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Contents

This month's cover shows Rep. Joseph E. Eagles of Edgecombe County. See the story on page 3. Photo by Siddell Studio, Raleigh.

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69

The NORTH CAROLINA GENERAL ASSEMBLY

By Milton S. Heath, Jr.

The 1969 General Assembly convened at noon on January 15 and adjourned sine die at 4:00 p.m. official time (7:20 p.m. actual time) on July 2.

In terms of volume and duration, the 1969 Assembly left most of its predecessors in the shade. It set an all-time record for length of session—running for a total of 176 calendar days or 121 weekday sessions plus one working Saturday, far outdistancing the 1967 mark of 106 weekday sessions. And it set a new modern record for the number of bills and resolutions introduced of 2,347, eclipsing the thirty-year record of 2,184 set in 1967. In this century only sessions in the early 1930s overflowed this high-water mark (the highest—2,469 in 1933).

For the second session running there was a combination of a record high number of introductions and a relatively low percentage of enactments. Of the 2,347 introductions, 1,305 laws and 120 resolutions were ratified—an over-all enactment ratio of only 60 percent, far below the average. Of the year's introductions, 801 were local and 1,546 were public; 614 of the local bills and 811 of the public bills were ratified, almost reversing the relative numbers of public bills and local bills enacted in 1967. Thus only about 77 percent of the locals were enacted (an extremely low percentage), and about 53 percent of the publics (slightly below average).

THE 1969 LEGISLATIVE RECORD

The 1969 General Assembly left an outstanding record in the field of local government; made considerable progress on conservation and consumer-protection matters; and adopted major tax increases to meet a record-breaking budget. Its attention was heavily occupied also by issues of constitutional revision, riots and civil disorders, and educational policy, among others.

Local Government

One of the hardest-working study groups active between the 1967 and 1969 sessions was the Local Government Study Commission. When the 1969 session convened, this Commission was perhaps best prepared of all the major study groups to introduce and forward bills to implement its proposals. As a result, legislation concerning local government held the limelight much of the time during the early weeks of the session, and continued to hold its own throughout the spring. This unusual focus on local government was stimulated by the home-rule proposals of the Local Government Study Commission, involving recommendations to repeal local exemptions from general enabling laws, to let localities determine their own government organization and the salaries of their

Chapter numbers given in the articles appearing in this issue of Popular Government *refer to the 1969 Session Laws of North Carolina. Numbers preceded by the letters H or S are the numbers of bills introduced in the House and in the Senate, respectively. G.S. refers to the General Statutes of North Carolina.*

officials, and to authorize county commissioners to adopt regulatory ordinances. In the process of its consideration, many questions involving state and local relationships were seriously examined and debated for the first time in years. A substantial part of the Study Commission's home-rule package was enacted without significant change—including legislation relating to county ordinance-making powers, selection and compensation of city and county governing boards, uniform statewide fees for registers of deeds, and county officials' salaries. Another major item in the Study Commission's and the Governor's program was an act creating a new State Department of Local Affairs and a companion measure relating to state and regional planning. A significant effect of the home-rule package was its impact on the volume of local bills, both in the current session and projected into future years. Working counter to the current of the heaviest volume of bills introduced in modern history that featured this legislative session, local-bill volume this year declined noticeably—a tribute to the effect of the new home-rule legislation. Local-bill volume this year was lower than for 1967 and the average for previous sessions this decade, both absolutely and proportionately. Local-bill volume for 1969 fell to just 30 percent of bills introduced, continuing and accelerating a trend of the last four sessions—down from almost 50 percent local bills in 1961.

Conservation of Natural Resources and the Environment

With relatively little fanfare, the 1969 General Assembly built a substantial record of conservation legislation. Heading the list is a group of new laws relating to the protection of estuaries and navigable waters, strengthening of local air pollution control powers, regulation of mining activities, and resource program organization.

A special focus of concern this session for conservationists was the protection of coastal estuaries, which serve as a spawning and breeding ground for much valuable fish and game. Recommendations to the '69 Assembly by interim study groups had stressed needs for state funds to acquire high-priority estuarine lands, for some degree of public control over private development in the estuaries, and for more clearly established organizational responsibility for state estuarine management programs. These recommendations met a strong positive response in the form of appropriations of $500,000 for estuarine land acquisition, $80,000 for additional staffing, and almost $100,000 for long-range studies and planning. Principal responsibility for the program was given the Department of Conservation and Development. And laws were enacted to require permits for dredging or filling in the estuaries or state-owned lakes, and to prohibit littering of navigable waters or erection of signs or other structures in such waters without a permit.

On related topics, bills were ratified that clear up the state's authority to acquire lands on the Outer Banks for the Cape Lookout National Seashore (recently questioned by the State Supreme Court) and simplify enforcement of an old law that prohibits the obstruction of streams by depositing sawdust, slabs, and other refuse. Other legislation was enacted to strengthen the legal authority of the State Board of Water and Air Resources and of local governments to cooperate as required by federal law with federal agencies in connection with rivers and harbors, flood control, and civil works projects, and also to clarify the Board's authority to include scientific and research

OUR COVER for this first 1969 legislative issue of *Popular Government* is devoted to Representative Joseph Elliott Eagles of Edgecombe County, who symbolizes the dedicated legislator.

Eagles has served his county with distinction in the North Carolina House of Representatives every session since 1961, as Chairman of the Highway Safety Committee in 1965 and as Chairman of the Finance Committee in 1967. During the 1969 session he served as Chairman of the Committee on Banks and Banking, which proved to be one of the most strenuous and taxing assignments of the session. In this capacity it fell his lot to shepherd through the House and through conference committee the complex and hotly debated interest rates legislation. His statesmanlike handling of this bill earned him high praise from all sides, including low-interest consumer-group supporters and high-interest banker groups alike. His performance set a standard for future legislative committee chairmen.

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uses of water in its water pollution classifications. A law recommended by the Legislative Research Commission to strengthen the powers of city and county governments to adopt air pollution control regulations was also enacted.

Controversies over the effects of uncontrolled strip mining prompted the 1967 General Assembly to create the Mining Council, a study and policy group for mining activities. The '69 Assembly adopted the Council recommendations for immediate adoption of a Mining Registration Law and establishment of an office of State Mining Engineer, pointing toward enactment in 1971 of a licensing system to ensure adequate conservation and land reclamation.

Finally, legislation was enacted to implement recommendations of the C & D Study Commission relating to the organization of the Department of C & D. And among the last actions of this Assembly were the adoption of resolutions directing the Legislative Research Commission to study and report in 1971 on needed changes in water and air resources laws and programs and on the need for pesticide control.

Consumer Protection and Related Matters

Consumer interests, in modern North Carolina history, have had relatively little organized support or representation in the General Assembly. Not surprisingly, our statute books and the ranks of Tar Heel state and local governmental agencies do not abound in consumer-oriented programs or consumer-protection policy. A hint of change could be noted during the 1967 legislative session, when members like Rep. Clark of Union and Rep. Penny of Durham invested considerable effort toward building support for measures such as regulation of installment sales and small loans. This year, efforts to foster consumer-protection legislation broadened both their base of support and scope of legislative concern. Two organized groups, the State Legislative Council and the North Carolina Consumers Council, actively supported consumer-oriented legislation in the General Assembly this session.

Among the measures on which consumer groups concentrated their attention this session were bills dealing with interest rates, regulation of auto install-

ment sales, and minimum-wage legislation. Other subjects lying within the range of their concern included the study of auto insurance rates, workmen's compensation benefit increases, meat and egg inspection laws, day-care center regulation, and abolition of capital punishment.

Other strong supporters of consumer-oriented legislation this year included Attorney General Morgan and Commissioner of Agriculture Graham. In his legislative program the Attorney General stressed bills to bolster his new Consumer Protection Division—measures to adopt state unfair and deceptive trade practices legislation, to strengthen and broaden North Carolina's antimonopoly legislation, and to direct the Attorney General to represent the interest of the consuming and using public before courts and regulatory agencies. Proposed agricultural legislation this year included bills to strengthen the Commissioner's hand in enforcing sanitary requirements for soft-drink bottlers, to enable the Commissioner to establish standards of quality under the Egg Law for consumer protection, and to revise the state meat inspection law.

A box score on consumer-backed legislation shows a mixture of successes and failures, but over-all a substantial achievement. The legislative programs of the Attorney General and the Commissioner of Agriculture were largely enacted, as were increases in minimum wages and workmen's compensation benefits. Once again, abolition of capital punishment and regulation of day-care centers failed, though the latter came close to passage in the waning stages of the session. The session-long battle over interest rates was finally resolved on the last day by adoption of a conference report that resolved a compromise between the lender-backed Senate bill and the more consumer-oriented House bill.

Constitutional Amendments

The 1969 session received some twenty-nine separate proposals for amendments to the State Constitution—a record number for recent sessions. Primary source of these proposals was the State Constitution Study Commission, chaired by former Chief Justice Emery B. Denny. The Commission recommended a general editorial revision of the Constitution and nine separate amendments, each dealing with a particular issue that it felt should have independent consideration.

It was to be anticipated that the General Assembly would be unlikely to approve and present to the voters anything approaching a majority of this record number of proposed constitutional amendments. When the dust had cleared, seven of the proposed amendments had been approved by the Assembly; the remainder were killed, including most of the more controversial items. A constitutional amendment must command an affirmative vote of three-fifths of each house in order to get on the ballot, and a majority of the popular vote cast on it to be ratified. The popular vote on those proposals approved by the Assembly will take place in November, 1970, the time of the next general election.

The general editorial revision recommended by the Commission was finally ratified on the last day of the session. Also ratified on the last day was a general revision of the state and local government finance provisions of the Constitution, recommended by the Local Government Study Commission and endorsed by the Constitution Commission. Other amendments ratified that were a part of the Constitution Study Commission package were measures to reassign escheats among all of the state's institutions of higher learning, to authorize the Assembly to fix personal income tax exemptions, and to require the Assembly to reduce the number of state departments to twenty-five by 1975. The other two constitutional amendments that were adopted this year by the Assembly were an act to repeal the literacy test for voting (initiated by Rep. Henry Frye) and an act to permit three-fifths of the legislators to convene a special session of the General Assembly (initiated by Sen. Herman Moore).

