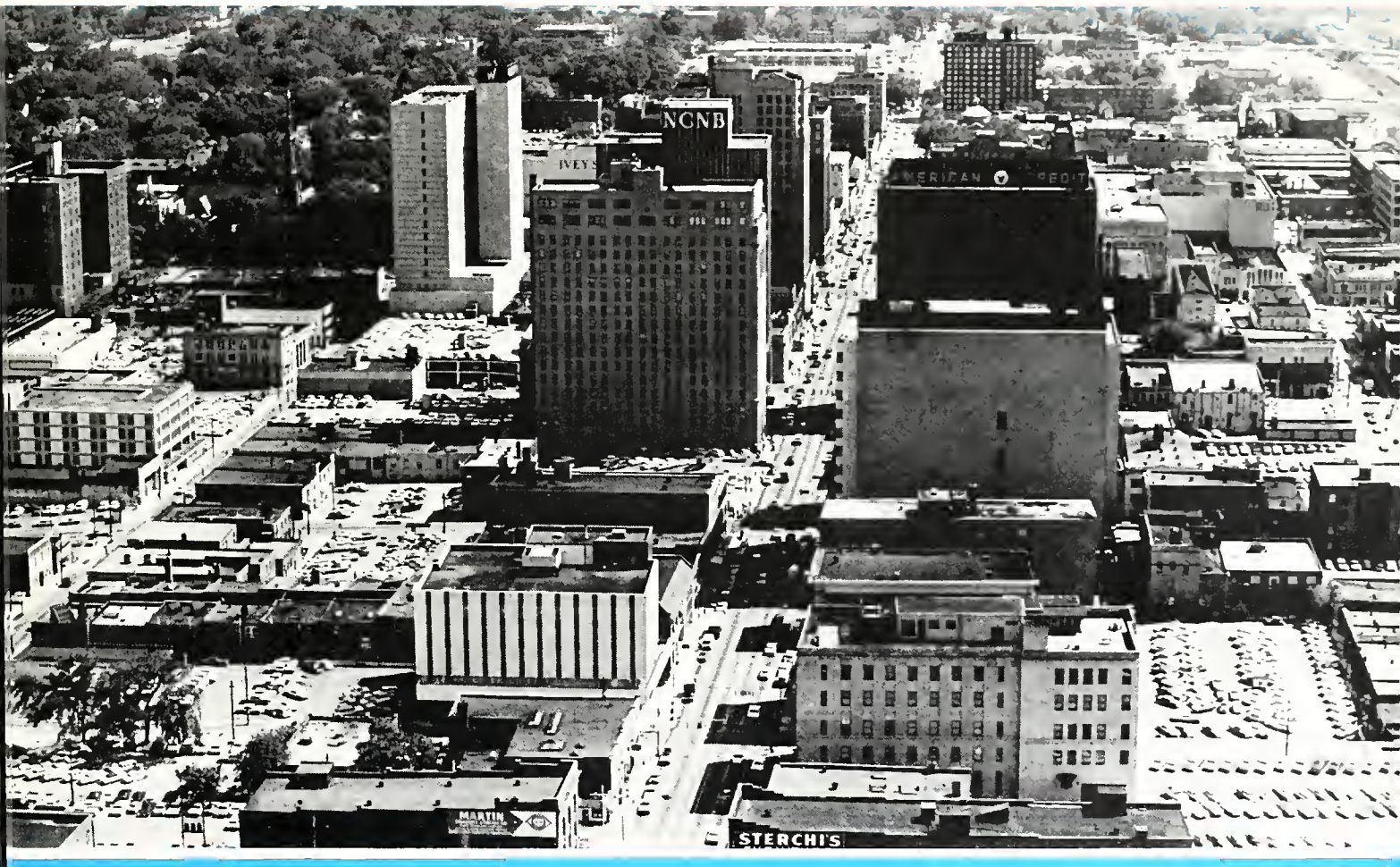
POPULAR GOVERNMENT

MARCH, 1969

Published by the Institute of Government
The University of North Carolina at Chapel Hill



This month . . .

This month's cover shows an aerial view of Charlotte, recently named an All-America city. See page 12.

POPULAR GOVERNMENT

Published by the Institute of Government

Contents

Volume 35 March, 1969 Number 6

POPULAR GOVERNMENT is published monthly except January, July, and August by the Institute of Government, the University of North Carolina, Chapel Hill. Change of address, editorial, business, and advertising address: Box 990, Chapel Hill, N. C. 27514. Subscription: per year, $3.00; single copy, 35 cents. Advertising rates furnished on request. Second-class postage paid at Chapel Hill, N. C. The material printed herein may be quoted provided that proper credit is given to POPULAR GOVERNMENT.

The Local Government Study Commission Recommends: An Analysis

by Joseph S. Ferrell

[*Editor's Note: The author, an Institute staff member, worked closely as consultant and drafter with the Local Government Study Commission. Much of his time is spent in Raleigh helping to translate Commission recommendations into legislation and consulting with lawmakers on proposed local legislation.*]

Shortly after the 1969 General Assembly convened in January, the Local Government Study Commission presented its Report to the Governor and the General Assembly. The Commission recommended constitutional reform, a state agency for local affairs, reform of the process of enacting local legislation, and its own continuation for another biennium. This article will discuss its proposed constitutional amendment and its "home rule" proposals. A later article will focus on the new Department of Local Affairs advocated by Governor Robert W. Scott.

An out-of-state visitor to the North Carolina General Assembly would probably find most unusual the pile of study commission reports on the members' desks and the large number of bills introduced applicable to only one county or city. Indeed, the "local bill problem" was largely responsible for the creation in 1967 of a study commission charged with the responsibility of studying the local government structure of the state and recommending means and procedures to reduce the volume of local legislation. Originally calling only for a study of local legislation, Resolution 76 of the 1967 General Assembly as finally enacted set up the Local Government Study Commission of fifteen members and directed it to study (1) ways to reduce the volume of local legislation; (2) possible revision of the organization and administration of county government; (3) the impact of urbanization on municipal governments; and (4) the purpose, function, and role of special districts and other special-purpose local governmental units.

By mid-September of 1967 the Commission had organized, electing Senator Jack H. White of Cleveland County and Representative Samuel H. Johnson of Wake County as its co-chairmen. Representative Julian Fenner of Nash County was chosen secretary. After extensive briefings from the Institute of Government, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities, the Commission adopted a tentative work plan. The plan recognized at the outset that not all the territory laid out for it could be covered by January, 1969. Rather than make superficial inquiry into many subjects, the Commission decided to concentrate on three major topics: constitutional reform, reform of the legislative procedures for handling local bills, and a state agency for local affairs.

Constitutional Reform

The Commission realized that close examination of those portions of the Constitution concerning local government would be essential before any study of new local governmental structures could be undertaken. The Constitution being a restraint on the power of the General Assembly to act, its prohibitions must be understood, potential problems identified, and solutions found which would preserve the essential and eliminate the unessential before major rethinking of the state's relation to its local governments can be profitably done. After an intensive constitutional study, the Commission put certain constitutional reforms at the head of its list of recommendations. The product of its labors in this connection was a comprehensive revision of Article V of the Constitution—the first complete re-examination of this crucial portion of the Constitution in 100 years.

Article V of the North Carolina Constitution—together with Article VII, section 6 (the "necessary expense" clause)—contains most of the significant restraints on the power of the state and its local governments to tax and to borrow money. Written at a time when the property tax was the only major source of revenue, revised in the 1930s when many counties and cities were bankrupt with unwisely incurred bonded debt, and tinkered with many times, Article V has become a curious collage of sound, fundamental propositions, obsolete and obsolescent provisions, and outright anachronisms. Most important, it places severe

limitations on the use of the county for urban-area government and city-county consolidation.

Compounding the problems of Article V has been the Supreme Court's approach to those portions regulating debt. In a series of decisions over the past five years, the Court has interpreted the word "debt" to include virtually any contractual obligation extending beyond the present fiscal year.

All told, the Commission recommended eleven major changes in those portions of the Constitution regulating local finance:

● *The twenty-cent limitation on county tax rates should be removed from the Constitution.* Since 1868 the Constitution has contained some limitation on the rate of tax which counties may levy on property. Originally, the limit was twice the state property tax (Const. 1868, Article V, section 7). The 1868 Constitution also limited the poll tax to not more than the property tax on $300 worth of property. When the Convention of 1875 placed a $2 limit on the poll tax by amending Article V, section 1, the resulting equation had the effect of limiting the total of the state and county property tax rates to 66 2/3 cents (the tax rate that will yield a $2 tax on property valued at $300). Thus, the absolute maximum county property tax rate was 44 4/9 cents, which would be reduced *pro tanto* whenever the state rate exceeded 22 2/9 cents. In 1921 the people amended the Constitution again to fix the combined state-county rate limit at 15 cents (the state began to levy income and gasoline taxes and abandoned the property tax to local government in 1920). This was raised to 20 cents in 1952. Thus, what began as a limit on the taxing power of *both* the state and the counties became effectively a limit only on the counties—and cities were never subject to any constitutional limit on tax rates.

The 20-cent limitation probably would have been either repealed or raised long ago were it not for the "special purpose" escape clause. The Constitution has always permitted tax levies in excess of the rate limitation "for a special purpose and with the special approval of the General Assembly." This exception, in all probability, was intended to permit special levies for one-time capital expenditures such as the construction of a specific bridge, or a specific building. However, it soon came to be used to permit the levy of taxes to support current operating expenses of specific governmental functions such as schools, welfare, health, roads, and so forth.

If the "special purpose" exception were completely flexible, the 20-cent limitation would have no real meaning and cause no particular problem. However, the Supreme Court has held that some governmental functions cannot be declared special purposes by the General Assembly. Chief among these is law enforcement. This restriction makes the merger of a county and its municipalities impossible or very difficult. Typically, the cost of extra police protection for urban areas, added to the cost of general county-wide law enforcement absorbs nearly all the money that can be raised by a 20-cent tax levy, leaving little or nothing for other functions that cannot be declared special purposes—such as holding elections, maintaining buildings, paying the expenses of the governing board, and the expenses of levying and collecting taxes.

Since the 20-cent limitation embodies so little restraint on the power of the General Assembly to authorize counties to levy property taxes, and since it is a serious impediment to city-county consolidation, the Commission recommended its repeal. Presumably the General Assembly would substitute legislative supervision of county tax rates like that for municipalities.

● *The poll tax should be abolished.* The Commission found that the poll tax now accounts for only 0.7 per cent of the taxes levied by counties, and only 0.2 per cent of the taxes levied by municipalities. It is an archaic, regressive, and insignificant source of revenue. In view of the difficulty of collecting the tax unless the taxpayer also owes property taxes, and since many people believe it has something to do with the right to vote, the Commission recommended its repeal.

