptions. Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town, or village with the dwellings and buildings used thereon, owned and occupied by any resident of this State, and not exceeding the value of one thousand dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes or for payment of obligations for the purchase of said premises.

[*Identical with present Art. X, § 2.*]

(2) Exemption for benefit of children. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

[*Compare present Art. X, § 3.*]

(3) Exemption for benefit of widow. If the owner of a homestead die, leaving a widow but no children, the homestead shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she be the owner of a homestead in her own right.

[*Compare present Art. X, § 5.*]

Section 3. Homestead may be conveyed; limitation. Nothing contained in this article shall operate to prevent the owner of a homestead from disposing of the same by deed; but no deed made by the owner of a homestead shall be valid without the signature and acknowledgment of his wife.

[*Identical with present Art. X, § 8.*]

Section 4. Laborer's lien. The provisions of Section 1 and Section 2 of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

[*Compare present Art. X, § 4.*]

Section 5. Property of married women secured to them. The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried. Every married woman may exercise the powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her, or by herself and her husband, or by her husband.

[*Compare present Art. X, § 6.*]

Section 6. Insurance for sole benefit of wife and children. The husband may insure his own life for the sole use and benefit of his wife or children or both, and upon his death the proceeds from the insurance shall be paid over to them, or to a guardian, where required, free from all claims of the representatives or creditors of the decedent. Such insurance shall not be subject to the claims of creditors of the insured during his lifetime.

[*Compare present Art. X, § 7.*]

ARTICLE IX, PUNISHMENTS, PENAL INSTITUTIONS, AND PUBLIC CHARITIES

Section 1. Public, charitable, reformatory, and penal institutions. Such charitable, benevolent, sanitary, reformatory, and penal institutions as the claims of humanity and the public good

may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

It shall be required by competent legislation that the structure and superintendence of penal institutions of the State, the county jails, and city police prisons secure the health and comfort of the prisoners and that male and female prisoners be never confined in the same room or cell.

[*Compare present Art. XI, §§ 3, 4, 5, 6, 8, 9, 10.*]

Section 2. Board of Public Welfare. Beneficient provisions for the poor, the unfortunate, and the orphan being one of the first duties of a civilized and Christian state, the General Assembly shall provide for and define the duties of a Board of Public Welfare.

[*Compare present Art. XI, § 7.*]

Section 3. Institutions self-supporting. It shall be steadily kept in view by the General Assembly, the State Board of Public Welfare, and the governing boards of all penal and charitable institutions that such institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.

[*Compare present Art. XI, § 11.*]

Section 4. Punishments. The following punishments only shall be known to the laws of this State: death, imprisonment with or without hard labor, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State. The object of punishments is not only to satisfy justice, but also to reform the offender, and thus prevent crime. Therefore, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

[*Compare present Art. XI, §§ 1, 2.*]

ARTICLE X, MILITIA

Section 1. Who are liable to militia duty. All able-bodied male citizens of the State of North Carolina between the ages of twenty-one and forty years shall be liable to duty in the militia: Provided, that all persons who may be averse to bearing arms, from religious scruples, shall be exempt therefrom.

[*Compare present Art. XII, § 1.*]

Section 2. Organization. The General Assembly shall provide for the organization, arming, equipping, and discipline of the militia, and for paying the same, when called into active service.

[*Identical with present Art. XII, § 2.*]

Section 3. Governor Commander-in-Chief. The Governor shall be Commander-in-Chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasion.

[*Identical with present Art. XII, § 3.*]

Section 4. Exemptions; control. The General Assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the militia.

[*Identical with present Art. XII, § 4.*]

ARTICLE XI, CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. Convention of the People. No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each House of the General Assembly, and except the proposition, "Convention or No Convention," be first submitted to the qualified voters of the State, at such time and in such manner as may be prescribed by law. If a majority of the votes cast upon the proposition be in favor of a Convention, it shall assemble on such day as may be prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and should a majority of the votes cast upon the proposition be in favor of a Convention, those limitations shall then become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters of the State at such time and in such manner as may be prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly which submits the convention proposition; and the delegates shall be apportioned as is the House of Representatives of the General Assembly which submits the convention proposition. A Convention may adopt no ordinance except such as shall be necessary to the purpose for which the Convention shall have been called.

[*Compare present Art. XIII, § 1.*]

Section 2. Power to revise or amend Constitution reserved to people. The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this article, but in no other way.