The amendments that were killed included the gubernatorial veto, two consecutive terms for the Governor, annual legislative sessions, the short ballot, appointment of the Superintendent of Public Instruction, off-year Governor's election, revised procedures for constitutional conventions, six-months' voter residence, 18-year-old voting, and four-year terms for the State Senate.

Education

Major policy changes this session concerning the structure of *higher education* included the naming of new regional universities, the addition of two new units to the Consolidated University of North Carolina, and the establishment of doctoral degree programs at regional universities. Following the designation of four regional universities in 1967, only eight public senior colleges remained out of sixteen state institutions of higher education. This arrangement was not destined to remain. Upon the request of Asheville-Biltmore and Wilmington Colleges, the UNC board of trustees recommended and the Assembly approved the addition of these two colleges as new branches of the Consolidated University.

While these additions were being made, five other colleges sought and received redesignation as regional universities: Pembroke College, North Carolina College (which became North Carolina Central University), Elizabeth City State College, Fayetteville State College, and Winston-Salem State College. While establishing these colleges as regional universities, the General Assembly also authorized all regional universities to confer doctoral degrees and marks of distinction.

In an attempt to strengthen the State Board of Higher Education and establish the basis for more orderly planning in higher education, the Governor recommended and the General Assembly enacted a reorganization plan. The Board was enlarged from 15 to 22 by adding seven ex officio members. The Governor was added, as Chairman of the Board, along with the Chairmen of the Senate and House Committees on Appropriations, Finance, and Higher Education.

There were over 50 other bills dealing with higher education plus another fifteen pertaining to community colleges. Of these, two that were enacted during the last week of the session were especially noteworthy—appropriations of $375,000 to East Carolina University to plan and develop a two-year medical school and $350,000 to the Board of Higher Education to provide funds for state aid for education of North Carolina residents at Duke University and Bowman Gray medical schools.

Proposed changes in the *public schools* by the 1969 General Assembly were dominated by the comprehensive report and recommendations of the Governor's Study Commission on the Public Schools in North Carolina. Out of 172 recommendations came some thirty bills, the majority of which were introduced by either Senator Evans or Representative Tart.

Seven of the successful Commission-recommended bills alone guarantee a substantial new face in public school operation—acts that (a) shifted to local school boards most of the responsibility for selecting textbooks; (b) clarified the authority and legal position of student teachers and supervising teachers; (c) reduced some twenty often-conflicting categories for allocation of teachers by the State Board of Education to three and eliminated the provision for basing allotments on average daily attendance so as to permit greater flexibility; (d) authorized a program of individualized instruction; (e) authorized state and local boards to engage in educational research and special education projects; (f) authorized use of school buses for instructional programs and for transporting children with special needs; (g) and authorized local school boards to condemn up to 50 acres for school facilities.

The creation of new school administrative units represent a significant new departure in the state's public school system. In recent years, the trend and emphasis has been on school merger and consolidation. The 1969 General Assembly, however, has gone in the opposite direction, authorizing three new school administrative units in Scotland Neck, Warrenton, and Littleton by special acts whose underlying motives include avoidance of further integration.

A small beginning on a program of public school kindergartens was authorized by a $1 million appropriation, sharply cut from the $18 million originally requested that contemplated phasing into a complete program by 1976.

Finally, legislation was enacted on the last day of the session prohibiting involuntary busing of public school students.

Riots and Civil Disorders/Campus Unrest

The current of disorder, endemic to our times, lapped at the shores of the General Assembly throughout much of its time in Raleigh this year. More than twenty bills were introduced during the course of the session dealing with various aspects of the problems created by riots and civil disorders and campus unrest. Among the more noteworthy of these bills that were enacted into law were the following:

H 321 (S 206) (Omnibus riots-civil disorders bill) To clarify the powers of local governments to impose curfews and take other riot-control measures; to spell out "stop and frisk" powers for law officers during violent disorders; and to codify a number of riot-connected common law crimes (Ratified, Ch. 869).

H 66 To make an assault on a policemen or fireman a felony (Ratified, Ch. 1134).

H 134 To increase the punishment for sit-ins in public buildings (Ratified, Ch. 740).

H 802 To prohibit outsiders on campus during university-declared curfews (Ratified, Ch. 860).

H 985 To revoke state scholarships of students on state-supported campuses who are convicted of serious crimes in connection with campus disorders (Ratified, Ch. 1019).

S 168 To immunize national guardsmen aiding civil authorities from liability for good-faith acts during public crises (Ratified, Ch. 969).

S 831 To declare the violation of any injunction or other court order to be a misdemeanor (Ratified, Ch. 1128).

S 832 To authorize the Governor to order public buildings evacuated during public emergencies (Ratified, Ch. 1129).

S 833 To permit transfers of local jail prisoners to state prisons for confinement during emergencies when local jail space is insufficient (Ratified, Ch. 1130).

While these measures were being enacted, a number of related proposals were killed in committee, mainly in the Senate. Among the more prominent disorder-related bills that thus failed of passage were the following:

H 530 (The Mohn bill) To require universities to screen and approve all visiting speakers through an elaborate procedure, and to determine whether to permit speakers to appear on the basis of detailed standards set forth in the bill (Unfavorable report, House committee).

H 551 (The Watkins bill) To require mandatory six-months-to-four-years' expulsion for students and dismissal of faculty who disrupt the operations of educational institutions (Not reported by Senate committee).

H 986 To make it a misdemeanor for students expelled or suspended from a state-supported university to reappear on campus (Unfavorable report, Senate committee).

S 126 To create a statutory crime of inciting to riot, punishable as a felony, and to forbid those convicted from attending or being employed in institutions of higher learning for one year (Not reported, Senate committee).

S 101 To prohibit (among other things) refusals to vacate buildings of institutions of learning, and obstructions of access thereto. (H 280 would have applied similar prohibitions to public schools and prohibited carrying weapons in or around schools.)

As is apparent from this record, the General Assembly responded selectively to this difficult and emotion-laden issue. It enacted the carefully studied general bill to remedy known deficiencies in the criminal law that hamper law officers in dealing with actual or imminent riot situations (the omnibus riots-civil disorders bill). It also enacted some of the other limited measures that fill technical gaps in authority to deal with campus and other disorders or strengthen selected penalties applicable to disorders. However, it rejected most of the harsher, more broad-gauged proposals that were not directly related to coping with actual or imminent riots or disorders.

Appropriations and Finance

In the final analysis the big story of the 1969 General Assembly must remain Governor Scott's budget to implement his program, together with the new and increased taxes enacted to support this budget. The Governor's budget came to a record $3.58 billion in operating funds plus $75 million in capital outlay. The funds he requested totaled about $200 million more for the biennium than was recommended by the Advisory Budget Commission; slightly more than half of these additional moneys are slated for highway spending, the remainder for General Fund purposes. Key elements of the operating budget include public school teacher pay increases of approximately 20 percent over the biennium, university teacher pay increases of 16 percent over the biennium, increases for state employees averaging 10 percent on a graduated scale during 1969-70 plus a 2 percent cost-of-living increase during 1970-71 and tax relief for single heads of households. Large items in the capital outlay increases included funds for university building projects (e.g., the Allied Health complex at ECU and completion of the medical school complex at UNC), for mentally retarded infants, and for livestock-poultry diagnostic labs. After the general appropriations bills were passed, the Assembly enacted what amounted to a "supplemental appropriations act"—over sixty separate bills submitted by various members, including the funding of such items as proposed new state parks, historic sites, research projects, cultural attractions, and a $250,000 beginning (much reduced from original requests) on a state zoo.

An irreducible minimum of around $200 million in new moneys had to be found to finance this substantial boost in spending. Governor Scott's original recommendations for raising these funds involved a new tobacco tax (5 cents on cigarettes and 2 cents on cigars), an additional tax of 10 percent on liquor, a 2 cents per gallon increase in the gasoline tax, a one-fourth increase in vehicle license taxes, a one-half of 1 percent increase in the sales tax on vehicles, and increases in three business taxes (the levies on building and loan associations, insurance premium rates, and bank excises). Late in May the gas tax and vehicle license increase bill was enacted. Then, in early June, the tax package to support the General Fund made its appearance on the floor, changed from its original form only by elimination of the cigar tax and of the increase in the insurance premiums levy. There ensued the long-anticipated major floor battle of the session, which resulted in the compromise acceptance of a reduced 2 cents per pack cigarette tax combined with a new 1 cent per bottle tax on soft drinks.

A variety of other tax legislation was approved during the session, but dealing mainly with procedures and formalities. The most notable piece of new tax law, outside the Governor's tax package, was the measure that calls for a referendum to be held in the fall of 1969 in all of the counties on an optional 1 cent additional sales tax to be levied in any county that approves the tax—potentially raising the sales tax rate in any county voting in the tax to 4 cents, except in Mecklenburg, where the rate would go to 5 cents.

Other Legislation

It would require many more pages to do justice to the full scope of new legislation enacted this year in other important fields such as motor vehicles and highway safety, organization of state government, organization and administration of the courts, criminal law and procedure, alcoholic beverage control, public welfare (renamed by law as "social services"), business and professional regulation, labor, agriculture and forestry, "lawyer's law," and public health.

The highway safety-motor vehicles field saw enactment, among other things, of a modified "implied consent law," a limited-driving-privileges law for first-offense drunk driving, a habitual offenders law, a mild safe-tires act, and the placing of parochial and private school buses and public school activity buses on the same legal footing as public school buses.

State government organization was marked by adoption of Governor Scott's recommendations for enlarging the State Highway Commission, the C & D Board, and the Law and Order Committee, creation of a Marine Sciences Council, abolishing the Seashore Commission, and reorganization of the ABC Board.