● *The property tax base should remain uniform throughout the state, but the General Assembly should have authority to vary other sources of revenue according to local conditions.* In 1962 the people ratified an important amendment to Article V which required the General Assembly to act only on a statewide basis in exercising its classification and exemption power with respect to the property tax. The Commission recognized the importance of this policy, but felt that the considerations leading to it were relevant only to the property tax. Certain language in Article V can be read to require that other sources of revenue, such as the sales tax, can be exercised only on a statewide basis. Anticipating the decision of the Supreme Court in *Sykes v. Clayton*, 274 N.C. 398 (1968), which held that the uniformity provisions of Article V apply only to the property tax, the Commission recommended deletion of those words and phrases which seem to apply to sources of revenue other than the property tax. Thus, these proposed amendments now simply codify the rule of *Sykes v. Clayton.*

● *Local government should have authority to establish subordinate service districts for the provision of additional or supplemental services financed by taxes levied only in the area served.* Under the decisions of the Supreme Court in *Banks v. Raleigh,* 220 N.C. 35 (1941), and *Anderson v. Asheville,* 194 N.C. 117 (1927), there is serious doubt that the General Assembly could permit a county or city

to levy differential tax rates depending on the type and level of services provided. For example, in a merged or consolidated county some means of providing urban services in urban areas without taxing rural residents who do not benefit from them would be necessary. At present, the only constitutional method is to create urban service districts with the legal status of municipal corporations distinct from the county. The Commission recommended that the Constitution be amended to permit county and city governments to establish urban service districts *without* the status of a municipal corporation, and to levy taxes in the districts to finance services provided therein in addition to or to a greater extent than those provided throughout the county or city. Thus, a merged or consolidated county could define the territory formerly included within city limits as an urban service district, provide urban services therein, and levy additional taxes in this district keyed to the cost of the urban services. Also, the amendment would permit county governments to provide limited urban services to suburban areas rather than compel the creation of a special district for the purpose, as is now required. For example, a county might, at the request of the residents of a well-defined suburban area, provide fire protection and water services financed by property taxes levied only in the area served. Thus, the main thrust of this proposed amendment is to make possible more efficient and economical methods of providing urban services to the people.

● *The General Assembly should have authority to determine on a statewide basis what functions may be financed with non-voted property taxes and bonds.* Under Article VII, section 6, of the present Constitution, taxes may be levied and debt incurred without vote of the people only for "necessary expenses" as that term is defined from time to time by the Supreme Court. The "necessary expense" doctrine has never applied to state taxes or bonds. Governmental expenses that are not "necessary expenses" may be financed with non-tax revenues without voter approval or with tax funds or borrowed money with voter approval. The Commission-recommended amendment retains the substance of this limitation, but makes the General Assembly rather than the Supreme Court the forum for determining what functions are sufficiently central to local government to permit the levy of taxes without voter approval. The amendment does this by permitting the General Assembly to authorize the use of non-voted taxes for any governmental purpose, so long as the same authority is granted to *every* county, or to *every* city. Presumably the political difficulty of obtaining such legislation for every county or city guarantees that the General Assembly will not be rash in exercising the authority.

● *The authority of local governments to cooperate with private enterprise in the accomplishment of public purposes should be clarified.* In *Dennis v. Raleigh*, 253 N.C. 400 (1960), and *Horner v. Chamber of Commerce*, 235 N.C. 77 (1952), the Supreme Court laid down the basic rule that local government might make appropriations to private organizations engaged in public service activities so long as reasonable steps were taken to insure that the funds were actually spent for public purposes. The Commission recommended an amendment that would write this rule into the Constitution.

● *Local legislation on debt matters should be prohibited.* The Commission recommended that no local legislation pertaining to the incurrence of debt should be permitted. However, recognizing that the size and wealth of a county or city is relevant to its debt policy, the proposed amendment would permit legislation for classes of counties or cities. Presumably, relevant criteria for classification would be such characteristics as population, assessed valuation, and net debt outstanding.

● *Local governments should be permitted to borrow in anticipation of next year's taxes.* Since 1929 local governments have had statutory authority to anticipate 5 per cent of next year's tax levy. The authority has never been used, since the statute is probably unconstitutional under the present Constitution. The Commission recommended an amendment which would make the existing statutory authority constitutional.

● *Local governments should have authority to borrow without a vote to meet emergencies immediately threatening the public health or safety.* Under the present Constitution, if a county or city has not made a net reduction in its outstanding debt in the preceding fiscal year, it may not borrow money for any purpose whatever without a vote of the people. A few years ago the Town of Warrenton suffered a major downtown fire which destroyed its water tank. The town had no funds on hand with which to replace the tank and no non-voted borrowing authority. The Commission proposed an amendment which would permit cities or counties in similar situations to borrow without a vote to meet such an emergency. To reduce delay to an absolute minimum, the proposed amendment gives the Governor conclusive authority to determine whether an emergency is one immediately threatening the public health or safety. Thus, no delay could result from court challenges of the proposed borrowing.

● *The General Assembly should have authority to determine what contracts, other than general obligation debt, should be submitted to a vote of the people.* Since 1936 the Constitution has limited local government in incurring new debt without a vote of the people except for "necessary expenses" to the extent of two-thirds of net debt re-

duction in the preceding fiscal year. For thirty years it was commonly believed that the "debt" to which the Constitution referred was "general obligation debt"—bonds and notes evidencing debt incurred through borrowing money on the private market. In *Vance County v. Royster,* 271 N.C. 53 (1967), the Supreme Court placed a much broader interpretation on the word "debt," holding, in effect, that a debt is any contractual obligation whereby the county or city is bound to pay a sum of money in the future. Thus, a grant agreement with the Federal Aviation Agency under which Vance County agreed to appropriate annually certain moneys to maintain an airport partially financed by a federal grant was held to be a debt subject to voter approval. The Commission recognized that undue extension of this line of reasoning could substantially hamper sound fiscal practices by local governments. For example, a simple lease of office space could be considered a debt, since the city or county would be bound to pay the rent in future years. The Commission proposes a solution to the problem by permitting certain contracts to be entered into without a vote: (1) contracts with private parties of not more than 10 years' duration which do not pledge the faith and credit of the unit, and (2) any intergovernmental contract.

● *The extent of the authority of local governments to lend their credit in aid of private parties should be specified in the Constitution.* Finally, the Commission proposes an amendment specifically prohibiting local governments from lending their credit in aid of private organizations except for public purposes upon a vote of the people to the extent which may be permitted by general laws. While the state is presently prohibited from lending its credit without a vote of the people, there is no express limitation on local governments in this regard.

On the whole the Commission's proposed constitutional amendments retain the basic conservative posture of the present Constitution. Most bond issues would continue to require voter approval. However, the archaic 20-cent limitation on county tax rates would be removed and the General Assembly given more latitude in devising new forms of local government.

As of this writing (April 1) bills embodying the Commission's recommended amendments have been introduced in both the House and Senate, and a special subcommittee of the Senate and House Committees on Constitutional Amendments has been appointed to study the House bill.

"Home Rule" and Reform of the Local Legislation Process

Legislation minutely regulating the affairs of individual cities and counties is a long-established tradition in North Carolina. Anywhere from one-half to three-quarters of the laws enacted by a typical General Assembly, and about two-thirds of the bills introduced, fall into this category. From time to time efforts have been made to reform this tradition, but they have met with little success, due largely to the lack of support from either General Assembly members or local government officials. The local legislation tradition has always had its critics and its supporters. The critics have charged that the large volume of local legislation wastes the legislature's time and saps the members' energies at the expense of matters of statewide importance. The supporters argue that local legislation permits a flexibility in local government and a spirit of experimentation not found in states that prohibit local bills. There is much truth in both positions.

In general, the approach to the problem of local legislation in recent years has been to prohibit such laws on subjects for which there are strong policy reasons to require statewide uniformity. Thus, local legislation granting special tax treatment to various classes of property was prohibited by constitutional amendment in 1962. In 1964 the court system was revised by constitutional amendment, and local legislation concerning the jurisdiction and fees of the courts was prohibited. There has been, however, almost no pressure for constitutional elimination of local legislation dealing with the structure, functions, and powers of local governments. On this topic, the supporters of flexibility and innovation have carried the argument by sheer force of logic and experience.

The Local Government Study Commission argues that constitutional prohibitions against local legislation should spring from substantive policy considerations and not from notions of legislative efficiency. It proposes that the solution to the problem lies in modifying legislative attitudes so that general laws are the preferred mode and local acts enacted only when necessary or desirable. To encourage a change in the attitudes of legislators, the Commission recommended a two-pronged attack on the local bill problem: (1) eliminate the necessity for local bills by revising the general laws, and (2) screen local bills introduced to insure that they are necessary, constitutional, and not in violation of state policy.

The second of these recommendations has been already implemented in the 1969 General Assembly. The three or four committees of each house which previously primarily or exclusively handled local legislation have been consolidated into a single Committee on Local Government in each house. To assist the committees in handling the large number of bills referred to them (far greater than that handled by any other legislative committee), the presiding officers authorized the employment of a staff attorney who serves both the Senate and House Committees on Local Government—the only

(Continued on page 24)

SCHOOL CONSOLIDATION IN GASTON COUNTY
A Case History

by William H. Brown

[*Editor's Note: The merger of city and county school units is one of the major recommendations made by the Governor's Commission to Study the Public Schools. It is also a very controversial issue in those counties that have several small units and are under pressure to merge them. This article, written by the superintendent of the newly established Gaston County School Administrative Unit, discusses the problems and successes of the citizens of Gaston County in merging their three school units this past year.*]

Gaston County has consolidated its three separate school systems, and while the consolidation process was not without trauma, those concerned with the schools—both professionals and lay citizens—feel that a great new opportunity has been provided for educational excellence in the county. The basic problem that faced these three school districts was that they varied in their supplemental tax levies from nothing to 50 cents per $100 assessed valuation. The disparity in the amount available per child for public education was inevitable, and the differences in kinds and quality of program were marked. Also, Gaston County had had a long commitment to pay-as-you-go school construction; as a result, the three school systems were in constant competition for the limited funds for capital outlay. And in addition, the differences in school district taxes and the corresponding emphasis on school district lines had become the prime considerations for locating facilities rather than where children actually lived and what the total needs were.

Perhaps ten years ago such a merger could not have taken place. There are twelve municipalities in Gaston County, each with strong local feelings, and bringing them together was of course difficult. But over the years a change had occurred in the point of view of the citizens that made them ready to accept merger. A decade ago the usual argument for merger would have been economy—tremendous savings would have been expected from consolidation. But in recent years the people have come to recognize the importance of quality education commensurate with the needs of each child and to want this education for their children.

In 1965, then, Gaston County was ready to consider school consolidation. In that year the board of county commissioners contracted with an out-of-state professional consulting agency (Public Administration Service of Chicago, Illinois) to make a comprehensive study and to submit recommendations for careful consideration and possible action.

The following year the commissioners appointed a blue-ribbon study committee, composed of leaders from the industrial and business communities, to study the question of merger and to recommend specific procedures if they decided that merger was desirable. This committee undertook the herculean tasks of predicting and designing the machinery to provide for the increased educational needs certain to result from Gaston County's continued growth and development.

The committee was clearly aware that community pride and certain suspicions and hostilities growing out of the threatened loss of "local" control, as represented by the "old" school committee organization, were crucial considerations, yet it decided from the beginning that the needs of children and the elimination of inequalities and disparities in educational opportunity must transcend all barriers, real or imagined.