[*No comparable provision in present Constitution.*]

Section 3. Revision or amendment by Convention of the People. A Convenof the People of this State may be called pursuant to Section 1 of this article, to propose a new or revised Constitution, or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at such time and in such manner as may be prescribed by the Convention. If a majority of the votes cast thereon be in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, the new or revised Constitution or constitutional amendment or amendments shall become effective January first next after ratification by the voters, unless a different effective date be prescribed by the Convention.

[*No comparable provision in present Constitution.*]

Section 4. Revision or amendment by legislative initiation. Proposals of a new or revised Constitution, or of an amendment or amendments to this Constitution, may be initiated by the General Assembly, but only if three-fifths of all the members of each House shall adopt an act or acts submitting such proposals to the qualified voters of the State for their ratification or rejection. Such proposals shall be submitted at such time and in such manner as the General Assembly may prescribe. Should a majority of the votes cast upon a proposed new or revised Constitution or constitutional amendment be in favor of ratification, it shall become effective January first next after ratification by the voters, unless a different effective date be prescribed in the act submitting the proposal to the voters.

[*Compare present Art. XIII, § 2.*]

ARTICLE XII, MISCELLANEOUS

Section 1. Seat of government; boundaries. The permanent seat of government in this State shall be at the City of Raleigh, and the limits and boundaries of the State shall be and remain as they now are.

[*Compare present Art. XIV, § 6; Art. I, § 34.*]

Section 2. Holding office until successor qualified. In the absence of any contrary provision of this Constitution, incumbents of public office, both elective and appointive, shall hold office until their successors are lawfully selected and qualified.

[*Compare present Art. XIV, § 5.*]

Section 3. Dual office-holding. No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, commissioners and trustees of public charities and institutions, school committeemen, United States Commissioners, commissioners for special purposes, or delegates to a Convention of the People.

[*Compare present Art. XIV, § 7.*]

Section 4. Mechanic's lien. The General Assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lien on the subject-matter of their labor.

[*Identical with present Art. XIV, § 4.*]

Section 5. Intermarriage of whites and Negroes prohibited. All marriages between a white person and a Negro, or between a white person and a person of Negro descent to the third generation, inclusive, are hereby forever prohibited.

[*Identical with present Art. XIV, § 8.*]

Section 6. Continuity of laws; protection of office-holders. The laws of North Carolina, not repugnant to this Constitution, shall be and remain in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State made in pursuance thereof.

The provisions of the prior Constitution shall, except as inconsistent with the provisions of this Constitution, remain in force as statutory law subject to the power of the General Assembly to repeal or modify any or all of them.

[*No comparable provision in present Constitution.*]

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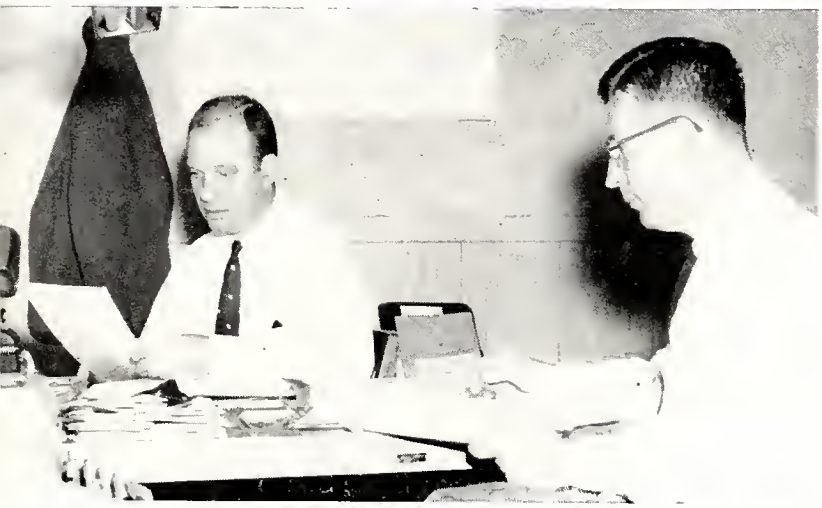

The Institute of Government

1959

Legislative Service

Ever since 1933 one of the major services rendered to the people of North Carolina by the Institute of Government has been its up-to-the-minute, on-the-spot reporting of both regular and special sessions of the General Assembly and the opening of the 1959 legislative session found another Institute of Government team, under the able direction of Clyde Ball, busy preparing the daily bulletins and summaries so many persons have come to rely upon for capsule views of legislative action.

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At top, Institute staff members (lower left corner) make notes at legislative session.

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

The 1957 legislative staff of the Institute of Government at the capital.