The Uniform Anatomical Gift Act was enacted, plus a revised vital statistics law and a solid-wastes disposal act; likewise, revisions in the new Rules of Civil Procedure, a revised corporation code, and a professional corporations law; narcotics law reform, juvenile courts revision, a permanent Courts Commission, coastal insurance legislation—a list that could be elaborated at great length.

THE LEGISLATIVE INSTITUTION

The 1969 General Assembly will be remembered as a source of many innovations in legislative institutions and processes. Two new data processing systems spewed forth computerized bills and video vignettes of legislative progress. A third experimental project was tested for computerized bill indexing. An important first step was taken toward strengthening legislative staffing by the creation of a new position of Legislative Services Officer of the General Assembly (initially named "Administrative Officer"); a Legislative Services Commission was created to supervise the Legislative Services Officer and oversee the administrative and clerical operations of the Assembly. Also, significant changes were made in standing committee structure and in legislative pay, allowances, and retirement. As the session drew to a close, the Assembly created a Legislative Citizens Advisory Committee to undertake a thorough examination of the legislative institution—which assures, if nothing else, the continuation into the 1971 session of the ferment that has been activated this year.

Several other measures looking toward more fundamental change received serious consideration but did not pass. Foremost among these were three proposed constitutional amendments—one to grant the veto power to the Governor (S 272, H 509) and another to permit the Governor to serve two successive terms (S 410, H 545), either of which would have significantly affected the legislative as well as the executive branch, and a third to provide for annual legislative sessions (S 375, H 171). A proposal for a Legislative Fiscal Research Agency (or "watchdog group," as it came to be known) received strong support from the House, even to the extent of being tacked onto an unrelated proposal for a Legislative Services Commission, but the Senate failed to approve it (H 396).

Legislative Research and Services

• *Computer Applications.* New computer applications made notable improvements in the flow of information to the 1969 General Assembly. These computer services will be only briefly noted here, as they were described in detail in an article by David Warren in the June, 1969, issue of *Popular Government* ("A Computer Information System for the North Carolina General Assembly").

First, a *bill status information system* was operated by the Institute of Government and the Department of Administration through seven video screen terminals and several typewriter outlets conveniently located in the Legislative Building. This project brought into full-fledged operation a system that was operated experimentally with written printouts only—no video screens—in 1967. The computer facilities used were those of Central Data Processing of the Department of Administration. By virtue of this project, cumulative status information on bills was made instantly available on the video screens in the following categories: status of individual bills by bill number; public bills arranged by General Statutes Chapters; local bills arranged by counties; ratified acts; killed bills; bills by committee; and bills by introducer.

Second, an experimental *computerized indexing system* was operated for the Assembly by the North Carolina Scientific and Technological Research Center, using the computer at the Research Triangle Park (Triangle Universities Computer Center, or "TUCC"). This information-retrieval system was used to search bills introduced in order to find those dealing with a particular subject. Operated on a small scale and at little expense, it produced weekly index printouts in very limited quantities. In addition, experimental individual bill searches were conducted at the TUCC facilities to demonstrate this potential application of the system.

Third, a separate computer program was operated by the Administrative Officer of the General Assembly and the Department of Administration to assist in bill drafting, engrossing, and enrolling—the *bill storage project.* It handled the text of all printed bills from the time of introduction or drafting to final ratification and enrolling. This project, like the bill status information system, used the computer hardware and programing services of Central Data Processing.

Partly in order to oversee the installation and operation of the bill storage project, the Legislative Research Commission late in 1968 appointed an Administrative Officer of the General Assembly. Though the need for this new office was directly generated by the computerized bill storage project, the Commission also had in mind the larger needs of the Assembly for coordination and improvement of its administrative, clerical, staffing, and study functions. Thus, it enjoined the Administrative Officer to begin exploring and developing this larger area of activity, as well as to oversee the computer project. John Brooks, a native of Greenville, was appointed as the Administrative Officer.

• *The Legislative Services Commission.* During the 1969 session the new Administrative Office was handicapped somewhat by the absence of any statutory definition of its functions. On the next-to-last day of the session a much-debated and often-amended bill was enacted that should provide a firmer foundation

in 1971 for the administrative, secretarial, clerical, and related functions of the Assembly and its officers (Chapter 1184, S 700).

Chapter 1184 creates the Legislative Services Commission, to consist of the President pro tempore of the Senate and three senators appointed by him, plus the Speaker of the House and three representatives appointed by him. The Commission is to be chaired by the President pro tempore in odd-numbered years and by the Speaker in even-numbered years. Functions assigned by the statute to the Commission include: general personnel policy responsibility over the "joint legislative service employees" (i.e., most legislative employees except those hired by the Principal Clerks and Sergeants-at-Arms for their offices); responsibility only to determine the classification and compensation of the employees of the Principal Clerks and Sergeants-at-Arms, and other employees of the respective houses; procurement and property management; engrossing and enrolling of bills; duplication and limited distribution of ratified laws; maintenance of legislative records and publication of documents. Authority to contract for services to the General Assembly and its agencies and commissions is also conferred on the Commission. However, new departures requiring substantial expenditures are required to be approved by resolution of the Assembly—a provision that bears overtones of criticism voiced during the 1969 session over the Legislative Research Commission's creation of the Administrative Office without express legislative authorization.

Chapter 1184 authorizes the Commission to appoint the Enrolling Clerk (formerly designated by the Secretary of State) and a "Legislative Services Officer"—a new name for the Administrative Officer. The functions and resources of the Legislative Services Officer are left entirely in the discretion of the Legislative Services Commission, but he is also to "be available to the Legislative Research Commission to provide such clerical, printing, drafting, and research duties as are necessary to the proper functions of the Legislative Research Commission." Thus, the Services Commission and Research Commission between them are left largely to shape the destiny of this significant new legislative staff office—the most important legislative staffing development in the recent history of the General Assembly.

Other provisions of Chapter 1184 continue the traditional House and Senate officers—the Principal Clerks, Reading Clerks, and Sergeants-at-Arms—and specify their compensation, subsistence, and between-session functions. The act also preserves the functions of the Secretary of State in indexing, printing, binding, and distributing Session Laws, and in printing and distributing *The North Carolina Manual, Directory*, and House and Senate journals. It provides for the expenses of the joint operation of the Assembly to be paid on authorization of the President of the Senate (with the advice of the President pro tem) and Speaker, and single-house expenses on authorization of their respective presiding officers. Finally, it repeals a number of former laws concerning legislative procedures, among them G.S. 120-21, an obsolete requirement for publication of notice concerning private acts; G.S. 120-22, relating to enrollment and distribution of acts; G.S. 120-30.15 and G.S. 120-30.17 (3) and (4), authorizing the Legislative Research Commission to employ personnel, contract for services, maintain custody of equipment and records and supplies of the Principal Clerks between sessions, and authorize legislative expenditures between sessions; plus provisions of General Statutes Chapter 147 relating to printing and indexing functions of the Secretary of State.

• *Legislative Interns.* The program of legislative internship begun in 1965 was continued this session under the supervision of the Department of Politics of North Carolina State University at Raleigh. It received this year its first statutory recognition with the enactment of Chapter 32 (S 55), creating a Legislative Intern Program Council. The Council is to consist of the two presiding officers plus the Chairman of the Department of Politics, is to establish an internship program, and is to promulgate a plan for selection, duties, and compensations of interns for each session.

• *Legislative Research.* As reflected in the other articles of these two legislative issues of *Popular Government*, the interim legislative study groups designated by the 1967 General Assembly were responsible for originating much of the major legislation enacted this session. The trend of heavy reliance on the Legislative Research Commission and on independent study commissions for in-depth study of complex legislative problems was continued by the 1969 Assembly. A review of the interim studies to be made between the '69 and '71 sessions will appear in the article on State Government in the October issue of *Popular Government*.

One study that is to be made *about* the General Assembly deserves mention here. Resolution 100 (S 712) creates a Legislative Citizens Advisory Commission to conduct a broad and comprehensive study of "legislative needs, organization, facilities, and functions." Befitting its mission of inquiring into the working of the Assembly itself, this study commission will be citizen-dominated rather than legislator-dominated in its composition. It will consist of the two presiding officers ex officio; twelve citizens appointed by each of them; three House members appointed by the Speaker; and three Senate members appointed by the President.

A minor gap in the provisions of the Legislative Research Commission Act was filled by Chapter 1037 (H 1353). This act provides that the House members

of the Research Commission shall select one of their number to perform the functions of the Speaker as co-chairman of the Research Commission if that office becomes vacant, and makes similar provision with respect to filling a vacancy of the President pro tem as co-chairman.

Frequency of Sessions and Call of Extra Sessions

The perennial effort to propose a constitutional amendment to shift from biennial to annual sessions once again was offered and killed this session. In 1967 the annual sessions bill passed the Senate handily but foundered in the House. This year the tables were turned, as the bill passed the House but died on the Senate floor (H 171).

A related measure to empower the Assembly to convene itself in extra sessions met a happier fate. Chapter 1270 (S 362) will place before the voters a proposal to authorize the presiding officers, upon receipt of written requests signed by three-fifths of the members of their respective houses, to convene the General Assembly in extra session by joint proclamation. Some observers viewed the enactment of Chapter 1270 as easing the pressure for adoption of annual sessions.

Committee Structure and Rules Changes

In modern times the committee system of the General Assembly has been characterized by a multitude of standing committees, chaired largely by nonrepeating chairmen. For example, the 1967 session saw 47 House committees and 35 Senate committees; only one of the House committee chairmen was a holdover and only six of the Senate chairmen. President Taylor and Speaker Vaughn made significant alterations this session by reducing the number of committees and by placing greater stress on continuity of chairmanships. The number of Senate committees was cut by five to 30, the number of House committees by ten to 37. This year there were 12 repeating chairmen in the House and six in the Senate, a much larger group of repeaters than in recent sessions.