The committee's recommendations were presented to the boards of education of the three school systems, whose reactions and suggestions were incorporated as a part of the committee's final report to the commissioners. The three school boards also cooperatively petitioned the commissioners to request a special legislative act that would permit a special election on the merger question under certain conditions.

The proposal had three significant provisions that contributed substantially to its eventual success. The first was a stipulation that called for a 50-cent levy on the $100 taxable valuation, thus providing some assurance that the

better school programs would not suffer in a merger. Another key part provided for geographical representation on the nine-member school board which would be selected on a nonpartisan basis for staggered terms. Four members would represent geographie areas, and the remaining five would be elected at-large. Still a third vital element was an accompanying $20,000,000 bond proposal; funds from this source would permit implementation of the proposed curriculum program. As the legislation was written, each provision included in the merger proposal had to be approved or the proposal would be defeated in total.

Once the bill authorizing an election on the issue had been enacted by the North Carolina General Assembly, a proposed program for using the current expense moneys was drafted and generally agreed upon, and priorities were established for the use of the supplementary money. We felt that doing this would promote eitizen acceptance of the proposal. Among the priority items were (1) inereasing teacher supplements, so as to place Gaston County among the top ten systems in North Carolina in the amount of supplement paid per teaeher; (2) additional teaehers employed from local funds in order to improve teaeher-pupil ratios; and (3) enlarging the program of speeial services in such vital areas as library services, guidance, the fine arts, sequential programs for the trainable and educable mentally retarded, and language arts-reading programs. More than two-thirds of all available supplementary funds were earmarked for these purposes.

A speaker's bureau consisting of both lay and professional members was established to publicize the advantages of the merger and to urge a favorable vote. It was indispensable.

In the election on February 20, 1968, the merger proposal was approved by a not overwhelming margin. The predictions of disaster from the opposition were perhaps inevitable, considering the strong local feeling.

But neither the interim Board of Edueation nor the professional staff nor the supporting group of lay citizens ever fell into the trap of negative thinking. Rather, they went to work. They produeed statements of philosophy and lists of short- and long-range objeetives, drafted and eodified a poliey manual, developed new and articulated programs to assure meaningful scope and sequence, held orientation sessions for both lay citizens and professional personnel. Several schools that were antiquated-obsolete and/or too small to permit program excellence were abandoned, and others were sehednled for abandonment as construction permitted. Consultant resource persons were employed to lead in specialized areas where programs were not possible under the prior school organization. A maximum effort was made at all times to get as many people as possible involved in all aspects of the merger.

In referenee to the contention that consolidation would bring about savings, it must be said that although individual economies have resulted from the merger, the increased quality of Gaston County's educational produet will necessarily cost more.

In the merger effort communication has probably been the biggest single problem. Rumors, half-truths, and outright fabrications have been rampant at times despite the assistance of extremely cooperative news media. A monthly publication, *The Gaston County Schools News Bulletin*, has been an effective countermeasure. This vehicle is used to project issues and actions as well as present exemplary and/or innovative procedures in aetual teaching situations. Copies are sent to all staff members, advisory committee members, chambers of commeree, doctors' offiees, and other suitable places. Another communieations tool has been the regular semi-monthly meetings at which status reports supervisory-administrative staff on all current and pending relevant projects are presented for information, total staff reaction, and constructive criticism.

We believe that this merger has been an enormously significant step for public education in Gaston County. We know how much effort lies ahead of us, but we feel that newly merged the Gaston County system will sueceed so well that it will serve as a model for others. That is what all of us—the board of edueation, the professional and supportive staff, the citizens of Gaston County—are committed to.

Credits: The cover photograph is courtesy of the *Charlotte News*. Lois Filley did the layout.

A Courts Commission Recommendation:

LEGAL REPRESENTATION for INDIGENT DEFENDANTS

by C. E. Hinsdale

[Editor's Note: The North Carolina Courts Commission, established by the General Assembly in 1963, was directed by Senate Resolution 654 of June, 1967, to investigate the feasibility of a public defender system for North Carolina. In undertaking this task, the Courts Commission found it necessary to examine all facets of the problem of representation of indigent persons in the courts of the state. In this extract adapted from the Report of the Courts Commission to the 1969 General Assembly, the Commission discusses the present scope of the legal services to indigent persons and the need for expansion of these services, and recommends establishment in certain populous judicial districts of a public defender system to replace the present assigned-counsel system. C. E. Hinsdale, of the Institute of Government staff, assisted the Commission in preparing this report.]

Scope of Entitlement

Until 1963, North Carolina's constitutional and statutory *right* to counsel had been interpreted as applying to indigents accused of crime in capital cases only. In that year the now famous *Gideon v. Wainwright*[1] decision was handed down by the U.S. Supreme Court. Fortunately the General Assembly was in session. Pursuant to the *Gideon* mandate, it enlarged (G.S. 15-4.1 et seq.) an indigent defendant's right to counsel to include all felony cases and such misdemeanor cases as the superior court judge, in his discretion, deems warranted. (While *Gideon* spoke of entitlement to counsel for "all crimes," the court in subsequent cases has refused several opportunities to affirm this broad language, and the exact extent to which counsel must be provided at government expense for indigent persons accused of misdemeanors is still debatable.)

The 1967 General Assembly extended the right of indigents to counsel to preliminary examinations in felony cases and authorized district court judges to appoint counsel for such proceedings. This was in recognition of the fact that counsel in a felony case, to be of maximum effectiveness, must be available to the defendant at the earliest practicable time. The Assembly also extended the right in indigency cases to a juvenile facing a delinquency determination that might result in commitment to an institution (G.S. 110-29.1). This latter extension was prompted by the *Gault* case, decided by the U.S. Supreme Court while the 1967 General Assembly was in session.

Gideon and *Gault* are but two of several recent U.S. Supreme Court cases that in most states have extended the right to counsel to indigent persons far beyond its traditional bounds. Among the most widely known of these additional cases are *Escobedo* and *Miranda*, which extended the right to counsel to in-custody interrogations. Other pertinent decisions—some decided since the 1967 session of the General Assembly—are *Wade*, *Gilbert*, and *Stovall*, which made clear the requirement for counsel at a pre-trial identification ("line-up") procedure involving the accused, and *Mempa*, which seems to require counsel in a probation-revocation hearing, at least in felony cases.

In this rapidly expanding field the statutory law has not kept abreast of the case law. The result is that our 1963 statute, as amended in 1967, is no longer adequate, and the Courts Commission has concluded

1. Citations to cases mentioned in this discussion are collected at the end.

that the best solution is a complete revision of current law to reflect in an orderly manner the coverage demanded by the federal courts.

In recommending extension of the right to counsel to indigent persons, the Commission has not lost sight of the increased burden such extension will impose on the bar. It has been careful not to extend the right significantly beyond the outlines of the case law, particularly those cases referred to earlier in this report. The most prominent example of this conservative approach involves the right to counsel in misdemeanor cases. As noted earlier, the U.S. Supreme Court has hinted at but refrained from an outright prescription of a right to counsel in all such cases. Several jurisdictions, perhaps anticipating that entitlement to counsel may eventually be mandated for all crimes, have authorized representation at government expense for all indigent misdemeanants. Other states have drawn the line at, for example, misdemeanors for which confinement is possible, or confinement is likely, or misdemeanors for which confinement for six months or more is possible or likely. The Commission has examined a variety of these plans from other states, from model acts, and from legal literature and has found none exactly suited to the needs of North Carolina. The "if confinement is likely" test is too subjective, meaning different things to different judges, a problem that would be aggravated by our system of rotation of judges; the "six months' confinement" or "more than six months' confinement" test would be both impracticable and expensive, because of the large number of relatively petty misdemeanors in our criminal code for which up to two years' confinement is authorized but for which the most likely sentence falls far short of six-months' confinement, perhaps no confinement at all. The Commission also felt that some flexibility should be left in the standard to be prescribed, in the event—not unlikely—that the Supreme Court subsequently defines the limits of the right with more precision. Accordingly, the Commission recommends that counsel be appointed for each indigent person accused of a misdemeanor when, in the opinion of the court, counsel is warranted. This is a continuation of the present statutory authority in misdemeanor cases which has worked reasonably well so far. It avoids the rigidity of a specific standard which, in future Supreme Court decisions, might be found lacking. It does not burden the bar or the courts or the public treasury with excessive numbers of minor cases in which little or no confinement is in prospect, and it leaves the presiding judge free to expand the right with the growth of the case law.[2]

In at least two areas the Commission does not recommend extension of the right to counsel as far as some federal (but not the U.S. Supreme Court) courts have held that counsel is required. These are revocation-of-parole cases and *civil* proceedings for the hospitalization of the mentally ill. The controlling consideration here has been not the absence of a high court mandate, but rather the sheer volume of cases. Hundreds of parolees have their parole revoked each year, frequently for conviction of additional criminal offenses. The Parole Board meets in Raleigh. To furnish counsel for a hearing before the Board for each parolee would literally inundate the Wake County bar, and for the Parole Board to spread the burden among the lawyers of the state by conducting hearings in various areas of the state would require a very expensive expansion of the Board's personnel and budget. Similarly, furnishing counsel to the mentally ill (and inebriates) at commitment hearings would increase the workload of the bar, entirely aside from adequacy of the compensation to the individual attorney or the cumulative impact on the state budget, to an extent quite likely beyond its capacity. In either case the administration of justice generally would suffer delays if not a substantial breakdown. Before the right to counsel can be freely extended to these categories of cases, much further study and preparation by the bar and the public at large are required.

The Commission recommends the extension of the right to counsel to civil arrest and bail cases and to extradition proceedings. Each of these is likely to involve loss of liberty (extradition is almost always limited to a felony), and the number of cases is but a handful per year.

The right to counsel in post-conviction proceedings and habeas corpus hearings is carried forward intact from existing law. In appeals, the right is extended beyond the state court system to direct review by the U.S. Supreme Court of decisions of our highest state court in which review may be had; again, the number of cases in this category is a mere handful. This latter coverage is not designed to duplicate any coverage afforded by the federal Criminal Justice Act of 1964.

Assignment of Counsel

G.S. 15-5.1 provides that the North Carolina State Bar Council shall have authority to make rules and regulations relating to the manner and method of assigning counsel in indigency cases, and the adoption of plans by district bars regarding the method of assignment of counsel among the licensed attorneys of the district. District bar plans frequently further delegate to the county bars the method of assigning counsel to represent an indigent in a particular county. This system has produced the necessary flexibility and has worked reasonably well, particularly in the more populous counties. It has worked less well in the rural districts.

The Commission studied the various district plans on file with the State Bar and queried the clerk of superior court in each county concerning operational

2. For late developments on the representation of indigent misdemeanants, see the addendum at the end of this article.

details of each local plan. Little uniformity prevails from district to district and from county to county, in the actual mechanics of assigning counsel. In many districts, the local plan for assignment of counsel, initiated in 1964, has not been kept up to date. New names have not been added to rosters of eligible attorneys, nor ineligible names removed, and local practices varying from the plan as published have sprung up. In a few counties the clerk is not aware that any local plan has ever been promulgated; in others the clerk has an up-to-date plan but states that the judge does not always follow it. In a typical county the clerk furnishes the presiding judge with a list of attorneys, and the judge may follow the list in rotation, appoint from it at random, or ignore it and appoint from the attorneys present in the courtroom. Whether the lists are official or informal, attorneys are frequently excused for age, health, or ethical conflicts, and sometimes on request. In some counties, the names of all attorneys or attorneys under a certain age (usually 65) are on the list; in others, only the names of a restricted number of volunteers, not all of whom may be thoroughly grounded in the practice of criminal law, are listed.

Since the fee allowed by the court for representing an indigent is frequently substantially less than counsel would receive if privately retained, appointed counsel in some counties are unjustly bearing more than their share of a common burden. The system also is subject to the criticism that the experience level of assigned counsel is not always proportionate to the seriousness of the crime charged. And a conscientious judge who strives to appoint experienced counsel to represent an indigent accused of a more serious offense may increase the enforced sacrifice borne by the experienced attorney.

However the Commission does not wish to make too much of the administrative difficulties of the present assigned-counsel plan, for flexibility in local plans is essential. In any event, no better system for assigning counsel has been recommended to the Commission, and the Commission feels that with some central supervision over the system not now provided and with an increase in the level of fees awarded attorneys in indigency cases, the difficulties can be substantially overcome. By way of supervision, the Commission recommends that the Administrative Office of the Courts be authorized to supervise and coordinate the operation of the various local regulations for the assignment of counsel to the end that all indigents entitled to appointed counsel be properly represented and that the burden of providing representation fall as nearly equally as possible on the shoulders of as many qualified members of the bar as possible. As for compensation for attorneys who represent indigents, the Commission believes that, in spite of the language of G.S. 15-5, which provides that the trial judge shall approve a fee "which shall be reasonable and commensurate with the time consumed, the nature of the case, the amount of fees usually charged for such cases in the county or locality," fees have frequently fallen short of this measuring stick. The Commission accordingly recommends a clarification of this formula, but with no change in its objective.

The Commission feels that in the most populous districts the representation of indigents can be more efficiently accomplished by replacing the assigned-counsel system with a public defender system. This recommendation is discussed below.

Office of Public Defender

There are two major systems for providing legal counsel for indigent defendants. One is the assigned-counsel system now in effect throughout North Carolina. The other is the public defender system, in which the state or local government unit supports an office staffed with salaried attorneys whose sole responsibility is the representation of indigents. Variations and combinations of these two plans are found among the states, but the variations represent no departure in principle from the two basic plans.

The office of public defender is not new; it has existed in some parts of the country for half a century. Since the *Gideon* case was decided in 1963, however, public defender systems have increased many fold. The tremendous volume of cases generated by *Gideon* and its successor decisions has spurred interest in alternatives to the time-honored but never entirely satisfactory assigned-counsel plan. This surge of interest has meant that over 200 counties in the United States have now adopted defender plans. Many metropolitan areas are now served by public defenders and at least seven states, the most recent being Florida, have created a statewide public defender network. The Commission felt it appropriate to study the public defender system in depth to see whether it offered a practical alternative, at least under certain circumstances, to the assigned-counsel plan.

The major advantages of a defender system are said to be these:

The defender system provides experienced, competent counsel. A full-time public defender can accumulate in a few months more practical experience than private counsel, assigned occasionally from the bar at large, can acquire in years. Of course such experience can be retained in a defender office only if salaries are attractive enough to keep turn-over to a minimum.

The defender system in larger centers of population is more economical to operate. The data available demonstrates this clearly in the major metropolitan areas of the country. Just where the break-even point lies, in terms of population, is difficult to establish accurately. An American

Bar Foundation study[3] (published in 1965, but based primarily on 1962-1963 data) indicates that where the unit population is 400,000 or more, the median expenditure for defender offices is less than that for assigned-counsel systems. Since this data was collected before *Gideon* reached its fullest effect, and since later cases have expanded the right still further, it is quite likely that in 1969 the break-even point is considerably lower, on the average, than 400,000. If assigned counsel were fully compensated for their services, the resulting expense would in all likelihood leave little room for serious challenge of the proposition that a defender system can be operated more economically than an assigned-counsel system in localities well below 400,000 in population. In 1967, the State of North Carolina paid over $103,000 to assigned counsel in Mecklenburg County, which has about 340,000 population. This sum would staff and support a defender's office staff of three or four lawyers, with a sizeable amount left over to compensate assigned counsel who must be appointed in those cases in which the defender, for one reason or another, is disqualified.

The Commission heard a number of North Carolina attorneys experienced in the practice of criminal law. Each voiced the customary complaints against the assigned-counsel system (burden of representation falls too heavily on the small segment of the bar experienced in criminal practice; compensation is grossly inadequate; service to indigents is spotty in quality). Each recommended adoption of a public defender system, at least for the state's larger cities and counties. None foresaw any substantial objection to the defender system.

The criticism most frequently leveled against the defender system is the fear that a defender is likely to become less zealous or less independent than he should be. The American Bar Foundation study cited earlier offers little support for this fear. Assigned counsel, frequently lacking experience in criminal matters, have been known to seek a plea bargain with the solicitor rather than face the unknown outcome of a contest in an unfamiliar forum. The public defender should never have this problem; furthermore, from his broader experience, he is better able to evaluate the prosecution's case and know when a plea bargain is to be preferred to a not-guilty plea. As for independence, the above-cited Foundation study has this to say:

> It is the overwhelming opinion among those who know the public defender system most intimately that the system does not and certainly need not undermine the independence of the defender . . . Like the house counsel or government lawyer, the defender works for a salary instead of individual fees. Like the lawyer whose clients come to him through . . . an automobile casualty company, the public defender exercises little choice in the individual employment relationship. The public defender is just as much a product of the twentieth century as the doctor who works for a public hospital or a state university clinic. Each may have lost something of his traditional autonomy, but neither needs to compromise his standards of professional competence. (P. 52.)

After weighing the pros and cons of the public defender system and after studying a rapidly growing and impressive array of legal literature on the subject, the Commission felt that an on-the-spot firsthand observation of a public defender system in operation would be valuable. The Commission chose Florida, where a statewide public defender system was adopted in 1964. A Commission delegation headed by Senator Lindsay Warren, Jr., visited three defender districts, selected for their variety and comparability to various districts in North Carolina. In these districts—whose respective centers were Jacksonville, Orlando, and Gainesville—the Commission talked at length with the public defenders, several assistant public defenders, trial judges, police officials, a prosecutor, and a defender's investigator. The Commission was most favorably impressed with the Florida system and found that all parties interviewed concerning the system considered it to be a vast improvement over the former assigned-counsel system. The Commission drew somewhat on what it had seen in the Florida system in proposing a defender system for parts of North Carolina.

In selecting districts in North Carolina for establishment of a public defender, the Commission considered several criteria. Population, of course, was the most important consideration, since a large population provides the case load that makes the defender system efficient. Geography was the second important consideration. These two primary factors led to the conclusion that several large one-county judicial districts could economically justify a public defender. The same factors caused the Commission to conclude that the districts with the least population and with the most counties could not at present justify a defender. The crucial question then became a matter of where the line should be drawn to establish a category of districts in which the defender system might be economically feasible.

The Commission recommends initial inclusion of the following districts: the 26th (Mecklenburg County), the 18th (Guilford County), the 21st (Forsyth County), the 10th (Wake County), and the 12th (Cumberland and Hoke counties). These districts contain the five largest counties in terms of population (1960 census), and are all one-county districts, except for the 12th. In addition, to obtain geographic

3. Silverstein, Defense of the Poor, American Bar Foundation, Volume I (1965).

and multi-county diversification, the Commission recommends inclusion of the 25th judicial district in the west and the 7th judicial district in the east. These districts are chosen, frankly, somewhat for experimental purposes. It is by no means certain that their inclusion can be entirely justified on economic grounds; this is a matter that can be determined only by experience. Each is a fairly populous, growing, three-county district, however, and successful employment of the public defender system in these two districts will provide a reasonable base for gradual extension of the system to additional multi-county districts with comparable or even lesser population densities.

Summary

In summary, the Commission, after studying in depth the problem of representation of indigents, recommends legislation which: (1) revises present statutes with respect to the scope of the right to counsel to encompass coverage required by applicable case law; (2) strengthens the present assigned-counsel system by providing adequate compensation for counsel and supervision of local assignment systems to assure greater equality and fairness in assignments; (3) replaces the assigned-counsel system in a number of the most populous districts by a defender system, to assure greater efficiency and economy; and (4) provides for monitoring of both systems with a view to recommending improvements in each based on experience.

Addendum

As the foregoing discussion was being printed, the North Carolina Supreme Court on January 21, 1969, handed down *State v. Morris*, 275 N.C. 50. In *Morris*, the Supreme Court held that a person accused of a "serious" crime, if indigent, must be offered the services of legal counsel, and defined "serious crime" to include any offense "for which the authorized punishment exceeds six months' imprisonment and a $500 fine." The decision specifically set aside as unconstitutional G.S. 15-4.1 "insofar as it purports to leave to the discretion of the trial judge the appointment of counsel for indigent defendants charged with serious offenses. . . ." While *Morris* overturned a superior court conviction of a misdemeanor that had been appealed from a lower court for trial de novo, there is no reason in logic or common sense why the opinion should not embrace trials for serious misdemeanors in the court of first instance, the district court. Therefore, the Commission feels bound to recommend to the General Assembly that counsel be provided for indigents accused of serious misdemeanors, as defined above.

While the *Morris* case provides a measure of certainty in a previously unsettled area, it imposes an enormous additional burden on the bar of the state, inasmuch as there are scores of offenses in our criminal statutes for which the maximum authorized punishment exceeds six months' confinement and a fine of $500. The bulk of these offenses in actual practice nearly always draws less than six months' confinement—in fact, no confinement at all is commonly imposed for many of them—so that it is appropriate to examine as a priority matter the entire range of general misdemeanors, with a view to reducing the maximum imposable punishment to not more than six months' confinement in those cases in which confinement in excess of this time would be inappropriate. The Judicial Council is undertaking to do this, and the Courts Commission heartily endorses this effort.

List of Cases

Gideon v. Wainwright, 372 U.S. 335 (1963).
In Re Gault, 387 U.S. 1 (1967).
Escobedo v. Illinois, 378 U.S. 478 (1964).
Miranda v. Arizona, 384 U.S. 436 (1966).
U.S. v. Wade, 388 U.S. 218 (1967).
Gilbert v. California, 388 U.S. 263 (1967).
Stovall v. Denno, 388 U.S. 293 (1967).
Mempa v. Rhay, 389 U.S. 128 (1967).