Another organizational innovation involved the Appropriations committees. Traditionally, the membership of each house has been divided equally into a Committee on Appropriations and a Committee on Finance, which would meet as a whole into the early spring. Near the end of the committee work, a small Appropriations subcommittee has been created to perform the final (and often critical) shaping of the budget. This year the presiding officers, in response to criticism of the traditional system, restructured the Appropriations committees by dividing them initially into four subcommittees, along subject-matter lines. In doing so, they sought to involve more members meaningfully in the budget-making process and meet objections of control of the budget by a small group of members. These changes were generally well received by the members of the Assembly, and may have helped to generate and foster the movement for creation of an independent legislative fiscal research staff (or "legislative watchdog") that was strongly supported by the House and met final defeat only in the waning days of the '69 session.

Yet another innovation involved the committees dealing with local bills and local government matters. As recommended by the Local Government Study Commission, the three committees of each house for these subjects (Local Government; Salaries and Fees; and Counties, Cities, and Towns) were reduced to one—a Committee on Local Government in each house. The Local Government committees effectively sponsored the home-rule program that was enacted this session, and processed the usual volume of local bills. They were aided in this task by a committee staff assistant, another reform recommended by the Local Government Study Commission. (For further details, see the article on home-rule legislation.)

A number of rules changes were adopted this session in both houses. Most of these amendments either implemented the organizational changes described above or implemented the procedural changes that accompanied the computerized bill storage project. Among the remaining rules revisions were the following:

- *House.* The rule on precedence of motions was changed to make the motion to adjourn first in order of precedence and to shift the precedence of a motion of previous question from first to fourth. A two-thirds vote was expressly required on motions to reconsider any of the following motions: to table, to suspend indefinitely, to remove a bill from the unfavorable calendar, to permit more than one reading of a bill on one day, or to table a bill because it embodies a previously defeated bill.
- *Senate.* A flat prohibition of secret committee meetings was adopted except when absolutely necessary to prevent personal embarrassment or when in the best interests of the Senate. The membership on standing committees was set at eight to sixteen (formerly only a *top* limit of sixteen). The number of standing committees on which a senator may serve was limited to eight (formerly twelve).

Legislative Pay, Retirement, and Allowances

Three new laws that were finally passed during the last two days of the session brought about a substantial improvement in the compensation of legislators—through pay increases, travel and subsistence increases, and creation of a Legislative Retirement Fund.

Chapter 1278 (S 160), *which will take effect on the convening of the 1971 Assembly,* establishes a new pattern of legislative salaries to replace the old system of per diem compensation which was based on number of days in session. Under Chapter 1278

each legislator except the Speaker will be paid a $2,400 annual salary on a monthly basis plus a $50 per month as an expense allowance, or an annual total of $3,000. (By comparison, under the old system in a 120-day session—something we may never see again—the total biennial compensation [pay and per diem] was $4,200.) The Speaker will be paid $4,000 annual salary plus a $100 monthly expense allowance. To balance off the Speaker's salary increase, the act eliminates the former authorization of G.S. 120-4 for the Speaker to receive subsistence and travel allowances on days spent in the service of the state when the Assembly is not in session, at the rates allowed for members of state boards and commissions. (This authorization was left intact, however, for the President pro tem, whose salary is the same as that of the other members of the General Assembly.)

Chapter 1257 (H 78), *which was made retroactive to the beginning of the 1969 session*, increased the daily subsistence allowance for the members by $5, from $20 to $25 per day, "for each day of the period during which the General Assembly remains in session."

Chapter 1267 (H 1399), *which will take effect on the convening of the 1971 Assembly*, creates a Legislative Retirement Fund to be administered by the TSER System. Under the act any former member of the Assembly with a minimum of four full terms' service is eligible to receive a monthly retirement allowance of $25 per full term—e.g., $100 per month for a four-termer. Members serving in 1969 or thereafter can be credited for terms served before 1969; otherwise, creditable service begins with 1969. There is a provision made for disability benefits at the same rate for members with three terms' service who become disabled during a fourth or later term. The act also provides that "credit shall be given to any member or elected officer serving in the 1969 session, who has attained the age of seventy years and has a total of three terms of creditable service."

This three-way increase in legislative compensation and benefits has elicited a not unexpected wave of editorial discontent, centering upon the eleventh-hour enactment of these measures, the retroactive feature of the subsistence increase, and the creation of the retirement fund. The net impact of the pay and subsistence increases raises the total of such compensation to the $9,750-$10,000 per biennium range (plus travel and retirement fringe benefits) from its previous $4,200 per biennium range. However, this only pushes North Carolina up a few notches in the scale of accelerating state legislative pay, leaving us below the current estimated national average compensation of almost $13,000. The Retirement Fund Law does no more than align North Carolina with the majority group of states that have legislative retirement systems. This legislation will somewhat ease the pressure of legislative service upon the pocketbook of the North Carolina legislator. But it is hardly likely to bring about any substantial change in the nature of legislative service in North Carolina or in the characteristics of the group who are attracted to this service.

Institute Budget Increased

From the time the Institute of Government became a part of The University of North Carolina at Chapel Hill in 1942, the major share of its operating budget has come from state legislative appropriations made to the University for the Institute. In recent years, the appropriated portion of the Institute's budget has been about 60 percent of the total. Contractual payments by state agencies and local governments for extensive training, research, and consulting services furnished them account for about 20 percent; federal grants for particular training and research projects bring in 2 to 10 percent; and the remainder comes from a variety of sources such as membership dues voluntarily paid by local governments, publications sales, residence hall rentals, etc. Total Institute expenditures in 1968-69 aggregated about $740,000.

For technical reasons, the Institute of Government never receives additional appropriated funds under the State's "A" Budget to extend its current services to additional people and agencies. All increases in Institute appropriations must come as a part of the "B" Budget, which provides for new activities and improved levels of service. And "B" Budget funds, as every budget-watcher nows, are never plentiful. As a result, the budgets recommended by the Governor and Advisory Budget Commission to the General Assemblies of 1963 through 1969 included none of the "B" Budget funds requested by the University for strengthening the Institute of Government. The interest of friends of the Institute on the 1967 legislative Appropriations Committees resulted in the appropriation of funds for two new staff positions, the first since 1961.

On the personal initiative of Governor Robert W. Scott, the supplementary appropriations recommendations made by the Governor to the 1969 General Assembly included a substantial sum for the Institute of Government. The General Assembly approved the Governor's recommendation without change.

The new appropriations provide for five professional staff positions (thus enlarging the staff by nearly one-fifth), seven clerical positions, and significant increases in nonsalary budget lines. Needed expansions of Institute programs in the fields of judicial administration, taxation, law enforcement, state legislative services, and state governmental administration will be made possible by the authorized staff enlargement.

To the Governor and the General Assembly, the Institute of Government expresses its thanks for this, the largest gain in its appropriated budget in history, and pledges to use these added resources in ways that will justify the confidence in the Institute implied in the actions that made them available to us.

John L. Sanders
Director

ABC Laws

By Ben F. Loeb, Jr.

The 1969 General Assembly made several significant changes in the "Alcoholic Beverage Control Law of North Carolina." One of the new acts altered the organization of the State Board of Alcoholic Control, but most of the bills that were finally enacted into law pertained to the sale, possession, or transportation of intoxicating liquors rather than to the structure of the control system. The first portion of this article will deal wih the public (statewide) bills that gained passage, while the second portion will outline the local (county-wide or city-wide) acts. There will also be a brief analysis of the more interesting of the public bills that failed to pass one or both houses.

PUBLIC ACTS

G.S. 18-37 and G.S. 18-38, concerning the membership of the State Board of Alcoholic Control, were rewritten by Chapter 294 (H 529). Under the provisions of the new act the Board consists of a chairman and two associate members. The chairman is a full-time official who receives a salary, while the other two members (who are not full time) receive per diem, subsistence, and a travel allowance. All three Board members are appointed by and serve at the pleasure of the Governor. The chairman is expressly empowered to appoint, promote, demote, and discharge employees of the State ABC Board and, except as otherwise specified by the Board, has all powers and duties formerly held by or imposed on the State Board Director.

Prior to the passage of Chapter 294, the Board consisted of five members, none of whom were full time; however the Board also had a director who was its administrative officer and a career official. The new act in effect makes the organization of the Board very similar to the way it was originally created in 1937. Chapter 49 of the 1937 North Carolina Session Laws likewise provided for a state ABC board to consist of a chairman and two associate members—the chairman being designated as a full-time official with a salary of $6,000 per annum.

Two acts amended the complicated statutes dealing with the transportation of alcoholic beverages. Chapter 789 (S 620) added a provision to G.S. 18-6 to prevent the confiscation of a motor vehicle when a person is convicted of having an open bottle of alcoholic beverages in the passenger area. Before the passage of this act, G.S. 18-6 required the confiscation and sale at public auction of any vehicle in which intoxicating liquors were illegally transported. Even under the statute as amended, the vehicle will be confiscated if an illegal amount of liquor is being transported, or if any non-taxpaid liquor is discovered in the convey-

ance. Chapter 1018 (H 185) added a new paragraph to G.S. 18-51(1) to specifically prohibit the operator of a "for hire passenger vehicle" from transporting alcoholic beverages. The apparent intent of this act is to prohibit taxicab drivers from purchasing and delivering alcoholic beverages. Taxi drivers may still transport passengers lawfully carrying their own liquor. A conviction of violating Chapter 1018 will not result in confiscation of the vehicle or in suspension of driver's license.

G.S. 18-78.1 prohibits a retailer holding a beer or wine license from "knowingly" selling these beverages to any person who is under eighteen years of age. Convictions of violating this section have been difficult to obtain because it could not be proved that the defendant knowingly made the sale. Now Chapter 998 (H 399) has added a new G.S. 18-78.2 providing that when a sale is made to one who is under age, the sale itself will constitute prima facie evidence of the vendor's knowledge that the buyer was less than eighteen years old. The act permits the prima facie evidence to be rebutted by showing that the purchaser exhibited a driver's license, draft card, or school or military identification card which indicated that he was eighteen years of age or older. The vendor may also introduce any other evidence which indicated to him that the purchaser was of lawful age at the time the sale was made.