CHARLO

BECOMI

Another North Carolina city recently joined the golden circle of All-America Cities when Charlotte was named a winner in the annual competition sponsored by the National Municipal League and *Look Magazine.*

The criteria for selecting recipients place heavy emphasis on citizen participation, and the sponsors cited Charlotte for these civic accomplishments:

- *Movement toward city-county consolidation.* In an effort to bring about greater efficiency, convenience, and equity for Charlotte and its neighbors in Mecklenburg County, a study commission initiated by the Chamber of Commerce and endorsed by the city and county governments last winter recommended that authorization be sought from the General Assembly for a charter commission to draw up a plan for city-county consolidation. The newly authorized charter commission is now being formed, and it will write a plan for the consolidated government to be submitted to the county's voters in a referendum in early 1971. If approved by the electorate, the charter will go to the 1971 General Assembly for legislative approval.
- *Enactment of a local sales tax.* After defeat in the General Assembly of a proposal for a statewide local 1 per cent sales tax two years ago, the Charlotte/Mecklenburg forces obtained passage of a bill authorizing Mecklenburg County to levy such a tax. Charlotte has used its portion to supplement other municipal revenues and to reduce the property tax.
- *Passage of an antidiscrimination ordinance.* An ordinance passed last June prohibits discrimination in places of public accommodation, and a conciliation committee within the Mayor's Committee on Community Relations has worked effectively to settle complaints of discrimination in other areas.
- *Manpower development with emphasis on teen-age employment.* Summer jobs were found for 579 sixteen- to eighteen-year-olds last year.
- *Citizen participation in the model cities program.* Charlotte is one of 75 cities selected for the federal model cities program. Many urban renewal and antipoverty activities will be carried on within it, and participation by the people to be affected is

AN ALL-AMERICA CITY

much to be desired. Charlotte has achieved a degree of participation in which poor people hold six of the fifteen seats on the program's governing board, in which a "town meeting" draws as many as 500 people, and in which hundreds of ghetto residents have served as consultants, talking candidly about their hopes and problems as the Charlotte model cities plan was drawn up.

- *A million-dollar Patrons of Excellence program for the University of North Carolina at Charlotte.* A campaign is well under way to raise funds to endow chairs at UNC-C (several already established), to supplement faculty salaries, to enrich the library holdings, and to provide other facilities for the campus.
- *Creation of the University Research Park.* University Research Park, Inc., financed by the sale of memberships at $1,000 each, has established a 1,465-acre tract near UNC-Charlotte that will be reserved for the research and office functions of large business and industrial corporations.
- *Expansion of the Mint Museum of Art.* To provide suitable space for an outstanding ceramics collection for which other museums were competing, nearly $500,000 of both municipal and private funds were used to expand the Mint Museum, which now also accommodates the new Golden Circle Theater.
- *A bicentennial celebration that made lasting contributions.* An amphitheater built at UNC-C entirely from private funds to accommodate the bicentennial historical drama may eventually become a covered auditorium seating 7,500. In addition, a 20-minute "cycloramic" history of Mecklenburg has been installed in a $40,000 building that will be a permanent part of the Charlotte Nature Museum. Finally, a 50-minute film narrated by Charles Kuralt and entitled "Discover Charlotte—A City in Motion" has been prepared by the chamber of commerce.
- *A community speech and hearing clinic.* Under the aegis of the Charlotte Junior League, a clinic has been established to help people of all ages with speech and hearing problems. It is the only such facility in the state that is not the outgrowth of a medical school or hospital program.
- *Initiation of downtown revitalization.* A plan, part of which has been approved and scheduled for construction beginning this summer, has been drawn up by Charlotte Development Associates which would involve up to $50,000,000 in private investment. An outstanding part of the planned complex is the proposed 20-story civic center and merchandise mart.
- *Staging of the Festival in the Park.* Charlotte's annual festival—which involves 75 cultural and artistic organizations and is largely arranged, built, and manned by volunteers—last year drew 750,000 people.

WILL WE CHANGE the PRESIDENTIAL ELECTION SYSTEM?

by Elmer Oettinger

[*Editor's Note: The author was invited by the Chapel Hill League of Women Voters to tie together thoughts on the electoral college with a discussion of related matters before the North Carolina General Assembly. Here are excerpts.*]

The introduction in the North Carolina General Assembly of a joint resolution to study the procedure for nominating the President of the United States illustrates the truism that the gaze of a state legislative body inevitably extends beyond the borders of the state. It also exemplifies the trend of such state bodies to re-examine their nomination and election procedures, especially at presidential level, in the light of recent events. The questions inviting consideration include possible change from state party conventions to presidential preferential primaries and a range of alternatives to the present electoral college system.

In effect, at the state and national level, our whole system of electing presidents is being re-examined. The long accreditation of the electoral college is suspect and should, some say, be revoked. The alternatives are election by districts, proportionally, or by direct election.

Constitutional Provisions for the Electoral College

To understand the electoral college and put it in perspective, let us look first at the provisions of the Constitution of the United States; and then back through the years to the reasons for their adoption by the framers of our Constitution; and then to the alternatives which faced them and which face us. Article II, section 2, of the U. S. Constitution states: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector." In other words, the state legislature—in our case, the General Assembly—controls the method in which electors are named, and the number is specified under Article II as equal to the number of senators (two) and representatives (eleven in our case) to which the state is entitled in Congress. And only those holding offices of trust or profit under the United States are prohibited from appointment as electors.

Now let us turn to Amendment XII to the federal Constitution, which reads:

> The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and trans-

mit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and the house of representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such a number be a majority of the whole number of electors appointed; and if no person has such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the House of Representatives shall choose immediately, by ballot, the president. But in choosing the president, the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of death or other constitutional disability of the president. The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no persons constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

Proposals Before the Constitutional Convention

It is worth noting that more than fifteen proposals for electing the president were presented to the constitutional convention in 1787. Several of the most prominent convention members—including James Wilson, James Madison, and Gouverneur Morris—preferred election of the president directly by the people, although Wilson also suggested election by electors chosen by the people in districts within each state. That these and all the other suggestions save that of an electoral college were rejected appears, from the debates, to be due to a distrust of presidential election by either Congress or the people. The predominant view among the delegates seemed to be that election of the president by Congress might invite cabal, corruption, possible influence from abroad, and a limitation of one term if the president was not to be too dependent on Congress and forced to court its members for re-election. On the other hand, most framers considered the people, at that time, to be too ignorant to be entrusted with direct election. When Gouverneur Morris observed that if the president "is to be the guardian of the people, let him be appointed by the people," Elbridge Gerry replied "ignorance of the people" would permit an organized group to "elect the chief magistrate in every instance, if the election be referred to the people." Other criticisms of direct election included a feeling that most persons would be partial to candidates from their own states and that this partiality would favor the larger states; that limited suffrage in the southern states would place them at some disadvantage; and that a majority of the people would not likely in any event be able to agree on one person.

American Bar Association Supports Direct Popular Election

It is highly doubtful whether those men, brilliant and able as many of them were, living and planning more than 180 years ago, could have anticipated the series of close elections, beginning with the Hayes-Tilden contest of 1876 and climaxing in the Kennedy-Nixon and Nixon-Humphrey-Wallace campaigns of 1960 and 1968, respectively, in which achievement of the popular will and the efficacy of the electoral system were brought into question. Whatever may be the outcome, the ferment which must precede any change is here. One need only read the public prints, and especially the professional legal journals, to become aware of the many proposals for change which appear almost monthly. The president of the American Bar Association, William T. Gossett, lists the major defects of the electoral college system as follows:

1. The popular will of the majority of the people of the nation can be—and has been, defeated by mathematical flukes.
2. The choice can be—and has been—thrown in to the house of representatives where each state has but a single vote.
3. A vote can be—and has been—cast by an elector for a candidate other than that for whom the voter expected him to vote.
4. Strong partisan cabals can influence—and have influenced—results of elections by influencing the choice of electors and appropriating party labels.
5. The disputed electoral vote of one state can negate—and has negated—the will of the rest of the nation.
6. Candidates with a clear plurality of the votes of the American people can be—and have been—defeated by candidates with a lesser vote.
7. The electoral vote of a state can—and does—nullify ballots of all voters not supporting the winner in that state.
8. The electoral votes of a state with a small percentage of its voters casting their ballots can—and do—have a fixed a numerical strength as a state with a large turn-out.
9. The margins of victory and of defeat can be—and are—grossly exaggerated by electoral votes, thus creating dangerous distortions of the real balances in our political system.

The American Bar Association recommends that the president and vice-president be elected by a direct, nationwide popular vote. It proposes that if the leading candidate has not received at least 40 percent of the vote for election, there be a run-off election between the two top candidates. It would leave the place and manner of holding presidential elections primarily to the states but would leave with Congress the power to make or alter election regulations, particularly "where the state attempts to exclude the name of a major candidate from the ballot." The ABA would make the qualifications for voting for president the same as those for voting for members of Congress but would allot to Congress "the reserve power to adopt uniform age and residence requirements." An ABA commission also urges Congress to "hold hearings and take appropriate legislative action on solutions for such contingencies as the death of a candidate either after or shortly before the election." In other words, the Bar Association now would implement the thoughts of James Madison in 1787 that "the people at large are the fittest" to decide upon the highest office of the land.

Figures are available to show that of the 28 states which have less than 10 electoral votes each in four of five recent elections, only four have voted with the winning candidate. On the other hand, the five states that have the most electoral votes, more than 25 each, have voted for the winner in four of five elections. The ABA believes that direct election would strengthen the participation of voters in small or sparsely settled states. It is argued that the "practical operation of the electoral system has led parties to concentrate disproportionately on their candidate or platform appealing to the majorities in the large industrial states, 12 of which have a clear majority of the total electoral votes. Thus, the candidates can and have tended to ignore the small states. That this strategy has worked to the detriment of the influence of small states is clearly apparent in a review of the states as barometers of elections outcomes—that is, the number of times a state has cast its vote for the winner."

The Case for the District System

Another alternative to the electoral college system is the so-called district system. Proponents of this system argue that the "gross distortions that exist in the present operation of the electoral college would be eliminated if 'constitutionally representative' electors were required to be elected." They blame the "state-wide general ticket system of electing presidential electors as posed by state election laws" as the primary cause of these distortions, and feel that the unit-rule system in states should be declared unconstitutional and made subject to injunction by the courts. Those favoring the district system point out that the "one man-one vote" ruling of the United States Supreme Court has brought congressional districts into a relative proportional equality, according to population within states. They would apply the "one man-one vote" principle to those electors equal to the number of representatives in Congress, and such electors would be required to vote the will as expressed by the voters of their particular districts in the presidential election. The two electors in each state equivalent to the two United States senators would be considered elected on a statewide basis and would be required to vote in their capacity as "citizens of the state." The philosophy underlying this proposal goes back to the compromise establishing dual representation in our bicameral Congress. In the Senate there was to be equal representation of states as states, regardless of population or other standards for measurement. In the House of Representatives the people were to be represented by representatives elected directly by the people and apportioned among the states according to population. Accordingly, under the district system, the vast majority of electors would be voting the will of the districts which they represent within states. Thus, the Republican elector from eastern North Carolina who chose to cast his vote in the 1968 election for George Wallace rather than Richard Nixon because that was the will of the people of his congressional district might find justification, or even mandate, for that vote under the district system.

The question in such case involves levels of government. It has been said that we have a pyramid of governments—local, state, federal, and, beyond that, international—one atop the other. Other observers have compared these layers of government to a marble cake, remarking that icing links the layers and spills over from the top so as to permeate all levels of government. And certainly when we see the federal linkage to states and local governments in appropriations and decision-making in such vital matters as education, public welfare, public health, highways, community action programs, and many others, we are acutely aware of the need to resolve and limit variant responsibilities and relationships. Much of our legislative and administrative activity in government today relates to that very need. The American Bar Association prefers the direct national election over the present electoral college system or the district system because it feels that the others fall short of meeting the evils of the present system. It claims:

> First, all votes cast within a state would be reflected in the national totals. Secondly, by necessity there would no longer be a possibility of a "minority president," in the sense of one elected with fewer votes than an opponent. Thirdly, there would cease to be any "pivotal states" as such because no states would be cast in a unit. Fourthly, the so-called "sure state" would disappear because candidates' efforts would be directed at people, regardless of location, and no Republican or Democratic minority

in the state would be ignored because they were out-numbered there. For a similar reason, the fifth evil disappears: The so-called "swing vote" within a state would lose its speeial attraetiveness with all its power to tip a state's entire electoral vote one way or another. . . . Finally, fraud or accident affecting a particular voting plaee or locality would affect only the votes involved and could not cause an entire state's vote to be miscalculated.

Practical Problems

As a practical matter, the large states are not likely to look with equanimity upon any proposal that takes away their special influence and power in selecting the presidents of the United States. The likelihood of getting a direct election-by-the-people proposal through the Congress therefore seems rather remote. No doubt a great deal of consideration is being given the problem by appropriate committees, but other matters—international and domestie—monopolize the front eenter stage in both national and state legislatures at the moment. Vietnam, the Israeli-Arab confrontation in the Middle East, the antiballistie missile program, international programs to control nuclear energy, international economic and politieal relationships—these are all in the forefront of the minds of our public officials in executive and legislative branches of government, at national level. The economy and problems of inflation, the antipoverty program, the spaee program, law and order, riots—on and off campus—these tend to engross the minds and the hearts of our executive and legislative officials in Washington and in some eases in Raleigh and forty-nine other state capitals.

Let's face it. One of the problems of our nation and our world today, perhaps as never before, is a short attention span. So many ideas, so many problems, so many proposals vie for attention that it is difficult for the public gaze to remain on any one for a long period of time. The eleetoral eollege becomes a major problem in an election year when its inequities become manifest. But as the clamor and furor and emotion of election time die away, change becomes more and more difficult until attention is revived four years later by fresh evidence.

Proposed Legislation in North Carolina

And so of the hundreds of bills introduced thus far in the North Carolina General Assembly (about 250 in the Senate and 400 in the House), only one has dealt directly with the electoral college system and only four with related matters, two of those virtually identieal. One of the four bills (HB 173), reported unfavorably, would have required politieal party primary candidates to pledge their support of all "state" candidates nominated by the party in the next general election. That was simply a party-loyalty bill at state level. Another of the four measures (HB 37) does relate to the electoral system in that it sets forth a fiduciary obligation of presidential electors to east their vote for the candidates of the politieal party nominating them. That bill still in committee, would permit the release of electors from their voting obligation by the party presidential and vice-presidential candidates in a written, verified release required to be delivered by noon of the second Wednesday in December to the Governor, who would then be required to notify the electors of their release. In such event the released electors would have a discretionary vote. But in any other ease, violation of their trust in voting as required for the party candidates would be a felony punishable in the discretion of the court. The burden of proving that he had a release as his defense would be on the elector. That bill would, if put in effect, end almost all chances of a vote by any future elector for candidates of a party other than his own.

The other two bills (HB 10 and HB 183) provided for a preference primary for eandidates for president and vice-president of the United States in North Carolina in national election years. HB 10 provided that eandidates be nominated only by the direetion of the State Board of Elections when it determines that the eandidacy is recognized by national news media, or by a petition containing at least 10,000 acknowledged signatures of the voters of the candidate's party. And it required that delegates to the national convention cast their votes on the first and second ballots to the candidate who received the largest number of votes in the preferential primary. That bill was reported out unfavorably by the Committee on Elections on February 28. HB 183 was identical with this defeated bill except that it provided only for a preferential primary for candidates for president (not for vice-president, as in the original bill) and provided that the presidential primary ballot should contain spaees to be entitled "for uninstructed delegates to the national convention" and "against" the same. It further provided that if the larger number of votes were in favor of uninstructed delegates to the convention, the results of the primary should not be binding on delegates; but if the larger number were against uninstrueted delegates, the delegates should be required to east their votes on the first and second ballots for the candidate of the party which received the largest number of votes for president in the primary. That bill reached the floor but was postponed indefinitely; behind-the-scenes efforts to resurrect it the following day failed.

The resolution to establish a Commission on Presidential Nomination Procedure (H 426) was introduced after the defeat of the preferential primary bill. It seems logical that the effort to begin a study of the problem was a result of the failure to aehieve immediate change. Much of the major legislation

introduced in this session grew out of study commission reports. If changes come about in our State Constitution, local government, higher and public school education, and jails as the result of 1969 legislative action, the source of change in most cases will have been study commissions. The presidential nomination study commission, if it is approved, would be directed to study presidential nomination procedures in North Carolina and other states to determine whether change is advisable; to solicit information and comment from the leaders of the major political parties in the state; and, on or before January 1, 1971, to file a written report with the Governor for transmittal to the General Assembly. The commission would be further directed to prepare and submit with its report any appropriate bills to encompass recommended legislation, if any. The fifteen commission members would be appointed five each by the Governor, by the President of the Senate, and by the Speaker of the House on July 1, 1969, "or as soon as practicable thereafter." The appointees of each officer would be required to include at least one person from each political party qualified on July 1, 1969, under state law to have a candidate on the ballot in the 1972 election.

Conclusions

Clearly a substantial number of state legislators are interested in determining whether North Carolina's present procedures for nominating a president meet the needs of the times. It is too early to forecast what may come.

It is not likely, however, that this General Assembly will be known primarily for its legislation concerning the presidential nominating procedures or the electoral college system. Nor should it. For its primary responsibility is to the day-to-day operation of this state. It must put first the matters that relate to appropriations and revenues and the growth and progress of this state and its people. And those considerations come in terms of public schools and higher education and health and welfare and governmental units and their interrelationships.

The legislators, of course, do have a responsibility for recognizing regional and national and international issues where they relate to the people of North Carolina and their responsibilities to the state and its people. On national and world matters, often they can do little more than make gestures in the form of resolutions urging the Congress to act or not act.

Furthermore, from the standpoint of practical operation, the political parties in North Carolina have in effect been granted control of the selection of electors and have picked their own slates each fourth election year. The framers of the United States Constitution originally contemplated that the electors would be composed of leading citizens, the best-informed persons in matters governmental, who would contrast with the ignorance of the great majority of people. Today the situation is very different. The bulk of the population is educated and relatively much better informed. The persons selected are generally not the most prominent persons in the state or in the party but rather relative unknowns to political office. They may be, and in most instances no doubt are, people of respectability and of some service to the party.

The public and party attitude toward the electors has been that they are recipients of a sort of plum—a one-shot sinecure that entitles them to take a trip, cast a pre-determined ballot, and return home. There is little concern about the individual elector—his knowledge, background, personality, merit, character. The usual view of the electoral college is simply that it is a routine part of a complex system. It does not excite the public. I doubt that anyone has ever taken the trouble to track down the process and personalities involved in selection within the individual parties of the specific electors. And yet those selected have importance as the process itself has importance. Perhaps we need an upgrading in our concept of the system for electing a president before we can ever hope to gain a careful, critical, national public awareness of the nature of the problem as a basis for discussion of the merits of the alternatives to the present electoral system.

Some Bibliographical Sources for Electoral College Information

American Bar Association's Commission on Electoral College Reform, *Electing the President,* 53 A.B.A.J. 219 (1967).

Feerick, John D., *The Electoral College—Why It Ought to Be Abolished,* 37 Fordham L. Rev. 1 (1968).

Feerick, John D., *The Electoral College—Why It Was Created,* 54 A.B.A.J. 249 (1968).

Feerick, John D., *The Electoral College—Its Defects and Dangers,* 40 N.Y. State Bar J. 317 (1968).

Gossett, William T., *Electing the President: New Hope for an Old Ideal,* 53 A.B.A.J. 1103 (1967).

Spering, Howard S., *How to Make the Electoral College Constitutionally Representative,* 54 A.B.A.J. 763 (1968).

Thornton, J. E., *Analysis of Electoral College Reform,* 39 Okla. Bar A. J. 2351 (1968).

Timmons, H. D., *Should the Electoral College Be Abolished?* 30 Texas Bar J. 335 (1967).

Improving Local Government Bond Ratings

by T. Gregory Morton

[*Editor's Note: This article is taken from an address made by the author at meetings of county accountants and public finance officers held at the Institute of Government in March. Mr. Morton is assistant investment officer in the State Treasurer's office.*]

First things first: What is a bond rating and why is it important to a local governmental unit? Bond ratings are simply an indication by a numerical score or a letter grade or some other method of ranking of the quality of a governmental debt obligation. Two national rating services rate bonds by letter grades; one uses the symbol AAA to denote the top grade, and the other uses Aaa. One North Carolina rating service gives local governmental bonds numerical ratings in which the maximum possible is 100. Another North Carolina rating service classifies local governmental bonds into three groupings, with "Group 1" being its top ranking.

Whatever the grading system, the bond ratings all serve the same purpose: they group bonds with basically similar quality under the same or similar classifications. The highest classification always includes bonds that are judged to have the best quality. Bonds in the next grouping may have traits that are almost as favorable as those of the highest group, but have a lower margin of protection. The third grouping will have a lower margin of protection than the second group, and so on, until the last grouping may indicate bonds in default.

These ratings have come to be heavily relied upon by investors, who use them as supplements to their own bond analyses. That these bond ratings are taken seriously is indicated by the fact that a bond with a particular letter rating may sell with a yield from one-tenth to one-quarter of 1 per cent lower than a bond with the next-lower letter grade.

This difference in interest cost is a strong reason for a unit to attempt to improve its bond rating. The difference of one-quarter of 1 per cent for $10,000,000 in bonds over 20 years represents $500,000. Thus a unit selling this amount of bonds at a given rate would pay $500,000 less in interest than a unit selling at an interest rate one-quarter of 1 per cent higher.

Another advantage of a unit's attempting to improve its bond rating is that the analysis of the unit's operations which any such attempt requires may indicate more efficient operating methods. Indeed, the more efficient operation that can result from this analysis will probably bring more savings than the improved bond rating.

Another important reason for a unit to attempt to improve its bond rating relates to the current rise in interest rates. North Carolina local governmental units cannot by law pay more than 6 per cent on their debt obligations, and having a reasonable rating might be the difference between getting a bid or not being able to sell the bond issue.

The Local Government Commission

Once a unit has decided that its bond rating is low, the question arises what it should do first to correct this situation. In many states, this would not be an easy question to answer, but in North Carolina the answer comes quite readily: Arrange a meeting with the Local Government Commission.