Prior to the enactment of Chapter 1131 (S 835), G.S. 18-141 provided that beer and wine could not be sold after 11:45 p.m. or consumed on the premises where sold after 12:00 midnight. Chapter 1131 amended this section by specifying that it is 11:45 p.m. "Eastern Standard Time" after which the beverages may not be sold, and 12:00 midnight Eastern Standard Time after which their consumption is prohibited. Since, pursuant to 15 USCA 260(a), North Carolina is on fast (daylight) time from April to October, this amendment makes G.S. 18-141 patently ambiguous. During August, for instance, when all clocks in North Carolina should read 11:45, it is still only 10:45 in any state that may have elected to remain on Eastern Standard Time. Can beer and wine be lawfully sold for another hour? If so, then beer drinkers may be well advised to wear two watches—one to go to work by and another to drink beer by.

Two acts were passed making minor changes in G.S. 18-45 concerning the powers and duties of local ABC boards. Chapter 902 (S 784) amended G.S. 18-45(15) to clarify the authority of county and municipal ABC boards to make expenditures for education, research, and rehabilitation. Pursuant to the amended act, local boards may expend up to 5 percent of total profits "for education and research as to the causes and effects of alcoholism or the excessive use of alcoholic beverages and for the rehabilitation of alcoholics." These expenditures may be made for programs carried on by the board or as appropriations to nonprofit agencies engaging in like programs. And G.S. 18-45(8) was amended by Chapter 118 (H 147) to authorize county ABC boards to sell surplus real or personal property at public auction.

Three rather technical enactments affect primarily those engaged in the manufacture of malt beverages:

(1) Chapter 1268 (H 1398) provides for the Commissioner of Revenue to promulgate rules and regulations exempting resident malt beverage manufacturers from paying the excise tax (levied pursuant to G.S. 18-81) on beverages furnished free to customers, visitors, and employees for consumption on the manufacturer's premises.

(2) Chapter 1057 (H 1373) amends G.S. 18-67 to provide that in-state beer manufacturers may receive malt beverages manufactured outside North Carolina for transshipment (reshipment) to "dealers in this or other States." Prior to this amendment, the transshipment was authorized only to dealers in other states.

(3) Chapter 732 (S 715) also amends G.S. 18-67 to specify that these manufacturers may sell only to those licensed "to sell at wholesale."

One act, Chapter 1239 (H 1391), is of primary interest to wholesale distributors of beer and wine. This act amends G.S. 18-81(h) to increase from 2 percent to 4 percent the discount allowed from the excise tax to compensate for "spoilage and breakage."

Chapter 869 (H 321), the "Omnibus Riot-Civil Disorder" Act, contains two sections pertaining to the regulation of intoxicating liquors during a "declared state of emergency." One of these sections adds a new G.S. 18-38.1 authorizing the Governor to close the ABC stores in all or any part of the state for the duration of an emergency. The other adds a new G.S. 18-129.1 permitting the Governor also to order the cessation of all sales and transfers of malt beverages and wine. Before passage of Chapter 869, there was no specific authority at the state level to close ABC stores because of a riot or civil disorder. It is even less clear that authority existed at any governmental level to prohibit the sale of beer and wine during hours or on days when sales were otherwise authorized by law.

Chapter 1075 (H 296), which should be of considerable interest to consumers, amends Article 4 of G.S. Ch. 18 to increase substantially the tax on beer and hard liquor as follows:

(1) G.S. 18-81(a1) was amended to increase the "surtax" on beer from (a) $3.00 per 31-gallon barrel to $7.50, (b) ½ cent per container of six ounces or less to 1¼ cents, (c) 1 cent per container of more than six ounces but not more than 12 ounces to 2½ cents, (d) 2⅔ cents per one-quart container to 6⅔ cents, and (e) 9 cents per ounce that wholesalers may pay, at their option, on containers of over six ounces to 21 cents.

(2) G.S. 18-81(a2) was amended to increase the beer surtax on containers of exactly seven ounces from .6 cents to 1½ cents.

The practical effect of these amendments will be to increase the tax on a 12-ounce can or bottle of beer by 1½ cents.

(3) A new G.S. 18-85.2 was added to impose a "surtax" upon the retail sale of spirituous distilled liquors (whiskey) at the rate of 5 cents for each five ounces (or fractional part) until July 1, 1970, and thereafter at the rate of 5 cents for each 3⅓ ounces (or fractional part). By July, 1970, this amendment will add 50 cents to the cost of a quart of liquor, 40 cents to the cost of a fifth, and 25 cents to the cost of a pint.

The Alcoholic Beverage Control Act of 1937 was amended by Chapter 598 (S 254) to allow persons to purchase and transport up to five gallons of fortified wine at one time under certain specified conditions. Prior to the passage of this act, it was unlawful to purchase over one gallon of wine or to transport over one gallon of any type of alcoholic beverage (fortified wine being defined by G.S. Ch. 18 as an alcoholic beverage). Now as much as five gallons may be lawfully purchased and transported provided a permit for this purpose is first obtained from a member of the local ABC board or from the board's general manager or supervisor. Permits may not be issued to "persons not of good character," persons not sufficiently identified, or persons known or shown to be alcoholics or bootleggers. These permits are good for one purchase only on a particular day and expire at 6:00 p.m. on the date shown on the permit. This act will be of very limited use but will enable a person acquiring fortified wine to serve to a large group at a party or reception to avoid numerous trips to the ABC store.

Chapter 647 (H 995) made two changes in Article 11 of G.S. Ch. 18, concerning local beer-wine elections. The first change, in the form of an amendment to G.S. 18-125, permits the same form of ballot to be used in a county-wide election as was already authorized for a municipal beer or wine election. Prior to this amendment, different ballots were prescribed for city and county elections. The second amendment is to G.S. 18-126; it provides that a county vote adverse to the legal sale of beer or wine shall not affect sales taking place within a municipality. Prior to this amendment a county-wide vote against the sale of wine, beer, or both could have resulted in prohibition of sales in all areas of the county, including areas within the corporate limits of a city or town.

Resolution 115 (H 1327) created a commission for the study of the North Carolina laws relating to the sale, possession, and consumption of alcoholic beverages. The commission is to be composed of nine members, three each to be appointed by the Governor, the President of the Senate, and the Speaker of the House. The object of this study will be to recommend changes in the liquor laws to make them more cohesive, more understandable, and less ambiguous, thereby benefiting both enforcement authorities and the general public. The commission is to make its report to the Governor by December 1, 1970.

One other noteworthy public act is Chapter 1111 (H 379), which appropriates $80,000 to the University of North Carolina at Chapel Hill for the establishment of a "Center for Alcoholic Studies." Eventually this center may be able to furnish legislators and others with information as to the effect of certain types of liquor laws on various social problems. To legislate intelligently in the area of alcoholic beverage control, members of the General Assembly need to know, for example, whether passage of a liquor-by-the-drink act or a brown-bag act is likely to result in an increase in the number of alcoholics in the state. Within a few years the new center may be able to shed considerable light on these types of questions.

LOCAL ACTS

A variety of local bills relating to intoxicating liquors were passed by the 1969 General Assembly. One important category of local legislation concerns municipal ABC store elections. Elections conducted pursuant to G.S. Ch. 18 must all be county-wide; therefore any municipality wishing to have an election limited to the corporate limits must obtain special authorization from the General Assembly by means of a local act. This procedure permits the establishment of municipal ABC stores in areas of the state where the drys can outvote the wets in any county-wide contest. The new municipal ABC store election acts are:

(1) Chapter 991 (H 1317), which permits the qualified voters of Marshville to determine whether ABC stores shall be established within the corporate limits. If the voters authorize the stores, the net annual revenues from their operation, after expenditures for law enforcement, will be distributed as follows: (a) 62 percent to the Marshville general fund, (b) 25 percent to the Union County general fund, (c) 12 percent to the Union County Board of Education, and (d) 1 percent to the county library.

(2) Chapter 734 (S 723) which authorizes an ABC store election in the Town of Sunset Beach. If successful, then net profits, after expenditures for law enforcement, will be divided as follows: (a) 15 percent to the Shallotte Volunteer Rescue Squad, Inc., (b) 65 percent to the Sunset Beach general fund, and (c) 20 percent to the Brunswick County Board of Education.

(3) Chapter 46 (S 88), which authorizes an election in the Town of Mount Airy. If the vote is for ABC stores, then 10 percent of net revenues will be earmarked for law enforcement and the remaining 90 percent will go to the Mount Airy general fund.

(4) Chapter 144 (S 213), which authorizes an ABC store referendum in the Town of Garland. Net revenues remaining after the payment of operating expenses and the retention of working capital will all go to the town.

(5) Chapter 626 (S 423), which authorizes the establishment of an ABC store in the Town of Angier, subject to a vote of the people. Twenty-five percent of net profits will go to the Angier Community Library. The remaining profits will go to the Angier general fund and to the Angier ABC Board for educational and rehabilitational programs.

(6) Chapter 925 (H 1257) which provides for an election in the Town of Burnsville, to be called upon motion of the town board or upon petition of a designated percentage of the qualified voters. Seventy percent of net profits will go to the town general fund, 20 percent to the Yancey County general fund, and 10 percent to the county board of education.

(7) Chapter 77 (S 155), which authorizes a vote in the Town of Bessemer City on the establishment of ABC stores and legalizing the sale of beer and wine. Both items are to be placed on one ballot. All profits from the operation of the ABC stores will go into the town general fund.

(8) Chapter 122 (H 264), which authorizes an election in the Town of Aberdeen on the question of whether the Moore County ABC Board shall operate a store within the town. This act also provides for a referendum on the sale of beer and wine. The town will receive only 10 percent of the net profits from the operation of the ABC store.

(9) Chapter 832 (H 1171), which permits a referendum on the question of establishing ABC stores in any municipality located in Rockingham, Cleveland, or Stokes counties, provided the municipality maintains a police force composed of one or more full-time officers who draw a regular salary.

(10) Chapter 145 (S 170), which authorizes an ABC store referendum in the Towns of Biscoe and Mount Gilead. Net profits will be divided between Montgomery County and the Towns of Biscoe, Candor, Mt. Gilead, Star, and Troy.

In addition to the above-listed acts, Chapter 262 (S 381), authorized an election on the sale of beer or wine in any municipality of Moore County having its own police department or other law enforcement agency. (Under the provisions of G.S. 18-127 and G.S. 18-127.2, a municipality may not hold a beer-wine election unless it has a population [or a seasonal population] of at least 1,000 persons according to the last federal census.)

G.S. 18-57 provides for the net profits from the operation of an ABC store to be paid into the general fund of the county in which the store is located. As the preceding discussion indicates, special local acts provide otherwise for most municipal ABC stores, and even in the case of county stores some modifications have been made with respect to this provision. In past years each session of the General Assembly has enacted several bills distributing or redistributing the profits from ABC systems which are not governed by provisions of G.S. 18-57. The 1969 General Assembly adopted several measures of this nature, among which are:

(1) Chapter 882 (H 1116), which amended Chapter 939 of the 1951 Session Laws to redistribute profits from the Town of Tryon ABC system.

(2) Chapter 76 (S 142), which amended Chapter 982 of the 1963 Session Laws and repealed section 2, Chapter 1062, of the 1967 session laws to reallocate profits from the Town of Hamlet ABC Board.

(3) Chapter 609 (H 889), which amended Chapter 50 of the 1963 Session Laws to require the Pender County ABC Board to spend between 5 percent and 15 percent of net profits for law enforcement purposes.

(4) Chapter 226 (H 288), which modified G.S. 18-57 to provide that 25 percent of net profits of the Northampton County system (after expenditures for law enforcement) are to be divided among the municipalities of the county on a population basis, with the remaining profits to be paid into the county general fund.

(5) Chapter 16 (S 6), which amended Chapter 413 of the 1963 Session Laws to provide that the Town of Morganton ABC Board may expend up to 10 percent of net profits for programs designed to find the causes and cures of alcoholism.

(6) Chapter 86 (H 219), which amended Chapter 48 of the 1963 Session Laws to require 5 percent of ABC store profits in the Town of Roseboro to be expended for law enforcement purposes.

(7) Chapter 1245 (H 1407) and Chapter 671 (S 676), which amended Chapter 1004 of the 1949 Session Laws to reallocate the profits of the Wayne County ABC system.

(8) Chapter 501 (H 864), which amended Chapter 1257 of the 1959 Session Laws to provide that a certain portion of the profits from the Halifax County ABC system are to be distributed to all city school administrative units in the county. Chapter 883 (H 1125) further amended Chapter 1257 to change the maximum salary that may be paid an ABC board employee from $6,000 to $10,000.

(9) Chapter 776 (H 1164), which amended Chapter 792 of the 1961 Session Laws to permit expenditures to be made by the Jamestown ABC Board for the rehabilitation of alcoholics.

(10) Chapter 115 (H 63), which amended Chapter 199 of the 1965 Session Laws to reallocate the profits of the City of Rockingham ABC Board.

G.S. 18-45(15) requires each county ABC board to employ at least one ABC officer to enforce the liquor laws within the county. Local acts establishing municipal ABC boards also usually provide for the

employment of one or more local ABC officers. Problems frequently arise with respect to the compensation and jurisdiction of these officers, and several bills concerning such questions are normally considered in each session of the General Assembly. During this session, for example, Chapter 337 (H 725) authorized the Gates County ABC Board to contract with the county commissioners for the services of a deputy sheriff who would enforce liquor laws within the county. (The ABC Board may lack the financial resources to employ a full-time ABC officer.) Chapter 230 (H 373) authorized the employment of ABC officers by the Lincolnton ABC Board. These officers would have county-wide jurisdiction, which is somewhat unusual, since municipal ABC officers have traditionally exercised jurisdiction only within the corporate limits. Chapter 220 (S 228) provided for the employment of ABC officers by the Mt. Pleasant ABC Board, and Chapter 221 (S 229) authorized ABC officers for the Concord board.

Other local acts of interest include Chapter 617 (H 643) concerning the transportation of alcoholic beverages (hard liquor and fortified wines) in 46 counties and 21 municipalities located in other counties. The act allows a person to purchase, possess, and transport up to five gallons of alcoholic beverages provided he has first obtained a "purchase-transportation permit" from a member of the local ABC board, or from the board's general manager or supervisor. The beverages may not be transported outside the county where purchased. This act is, of course, very similar to Chapter 598 (S 254), the statewide act allowing the purchase and transportation of up to five gallons of fortified wine. Chapter 617 is effective in the following counties and municipalities:

- *Counties:* Alamance, Alleghany, Beaufort, Brunswick, Buncombe, Burke, Caldwell, Carteret, Catawba, Columbus, Craven, Cumberland, Dare, Durham, Edgecombe, Forsyth, Granville, Greene, Halifax, Haywood, Henderson, Hoke, Johnston, Jones, Lenoir, Martin, Mecklenburg, Moore, Nash, New Hanover, Orange, Onslow, Pamlico, Pasquotank, Person, Pitt, Richmond, Rowan, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson.

- *Municipalities:* Clinton, Concord, Dunn, Garland, Greensboro, Hertford, Jamestown, Maxton, Monroe, Mount Pleasant, North Wilkesboro, Pembroke, Reidsville, Roseboro, Rowland, Sanford, Sparta, St. Pauls, Taylorsville, Wadesboro, and Wilkesboro.

The ABC Act of 1937, which authorized the establishment of county liquor-control stores in this state, did not permit the stores to sell beverages with an alcoholic content of 14 percent or less. Thus, as a general rule, while beer and unfortified wines are sold in grocery stores and restaurants, they cannot be purchased at an ABC store. Chapter 68 (H 146), however, authorizes ABC stores located in Warren County to sell wines having an alcoholic content of less than 14 percent (unfortified wines).

Chapter 728 (S 452), an act applicable to Cumberland, Hoke, Moore, and Onslow counties, slightly modifies the procedure of the State ABC Board relative to the granting or denying of retail beer permits. The new act adds an additional paragraph to G.S. 18-129 allowing county or city authorities to file a written objection to the issuance of a malt beverage permit and to be heard in support of the objection. However, the final authority to determine whether the permit is to be issued remains with the State ABC Board.

PROPOSALS THAT FAILED PASSAGE

Several very interesting bills died in committee, were reported unfavorably, or otherwise failed passage. H 47, for instance, would have required the following wording to appear prominently on each bottle of alcoholic beverages: "Caution: Use of alcoholic beverages may be injurious to your health and family." Needless to say, this proposal was not enacted.

At present G.S. 18-51 prohibits the transportation of alcoholic beverages (hard liquor and fortified wine) in the passenger area of a motor vehicle when the cap or seal on the beverage container has been opened or broken. H 924 would have extended this prohibition to include beer and unfortified wine. The proposal was, however, reported unfavorably in the House; it is therefore still lawful to have an open bottle of beer or unfortified wine on the front seat of a car.

A local-option liquor-by-the-drink bill was again introduced and again defeated. The proposal (H 534) would have allowed mixed drinks to be sold or served in properly licensed restaurants, hotels, motels, convention centers, and auditoriums. The bill provided that mixed beverages could be sold only between noon and midnight and totally prohibited sales in areas that have not elected to establish ABC stores.

As noted, the General Statutes provide for county-wide ABC store elections, and thus a municipal election on the question may be held only after authorization is obtained pursuant to the provisions of a local act. S 53, which failed to pass its second reading in the House, would have permitted an ABC store election in any municipality located in a dry county provided the municipality had an organized police force.

Since each municipal ABC system is organized pursuant to a special local act, it is hardly surprising that there is no uniformity whatsoever regarding the manner in which the various city ABC boards are selected. S 565, which was reported unfavorably in the Senate, would have required all municipal ABC

boards to be appointed by a joint board composed of members of the city or town governing body, the county board of education, and the county commissioners.

CONCLUSION

During each session of the General Assembly attempts are made to modify the North Carolina liquor laws to make them more uniform and more comprehensible, but the inevitable product of each session seems to be laws that are less uniform and less comprehensible.

Prior to 1969, for example, G.S. 18-141 provided unequivocally that beer and wine sales were not permitted after 11:45 p.m. The act that amended this section to specify 11:45 p.m. "Eastern Standard Time" has left considerable doubt as to the proper hour to terminate sales during those months when the state is on fast (daylight) time.

Prior to 1969, G.S. Ch. 18 provided unequivocally that alcoholic beverages (hard liquor and fortified wine) could not be lawfully transported in quantities exceeding one gallon. This limitation was modified by a statewide act to allow the transportation of up to five gallons of fortified wine under certain conditions and was further modified by an act affecting 46 counties and 21 cities to allow the transportation of up to five gallons of any alcoholic beverage under similar restrictions.

Prior to 1969 G.S. 18-6 provided unequivocally for the confiscation and sale at public auction of any vehicle used in the illegal transportation of intoxicating liquors. Two acts, one relating to open bottles in the passenger area and the other to taxi drivers, weakened and complicated this sanction.

Also, ten acts authorized municipal ABC store elections despite the fact that the Alcoholic Beverage Control Act contemplates only county-wide elections on this question. Finally, there were a multitude of acts dealing with the distribution of ABC store profits, although G.S. Ch. 18 contemplates that net profits will be paid into the county general fund.

The net result of all of this is a state liquor law more difficult to administer, more difficult to enforce fairly, and, for the general public, more difficult to understand and obey.