Few people outside of financial circles realize the importance of the Local Government Commission to North Carolina. This Commission provides fiscal assistance to the local units of the state. Its major responsibility involves its authority to approve or disapprove the issuance of debt obligations by local governmental units. In connection with this authority, the Commission advises local units concerning the incurrence of debt and provides a facility for marketing the debt issues. The Accounting Advisory Section of the Commission, which is supervised by a

certified public accountant, as is the Commission itself, provides assistance concerning "accounting systems and practices and independent audit programs."[1]

North Carolina is one of four states that assist local units in their borrowing operations.[2] In North Carolina, units issuing debt obligations are required by law to "proceed through the Local Government Commission. The Commission's supervision assures investors that correct procedures have been followed and that the fiscal data presented in the offering circular is based upon reliable sources. The local units also benefit through lower interest costs that result from the underwriter's knowledge of Commission standards and the uniformity of the offering procedures."[3]

At the meeting between local officials and the Local Government Commission, Commission officials will ask many questions concerning points that affect bond ratings. If a unit has too much debt outstanding or has allowed needed public facilities to be neglected, the Commission will help set up a system of priorities to help the unit improve governmental service and reduce outstanding debt. If a unit has been lax on property tax collections or has had budget crises, the Accounting Advisory Section may recommend better accounting procedures.

Projecting Needs Accurately

Many factors, some seemingly not in the realm of finance, must be considered in rating a unit's bonds. Generally speaking, when a unit's debt is high compared with that of similar units, that unit's bond rating tends to be lower. The reverse is not always true, however. The fact that a unit has an unusually low amount of debt may indicate that the unit is providing an inadequate level of governmental service. If schools, water and sewage facilities, and other public facilities are in bad repair, very probably a heavy increase in debt will be necessary in the future to correct this "penny-wise, pound-foolish" situation. Perhaps, however, a unit will continue to exist with these inadequate services and not increase its debt: In a speech made to the National Association of State Auditors, Comptrollers and Treasurers in 1958, David M. Ellinwood, then vice-president of Moody's Investors Service, said that "if the community is happy to continue to exist with outmoded and inadequate facilities, it is hardly an attractive investment background, however low the debt may be."[4]

Rather than have an extremely high debt that would adversely effect the unit's bond rating or go to the other extreme and reduce needed public service, a unit should establish long-range planning procedures that will enable it to forecast with some degree of accuracy the future needs of the community. Once these needs have been established, priorities should be set to expedite the orderly accomplishment of these obligations without letting governmental services deteriorate or inordinately increasing the unit's debt.

A unit should anticipate realistically the need for additional borrowing over the next five years by that unit or overlapping units. Being realistic means that the unit must face up to its needs and admit that they must be met. By recognizing needs far enough in advance, it may be able, through adequate planning and a system of priorities, to provide for a large part of them through current expenditures without resorting to debt financing. Even if the unit finds that it will have to rely to a large extent on debt obligations, by recognizing this fact far enough in advance, it can better prepare for the additional burden.

One of the most important factors in projecting future expenditures is the need for additional educational facilities. In this regard, a unit has quantitative and qualitative factors to consider. Its officials must analyze current academic programs, determine what improvements should be made, and estimate the cost of these improvements in terms of present and future enrollments. If present facilities are inadequate, the unit's budget will have to include expenditures to bring them up to par. Here again, by recognizing needs early, the unit can more easily prepare for their financing. One thing local officials can be sure of: whether or not they recognize the need for necessary future improvements, the bond rating services will, and they will note favorably if the officials have prepared for these expenditures.

The adequacy of present water, sewage disposal, and other utilities and the future needs for expanded and improved services also weigh heavily in estimates of future expenditures. Once more qualitative and quantitative factors exist. If present facilities are inadequate, future expenditures must be made to improve services. If the population is increasing rapidly, as it is in urban areas, greatly expanded facilities may be required to maintain the present level of services. Again, if local officials recognize and plan for future needs well in advance, the rating services will note this favorably.

Obviously, many of these factors are beyond the control of the unit's finance director or of any one public official. The complex nature of these factors indicates the need for cooperation among all local boards, officials, and the public. This cooperation is something that a unit must have if its campaign to improve its bond rating is to be successful.

Ability to Pay

Another important factor in determining a bond credit is the

1. Edwin Gill "How the Local Government Commission Works with Local Units," *Popular Government*, 34 (December 1967), p. 1.
2. *Ibid.*
3. *Op. cit.*, pp. 1-2.
4. David M. Ellinwood, *Report of the Forth-Third Annual Convention of the National Association of State Auditors, Comptrollers, and Treasurers*. 1958, p. 45.

unit's ability to pay. This determinant is much broader, however, than a simple mathematical correlation between the amount of outstanding debt and the legal ability of the unit to raise the tax rate as needs require. There may be non-economic considerations that limit a unit's ability to increase its tax rate.

Units that continually have budget crises, perhaps often finding it necessary to issue tax-anticipation notes, generally have a lower credit standing than they would without these crises. The current account deficits, which must be funded, reduce the ability to repay long-term debt.

An unlimited tax rate does not guarantee a high credit rating where the tax base is currently being drawn upon at a level that is close to the practical economic limit. In a situation in which a unit is using its tax base to the maximum practical level, a system of priorities should be set for governmental needs to allow for future periodic reductions in tax rates. These reductions are not easy to obtain, but they are necessary if the unit is to improve its credit rating. The only other alternative, if they cannot be made, is to find new sources of revenue to provide a stronger tax base, but this is not always possible.

Another factor important to a unit's credit rating is the ability to collect quickly and virtually in full the property taxes that are due. Inadequate procedures for collecting these taxes, which will be indicated by a heavy backlog of uncollected taxes, have serious and adverse effects on a unit's bond rating. Credit rating is strengthened if a unit has a reputation for fair and impartial property assessments.

Retiring Debt

A unit can also strengthen its credit rating by having a reputation for aggressive retirement of outstanding debt. This retirement program indicates that a unit is serious about reducing its debt-service burden. Aggressive retirement of debt also saves the unit money because interest is paid for a shorter period of time. Such a reputation has strengthened the bonds of the State of North Carolina, and articles in financial publications have stated that "North Carolina retains its policy of aggressive debt retirement."

A unit should insure that the retirement schedule for currently outstanding debt is adequate to produce a smooth, rapid reduction in this debt. Ideally, the debt service requirements should be roughly even for the first few years, decreasing as the most distant maturities are reached. No perfectly smooth debt-service curve will mean much, however, if the schedule is not fairly aggressive in reducing debt.

Putting Your Best Foot Forward

Some units in North Carolina are strong financially but still have relatively low bond ratings. The officials of a unit in which this situation exists should tell the Local Government Commission officials about it. If the facts verify the report, the Commission representatives will probably ask the officials a question: "Who have you told about your unit's strong financial position?" Just as a business concern needs to advertise its products or services, a governmental unit needs to advertise its strong financial position if anyone is to know about it. This does not mean "advertising" in the sense of running ads in newspapers or of having commercials on television, because commercial-type advertising would do little to improve a unit's bond ratings. A unit should advertise its strong financial position by contacting the national rating services and others who rate bonds and thereby influence the thinking of purchasers of municipal bonds. This list would include Moody's Investors Service, Standard & Poor's, Dun and Bradstreet, the North Carolina Municipal Council, and the North Carolina Securities Advisory Committee.

At this point, the importance of the dual rating system and of the North Carolina Muncipal Council enters in. The dual rating system, simply means that most investors prefer that a unit's bonds be rated by two investment services. Historically, these have been Moody's Investors Service and Standard and Poor's Corporation. Occasionly a unit may have been rated by Standard and Poor's and not by Moody's, or vice versa. In most states, such a unit would have only one rating. In North Carolina, however, the need for a second rating is filled by the North Carolina Municipal Council. Besides giving investors a local rating of the bonds to supplement the national ratings, the NCMC also rates many bonds that the national services do not rate at all, which greatly facilitates the sale of bonds by our smaller units.

After meeting with the Local Government Commission, a unit wishing to improve its credit rating should contact the above-mentioned rating services. A letter to each service explaining that the unit believes its bonds are rated too low and that it hopes to improve their rating should be sufficient to start things moving. This letter should state that the unit is willing to provide any information that the rating service requests. Bond rating services do not receive very many letters volunteering information, especially from a unit that is not currently in the process of selling bonds; local officials can therefore be fairly sure that they will get an answer to their communication, probably a letter thanking them for the offer to provide information and accompanied by a long questionnaire.

Local officials will need to have done their homework well and have the requested information at their fingertips. Actually, if the unit has conscientiously provided the information requested annually by the Local Government Commission, it should have most of the

information needed readily available.

The information that bond-rating services will probably request can be broken into five categories:

1. The unit's audit reports for the previous five years. Obviously, the more detailed the audit reports are, the more information the rating services will be able to derive from them.

2. Information concerning outstanding and proposed debt. This should include a debt-service schedule for outstanding debt of the unit and of overlapping units, and a list of any projected borrowing by the unit or overlapping units for five years.

3. The tax base and taxation. This category should list the annexations over the past five years, and any currently planned. The assessed valuation of property, with the basis of assessment shown, should be included, plus a list of the twenty largest tax payers in the unit over the past ten years. The tax levies and collections over the past five years are an important factor and should be included.

4. Information relating to future capital needs. School needs are a very important part of this section. School enrollments for the past five years and projected enrollments for the next five years should be included, plus a description of present school facilities and programs and projections for the future. This section should also show the areas serviced by the unit's public utilities and include a statement about the adequacy of the present facilities. Any other proposed capital expenditure should also be listed.

5. A socio-economic analysis of the unit. It should show what percentage of the unit's area is residential, commercial, and farm land, including building codes and zoning maps. A summary of building permits over the last ten years which shows their purpose, valuation, and number will usually be required by the rating services, as well as an outline of industrial and housing developments currently planned. This section should also show a breakdown of the types of agriculture, showing the principal crops and the size of farms. To show population trends, a list of populations for the last several censuses and estimates for the future should be included. The last grouping under this category should include an analysis of the local population showing medium family income; percentage of homes owned by occupants; and the percentage of the work force in manufacturing, profession, technical and managerial, clerical, and unskilled labor.

This list appears to leave little room for flexibility, but covers most points influencing bond ratings. If a unit has some weak points, this list will bring them out. By thoroughly researching this information in advance, however, a unit can find all of its favorable points and emphasize these. It can also attempt to improve some of its weak points.

Always, in such a report, a unit should list specific steps that it is taking to strengthen its credit rating, and it should always live up to its promises. A meeting between local officials and a representative of the rating service might be arranged if the service feels that would be helpful. Throughout any of these steps, a unit may call upon the Local Government Commission for assistance.

Fairfield, Connecticut, is a good example of this approach to bond-rating improvement. In 1958, its bond rating was reduced from "Aa" to "A." The town officials of course wanted to get it brought back to "Aa," which started a five-year struggle to get the town's bond rating improved.[5]

The chairman of the board of finance of Fairfield during this period gave a summary of the campaign to the *Weekly Bond Buyer*. In part, he said:[6] ". . . I guess the first thing we decided to do was to get mad . . . [W]e decided to let the rating agencies know about it, not that we were mad at them but that we were mad at the situation which created a down-grading of our rating. The first thing we did . . . was to set up a continuing five-year plan which we kept moving on as the years rolled by, and we made realism the principal ingredient of the plan. We set up priorities, and developed an orderly process for meeting the goals in the priorities. . . . I think one of the things that intrigued the rating agencies was that we would set up these projections and then live up to them. . . . Keeping the municipal plant up to date and adequate to the community needs on a year-by-year basis is critical."