Readers of this article will find further details on some of the subjects covered here in the articles on home-rule legislation, constitutional revision, state government, personnel, counties, property taxation, planning, and alcoholic beverage control, which appear in these two legislative issues of Popular Government *(September and October).*

Cities

By DAVID M. LAWRENCE

The 1969 General Assembly was good to municipalities and to local government in general. The big news, of course, was the so-called "home rule" package sponsored by the Local Government Study Commission and, with a single exception, enacted without difficulty. Equally important was the passage, for presentation to the people in November of 1970, of a completely revised Article V of the North Carolina Constitution, a revision that should increase the financial flexibility of local government as it prepares to meet the increasing responsibilities generated by urbanization. Not far behind in potential importance were the passage of the local-option sales tax, directing each county to vote next November on whether to add a penny on sales within its borders, and the creation of a State Department of Local Affairs. And finally there were many less renowned acts, yet still important, which either modernized some provisions of law under which municipalities must act or provided new tools to meet the growing problems of local government.

Local municipal legislation continued to diminish in relation to total introductions and ratifications, but not in absolute numbers (see tabulation on page 27). The passage of the home-rule package designed to permit local officials to accomplish themselves many of the things they had, in earlier years, been forced to depend on Raleigh to do, may exert an influence toward the reduction of local bills in future years. Much of the local legislation that passed was typical of what had come before during the past few sessions, and where trends have continued, they will be noted. In addition, any local acts that presage important innovations in local government in future years will be noted with more particularity. Table I (page 27) continues the chart, begun a decade ago, of local legislation affecting municipalities.

ORGANIZATION AND STRUCTURE OF MUNICIPAL GOVERNMENTS

In past years a major portion of the local legislation introduced for municipalities sought structural changes in the government of the municipality. The manager system would be adopted, another council member would be added or the terms of councilmen changed, wards would be removed or added. Again this session, this type of legislation was evident, but perhaps for the last time. Part of the home-rule package authorizes municipal governing boards, upon resolution, to restructure the municipal government.

Incorporation, Dissolution, and Consolidation

Five municipalities were newly incorporated: Whispering Pines (Moore), Fletcher (Henderson), Cofields (Hertford), Polkville (Cleveland), and Cooleemee (Davie), with the latter two requiring an affirmative local vote beforehand. In addition the charters of Arapahoe and Stonewall in Pamlico County were reactivated, while the citizens of Archdale and Trinity, two inactive towns just south of High Point in Randolph County, were authorized to vote on whether to reincorporate as Archdale-Trinity. In the July 8 vote, only Archdale voted affirmatively, so only Archdale is incorporated.

Each General Assembly normally incorporates a few new municipalities. But until 1969 a community wishing to incorporate had an alternative course. The Municipal Corporation of 1917, an optimistic

attempt to get the General Assembly out of the local-legislation business, created the Municipal Board of Control, charged with administrative incorporation of municipalities. Since 1953 the Board has been without discretion, authorized only to determine whether the minimal requirements[1] of incorporation were met. In the first dozen years of its history, it incorporated twenty municipalities; in the years since, not half that number have utilized the Board's machinery. Municipalities incorporated by the Board must initially govern by general law only; legislatively incorporated municipalities can modify general law in their charter. Because of the greater flexibility of the latter method, the Board was soon stagnated. Of late the criticism had been made that very small communities were attempting to incorporate administratively in order to permit the sale of beer and wine within otherwise dry counties.[2] With controversy added to stagnation, the inevitable was not hard to predict, and Chapter 673 of the Session Laws of 1969 (H 788) abolished the Board.[3] The repealing statute confirmed all lawful orders of the Board, making clear that Board-incorporated towns remain valid municipalities, while a later act—Chapter 1225 (H 1416)—reactivated the Board for the sole purpose of acting on the petition of the proposed town of Greenevers in Duplin County.

The Board also was charged with the authority to change the name of any municipality. A bill companion to the one abolishing the Board provides a procedure for name changes. Under Chapter 680 (H 786) the governing board of any municipality is authorized upon its own motion, and directed upon receipt of a petition signed by 15 percent of the municipality's voters, to call a referendum on changing the town's name. If the vote is affirmative, road maps will have to be reprinted, apparently immediately.

Two inactive municipalities had their charters revoked—West Bladenboro (Bladen) and Manchester (Cumberland). If another act becomes effective, the Town of Guilford College will disappear. It was annexed to Greensboro, without a vote, but the annexation is not effective until June 30, 1972, which will give another General Assembly a chance at repeal.

At least twice in the past two decades North Carolina has witnessed detailed studies on whether to merge a city and a county: Charlotte and Mecklenburg in the late 1940's and Durham city and county a decade later. The 1969 General Assembly authorized a third. Chapter 67 (H 101) creates the Charlotte-Mecklenburg Charter Commission, directed to study local governments in Mecklenburg County and produce a charter for a consolidated government. The expectation is that sometime in early 1971 the people of the county will vote on the charter. The commission represents Charlotte, Mecklenburg, and each of the five smaller municipalities in the county. In order to test community sentiment throughout the study and drafting process, the commission has the services of the Citizens' Review Committee, fifty persons appointed by the six municipalities and the county. City-county consolidation has not fared well at the polls in North Carolina, but since Durham's effort, consolidations have occurred in Tennessee and Florida, and the proponents in Mecklenburg express hope that the lessons from those successes have been learned. And, if Article V is amended as proposed, consolidation will be far less complicated now than it would have been ten years ago.

Mecklenburg's effort produced a mild contagion. Henderson County and Hendersonville and Forsyth and Winston-Salem emerged from the session with authorizations for commissions to study local government in their counties and to recommend changes and reallocations of functions and services. Although these efforts are not conceived to be as sweeping as Mecklenburg's, the seeds of consolidation may be there.

Form of Government

The trend toward adoption of the council-manager form of government continued, with eight municipalities (three subject to local referendum) adding the plan to their charters. Hendersonville, the largest town without a manager, included the plan in its consolidated charter; however the consolidation was not enacted. Under one provision of the home-rule package, municipalities may adopt the manager form by resolution of the governing board, and a number may be expected to utilize this authority.

One local act modified a council-manager plan in an unusual manner. In the typical council-manager city, the mayor's authority is largely personal and political. He usually votes at council meetings only in a tie. Charlotte obtained an act strengthening the mayor's authority by giving him a modified veto power. Unless six votes of the council can be obtained for the passage of an ordinance (out of seven possible), the mayor can impose a period of deliberation until the following regular or special meeting of the council. At that time five councilmen must vote for

1. Chiefly, these were that the area proposed for incorporation contain at least 50 persons, of whom at least 25 must be freeholders and 25 must be qualified voters. The assessed value of taxable property in the proposed town must have been at least $25,000, and no part of the town was to have been within an already incorporated town or within three miles thereof. The petition must have been signed by a majority of the qualified voters residing within the proposed town boundaries. Detailed provisions were set down for the contents of the petition and a public hearing upon it was provided. Quaintance and Wicker, *Municipal Incorporation in North Carolina*, 33 POPULAR GOVERNMENT 1, contains a fuller discussion of the Board and the differing effect of administrative and legislative incorporation.

2. For example, G.S. 18-127.2 permits any municipality having a seasonal population 1,000 or more—as determined by the mayor and commissioners—to hold a beer and wine referendum in a dry county.

3. The extinction of the Board presumably nullified Chapter 197 (H 363). This act extended to January 1, 1971, the authority of any community in Lincoln County to go before the Board, create a municipality, and utilize the charter set out in the act.

a measure for it to pass, even though four ordinarily would suffice. A mayor's veto is a common feature in cities where the mayor is the full-time administrative head of the city, where often there is a separate legislative branch of city government. But the power is almost unheard of in manager cities, and the reaction from the mix will be interesting to watch.

One general law affects the powers of mayors: Under Chapter 713 (H 947) mayors have been added to the list (see G.S. 11-7.1) of officers entitled to administer oaths. For a time it looked as if they would be performing marriages as well. H 1153, as introduced, authorized the mayor of Sparta to perform marriages. The House amended it to apply to all mayors. But the Senate re-restricted the bill to Sparta, and so restricted, it was ratified.

Trends from past years concerning the composition of municipal governing boards continued. At least twelve boards were enlarged, with five being by far the most popular number of council members. Staggered four-year terms were adopted for six towns; two other towns may also adopt such terms by a vote of the local citizenry.

Municipal Elections

This area was once again a popular one for local legislation. Matters involved included the modification of ward boundaries, changes in notice requirements and filing fees, modifications of ballot form and the like. Enfield was added to those towns prohibiting single-shot voting, but Hoke and Scotland counties (and the municipalities therein) were deleted from the list of those prohibiting the practice in primary elections.

Compensation, Qualification of Officers, Retirement, and Civil Service

General and local legislation relating to municipal personnel will be discussed elsewhere in the legislative issues of Popular Government, but two acts should be noted here. Chapter 23 (H 69) permits the hiring and continued employment of policemen and firemen who are not voting residents of the municipality, while Chapter 134 (H 310) extends this authority to include all nonelected officials and employees.

Although these acts merely validate what a good many municipalities do already and follow in the path of many similar local authorizations, there is a question as to their status under the present North Carolina Constitution. In interpreting Article VI, section 7, the State Supreme Court has held that every elected officer of a local unit must be a voter in and resident of that unit.[4] In other contexts the Court has held that a policeman is an officer.[5] The Attorney General, in various rulings, has put these two lines of cases together and said that a number of municipal offices, elective and appointive, must be filled by residents. The General Assembly passed these two acts in the teeth of such rulings, acting on an alternative reading of the two lines of cases and of the Constitution. Under this alternative reading, the word "office" has different meanings in different contexts. In one context it denotes any position that partakes of and acts through the sovereignty of the state. Certainly a police officer would have to be included here, as would a manager, a town accountant, and many other appointed officers. But Article VI is concerned explicitly with elections, and therefore with elective personnel; there is no good reason to extend its provisions to appointed personnel. In any event the proposed constitutional revision, discussed in the article on page 86, clearly settles the issue in favor of the two acts.