In 1963, five years after its rating was reduced, Fairfield's rating was raised again to "Aa."

5. The Weekly Bond Buyer, November 6, 1967.
6. *Ibid.*

Summary

In summary, the general approach that local officials should take in a campaign to improve their unit's bond rating can be outlined in five steps:

(1) Local officials should contact the Local Government Commission, advising the Commission of the campaign and requesting Commission advice and assistance.

(2) Realistic assessments must be made of the unit's spending and borrowing needs, and capital-improvement backlogs must not be allowed to develop.

(3) The unit must plan for these expenditures, establish a system of priorities, and stick to projections once they are made.

(4) The rating services should be informed of the campaign, asked for advice, and provided any information they request.

(5) The rating services should always be kept informed of the unit's progress.

Improving a local governmental unit's bond rating is not easy, but it can be done over a period of years if local officials make a concentrated effort.

Attorney-General's Rulings

Compiled by George M. Cleland

COUNTIES

Authority to Enact Curfews; Police Power

11 October 1968
A.G. to E. J. Prevatte

Question: Does a board of county commissioners have the authority to enact curfews in order to control the movement of persons in or entering an area of a county?

Answer: G.S. 153-9(53) authorizes the board of county commissioners to take action to suppress riots or insurrections or to handle any extraordinary breach of law or order which occurs or threatens to occur within the county. This section authorizes the board to levy a special tax for the purpose of meeting the expense of additional law enforcement personnel and equipment required in suppressing riots or insurrections which occur or threaten to occur in the county. Although we cannot say with certainty that this section confers upon a board of county commissioners authority to enact a curfew, it is possible that the language is broad enough so that the board may do so if there are riots, insurrections, or extraordinary breaches of law actually occurring or threatening to occur within the county.

MOTOR VEHICLES

Nolo Contendere, Driver's License Point System

24 January 1969
A.G. to Ralph L. Howland

Question: In view of recent cases, would you review status of the plea of *nolo contendere* for purposes of assigning points under the point system of the Uniform Driver's License Act?

Answer: Upon receipt of notice of final conviction of an offense for which points are provided in G.S. 20-16(c), the Department of Motor Vehicles should assign such points irrespective of whether the records show final conviction to have been entered upon a plea of *nolo contendere*, not guilty, or guilty. G.S. 20-16(c) requires assignment of points for "convictions." G.S. 20-24(c) declares that "conviction" shall mean a "final conviction." In order to have a final conviction there must be a judgment from which an appeal might be taken. [*Barbour v. Scheidt*, 246 N.C. 169 (1957).] A plea of *nolo contendere* is not equivalent to a judgment. It is merely one response that the defendant may make to the charge contained in the warrant or bill of indictment. The legal effect of such response is that the court may proceed to enter a judgment just as if the defendant had responded with a plea of guilty. "It (a plea of *nolo contendere*) authorizes judgment as upon conviction by verdict or plea of guilty." [*Fox v. Scheidt*, 241 N.C. 31, 35 (1954).] When judgment is entered, then, and only then, does a final conviction in court in the meaning of G.S. 20-24(c) exist. At that point, G.S. 20-24(b) requires the court to forward to the Department a record of the conviction, and G.S. 20-16(c) requires the Department, upon receipt of such record, to assign points if the offense is one for which points are provided. The cases of *Fox v. Scheidt*, 241 N.C. 31 (1954), and *Mintz v. Scheidt*, 241 N.C. 268 (1954), clearly established that a final conviction based upon a plea of *nolo contendere* not only empowers but requires the Department to act where mandatory revocations or suspensions are involved. The only distinction between a plea of *nolo contendere* and a plea of not guilty is that while the latter may be put in evidence as an admission by the party making it in a separate proceeding, the former may not. In fact, in *Gibson v. Scheidt*, 259 N.C. 339, 343 (1963), the Court says: "As a basis for suspension or revocation of an operator's license, a plea of *nolo contendere* has the same effect as a conviction or plea of guilty of such offense."

PUBLIC SCHOOLS

Teacher Aides and Student Teachers: Liability of Supervising Teacher

18 October 1968
A.G. to J. E. Miller

Questions: (1) What is the liability of a certified teacher when she entrusts part or all of her class to the supervision of an aide? (2) What is the liability of a certified teacher and the board of education when parents voluntarily render services to classrooms or groups of children under the direction of a teacher or the school?

Answer: The board of education is not liable in a tort action or proceeding involving a tort unless it has waived immunity or unless liability is established under our Tort Claims Act. [G.S. 143-291 through G.S. 143-300.1.] A teacher in the public schools, on the other hand, is liable for injury to pupils in his charge caused by his negligence or failure to exercise reasonable care. [*Drum v. Miller*, 135 N.C. 204 (1904).] The teacher,

since he has the primary responsibility for the welfare of the pupils under his supervision, may be responsible for negligent acts or omissions of an aide acting under his direction. The duty of the teacher to exercise reasonable supervisory care for the safety of the students entrusted to him and liability for injuries resulting from failure to discharge that duty is well recognized. Before a teacher may be held liable for negligent acts or omissions of an aide, it must be shown that the teacher was negligent in entrusting the pupils to the supervision of the aide. For example, if the teacher knew or should have known that the aide was irresponsible and the teacher persisted in allowing the aide to supervise the pupils, the teacher may be held liable for injuries sustained by a pupil as the result of the negligence of the aide. The same principle would be applicable to the parent who voluntarily renders services to classes or groups of children under the direction of the teacher. The teacher, or the principal of the school if the principal directs the parent to supervise the pupils, will not escape his primary responsibility simply because the parent is supervising the children if the teacher or the principal knew or should have known that the supervising parent was irresponsible.

LOCAL GOVERNMENT STUDY COMMISSION REPORT

(Continued from page 4)

professional staff assigned to any legislative committee. As of this writing (April 1), this arrangement appears to be accomplishing its objective. Local bills are being closely scrutinized in committee—by no means the practice of former sessions—and a noticeable reluctance by the committees to report unnecessary, unconstitutional, or unwise local legislation favorably has developed.

The Commission's recommendations to eliminate the necessity for local bills by general legislation has been fairly successful as of April 1. Bills have been introduced fixing uniform fees for registers of deeds, authorizing city and county governing boards to fix their own compensation, granting ordinance-making authority to counties, setting up machinery for local modification of the composition and mode of election of local governing boards, and removing county exemptions from certain permissive general statutes. Several of these bills have been enacted or have passed one house. As yet, none have been defeated and no counties have been permitted to exempt themselves from them.

The major recommendation of the Commission designed to eliminate the need for local bills must await the 1971 General Assembly. The Commission found that those chapters of the General Statutes concerning counties and cities are in dire need of recodification and revision. Particularly as concerns cities, the general laws have not been revised because it is so much simpler to obtain a local act than to secure enactment of an amendment to the general law. Thus, the legislature is caught in a vicious circle: local legislation is needed because the general law is obsolete, and the general law is obsolete because revisions are secured by local legislation. If the Commission is continued through 1971, it seems probable that its major recommendation to the 1971 General Assembly will be a complete rewrite of Chapters 153 (Counties) and 160 (Municipal Corporations) of the General Statutes.

STATE OF NORTH CAROLINA
LOCAL GOVERNMENT COMMISSION

National Volume Outlook—2-20-69

	The Bond Buyers Index[1]	
Date	*20 bonds*	*11 bonds*
2-20-69	4.95	4.82
2-13-69	4.96	4.84
1-23-69	4.82	4.68
2- 1-68	4.16	4.04

Blue List Supply	$ 468 million
30-day visible	618 million
Total Supply	1,086 million
Total Supply last week	1,101 million

	Yields Currently Available on North Carolina Issues (%)		
	Aaa	*Aa*	*A*
10 year	4.30	4.40	4.50
20 year	4.60	4.70	4.85

Recent Bond Sales in North Carolina

Issuer	*Date of Sale*	*Purpose*	*Amount*	*No. of Bidders*	*Years Average Life*	*First, Second and Last Bids*	*Winning Manager*	*Moody's Rating*	*NCMC Rating*
Orange County	2-18-69	School Building	$3,000,000	8	13.46	4.6721, 4.7238-4.9331	FUNB[2]	A	84
City of Lenoir	2-25-69	Sanitary Sewer	1,100,000	5	11.50	5.1541, 5.1545-5.4260	FUNB[2]	Baa	78
Town of Rich Square	2-25-69	Sanitary Sewer	15,000	1	3.23	5.7479	FNBk of East. N.C.	NR	NR

Visible Bond Issues March 1, 1969-April 15, 1969

Wayne County	3- 4-69	Refunding	$ 196,000
City of Greensboro	3- 4-69	Aud. & Pub. Bldg.	6,250,000
Kings Mountain	3- 4-69	Water	3,000,000
Town of Walnut Cove	3- 4-69	Sanitary Sewer	130,000
Dogwood Acres Sanitary District, Orange County	3-11-69	Water	80,000
Town of Raeford	3-18-69	Sanitary Sewer	700,000

Edwin Gill, Chairman and Director
Harlan E. Boyles, Secretary
Edwin T. Barnes, Deputy Secretary

1. *The Weekly Bond Buyer*, February 24, 1969, p. 60.
2. First Union National Bank.

The Institute May Calendar

State Management Training Seminar	April 27-May 2
City and County Planners	2
School Board Members	2-3
Superior Court Judges	2-3
Probation Officers In-Service School	5-7 14-16
Library Trustees and Librarians	7-8
Committee on Standard Jury Charges	9-10
Governor's Law and Order Conference	11-14
N. C. Local Government Association of Data Processing	12-13
Local Government Reporting Seminar	16-17
Probation Officers	19-21

Continuing Schools

Municipal and County Administration	8-10 19-22

DEPARTMENT OF COMMUNITY COLLEGES

Special Education Division, Law Enforcement Training

Schools and Conferences	Date	Location	Area Consultant
Accident Investigation	May 5-May 9	Wilson	Langston
Accident Investigation	May 5-May 9	Morehead City	Langston
Police Firearms	May 6-May 8	Edenton	Langston
Police Firearms	May 6-May 8	Wallace	Langston
Accident Investigation	May 12-May 16	New Bern	Langston
Accident Investigation	May 12-May 21	Gastonia	Lineberry
Jail and Detention Service	May 13-May 14	Wilson	Rumple
Police Firearms	May 13-May 15	Ahoskie	Langston
Police Firearms	May 20-May 22	Elizabeth City	Langston
Police Firearms	May 20-May 22	Wilmington	Langston
Breathalyzer Operator	May 21-May 30	Morehead City	Abernethy
Jail and Detention Service	May 27-May 28	Morganton	Rumple
Special Investigation Seminar	June 4-June 6	Lexington	Rumple
Jail and Detention Service	July 15-July 16	Wilson	Rumple
Jail and Detention Service	July 29-July 30	Lexington	Rumple
Jail and Detention Service	Sept. 9-Sept. 10	Greenville	Rumple
Supervision for Police	Sept. 15-Oct. 10	Gastonia	Lineberry