The number of local acts setting the compensation of municipal governing boards was reduced drastically this session. The credit clearly must go to Chapter 181 (H 52), yet another part of the home-rule package. This legislation authorizes governing boards to set their own and the mayor's compensation. The prospect of this bill's passage, and then its enactment, removed the necessity for many compensation acts. In other personnel matters, this session enacted more local legislation than the 1967 legislature, but not an amount out of line with earlier sessions. The one prominent subject was the creation in eleven municipalities of supplementary retirement funds for firemen.

Comprehensive Charter Revision

As in the last session, thirteen municipalities completely revised and consolidated their charters. The largest was Wilson, the others being Nashville, Harrells, Hamlet, Cherryville, Carrboro, Grifton, Belhaven, Dunn, Indian Trail, Morehead City, Creedmoor, and Polkton. (As noted above, Hendersonville had introduced a comprehensive revision, but it did not pass.) These thirteen also mirrored the increasing preference for five- or six-man governing boards, four-year staggered terms, and a manager.

FINANCE

Local Sales Taxes

Mecklenburg's success with its additional penny sales tax, authorized in 1967 and approved by county voters that fall, augured a general demand from other counties for that same penny in 1969. Before the session began the North Carolina Association of

4. State v. Knight, 169 N.C. 333 (1915).

5. A recent example is *State v. Hord*, 264 N.C. 149 (1965), which held a police chief to be an officer within the meaning of G.S. 14-230, which requires, on pain of a misdemeanor, any official to discharge his duties. Other examples are mentioned in that opinion.

County Commissioners and the League of Municipalities went on record requesting an additional penny, the proceeds to go to local governments. However, the Governor spoke out strongly against state collection of a fourth cent for local units, urging that this source of revenue be saved for state purposes. But he left open the possibility of widespread local-option sales taxes, and this hint was not ignored. Three bills were introduced permitting statewide local option: The first (S 178; H 358) would have allowed either the county commissioners or the voters by petition to force a local referendum; the proceeds of the penny were to be returned to the county of collection, divided on a per capita basis between county and municipalities. The second bill (H 293) retained that distribution scene but would have permitted the commissioners to impose the tax by resolution; and the third (H 328) would have required an election, but required distribution within the county on the basis of ad valorem tax rates. (Three other bills were introduced, in spite of the Governor's message, which would have imposed an extra cent statewide. The first [S 258; H 332] would have returned it all to local governments, on a per capita basis; the second [S 342; H 353] would have given half to the General Fund, the other half to the counties and municipalities on a per capita basis; while the third [H 1055] would have also split the proceeds half and half, but first would have required approval of the extra penny in a statewide referendum.) In addition to these statewide bills, and in anticipation that none might pass, forty counties sought authority to impose the extra penny as Mecklenburg had done. Thirty-three would have divided the money on a per capita basis, the other seven on the property tax levy. Forty local-act requests for the same authority produced strong pressures for a general law, and the initial step was taken by the Senate.

The committee substitute that emerged and was finally adopted (Ch. 1228) requires each county in the state, on next November 4, to hold a referendum on whether to impose an extra penny in that county. Where the tax is approved, it will become effective on March 1, 1970, as to all items on which the state presently imposes its 3 percent sales and use tax. The major compromise took place in the distribution of the funds. The larger counties—those that are regional shopping centers—logically wished to have the funds retained by the county of collection; the other eighty-five or ninety just as logically wanted the money returned by some other measure, say per capita. The bill as passed splits the difference. One half of the total collections is to be returned to the county of collection, there to be divided among the county and its municipalities on the basis of ad valorem tax levies. Such a method encourages local governments to make maximum use of their property tax base, as the higher the rate, the greater the return from the sales tax. This is also consistent with the purpose of the sales tax—to relieve pressures on the property tax; sales tax proceeds will be distributed in relation to property tax use. In addition, as units expand and as functions are transferred between units, the property tax, and now the sales tax, will reflect these dynamics. The other half of the money is to go into a statewide pool, to be distributed on a per capita basis. These distributions will utilize the most recent estimates of the Department of Administration as to municipal and county populations.

The extra penny could mean a great deal to local government financing. Mecklenburg (which was excepted from the act by a closely contested Senate floor amendment and thus will vote next November on whether to impose a *fifth* cent on itself) presently receives something like $6,000,000 a year from the tax. But the difficulty of imposition lies with the requirement of voter approval. The nationally discussed taxpayer's revolt has not missed North Carolina, as the many recent bond failures demonstrate, and whether people will vote to tax themselves this extra cent remains to be seen.

Other Revenue Proposals

Three other proposals were before the General Assembly that would have directly affected local revenues; none passed. H 65 would have accelerated the schedule increasing the allocation to municipalities of the franchise taxes collected from nonmunicipal public service companies and telephone companies. S 273 would have phased out the intangibles tax by 1974, while S 358 would have replaced the lost local revenue from the state's General Fund, but only at the level of 1969 collections. Finally, H 879 would have authorized municipalities to increase their license taxes on motor vehicles to $5.

Bonds

• *Interest.* The Municipal Finance Act, the County Finance Act, and the Revenue Bond Act of 1938 were each amended—by Chapter 686 (S 488), Chapter 687 (S 489), and Chapter 688 (S 503) respectively—to remove the statutory limit of 6 percent on the interest payable on local government bonds. This, of course, takes account of the difficulties on today's money market and grants increased flexibility to local governments seeking funds.

• *Revenue Bond Act.* Chapter 1118 (S 716) makes a number of minor amendments to the Revenue Bond Act. "Parking facilities" were redefined to delete the requirement that they be municipally operated and to delete the inclusion of on-street parking meters in the definition. The proceeds of parking meters were made available for the operation and maintenance of, as well as payment of principal and interest on bonds for, parking facilities. (Both amendments are part of a continuing effort to tighten the law enough so that parking-authority bonds might

be issued.) "Revenue" was defined for the first time, and explicitly includes moneys received from the federal government pursuant to an agreement pertaining to an undertaking. Governing boards were authorized to include in the cost of bonds the engineering, inspection, fiscal, and legal expenses and interest expected to accrue during construction and for eighteen months afterward; under prior law, the permissible period was during construction and six months thereafter. Finally, recognizing the use of local legislation to authorize the issuance of revenue bonds, municipalities were authorized to use the Revenue Bond Act refunding bond procedures for revenue bonds issued otherwise than by the authority of the 1938 act.

• *Statement of Indebtedness.* G.S. 160-383 requires that prior to the final passage of a bond ordinance, an officer designated by the governing board file with the clerk a sworn statement of the indebtedness of the municipality. Three acts of the 1969 General Assembly affected the contents and use made of that statement. The statement must show gross debt, from which certain deductions are made. Chapter 1092 (H 1192) provides that one of the deductions is to be the amount of bonded debt incurred or to be incurred for sanitary sewer system purposes, if the Local Government Commission determines that during each of the previous five years revenues of the sewer system and the water system, or of the consolidated sewer and water system if there is one, or of both if the switch-over was made within the past five years, were sufficient to pay the operating expenses and principal and interest on any bonds of the system for that year. Under prior law there was no requirement of support for five previous years, and the revenues of the water system were not charged against sewer bonds unless there was combined operation.

Under prior law the statement was also to show assessed valuation in the municipality; if net debt exceeded 8 percent of assessed valuation, the bonds could not be issued. Chapter 995 (S 745) changed the valuation figure from assessed to true, which could require a downward revision in the percentage figure of the ratio of net debt to valuation. Inadvertently the new percentage figure was left blank in the bill as ratified and not discovered until the last week of the session, too late for enactment of a roll-called correction. All that could be done was to repeal the act, and that was done in Chapter 1288 (S 908). A similar change was made in the County Finance Act, and it too had to be repealed. Therefore, the 8 percent assessed valuation limit remains unchanged.

• *Modernizing Amendments.* Four acts relating to bonds generally were of significance to local governments. Chapter 29 (H 139) permits any bonds authorized by North Carolina law to be issued with the official seal imprinted on the bond (in lieu of being physically affixed) and with facsimile signatures instead of manual, so long as there remains one manual signature, which may be the signature of the Local Government Commission representative in the certificate of the Commission. (G.S. 160-393 and G.S. 153-106 previously required that the official seal of the unit be affixed to all bonds, and that two officials sign each bond.) Chapter 685 (S 487) permits the governing body of any unit, as defined in the Local Government Act, to issue, in lieu of coupon bonds, a single bond without coupons of the aggregate principal amount of such coupon bonds. This will permit a bond issue sold to one buyer to be transferred on one piece of paper, rather than in a stack. If the holder should desire to convert it to coupon bonds, the governing board must do so, although the expense may be placed on the holder. Chapter 943 (S 632) permits official bank checks and cashier's checks, as well as certified checks, to be tendered in payment of bonds sold by the Local Government Commission. And finally, Chapter 788 (S 608) updates the jurisdiction of the Local Government Commission to apply to all units, notwithstanding any local, private, or special act passed through the end of the 1969 General Assembly. Such acts are passed every few years to maintain the control of the Commission over local government financing but cannot be made prospective because of the doctrine that a legislature cannot bind its successors.

• *Miscellaneous.* Two acts concerned bond financing for specific types of undertakings. Under the provisions of Chapter 308 of the Session Laws of 1959 (uncodified), two or more municipalities and/or counties may issue bonds to cover their costs of participation with the U.S. Army Corps of Engineers in reservoir projects that will provide municipal or industrial supply benefits.[6] Chapter 407 (H 449) amends that act to provide that after the passage of the bond order and after it has taken effect, the local unit may at any time issue its bonds. (The previous law, under a 1963 amendment, required the bonds to be issued within ten years of the effective date of the order.) A second act recognized the increasing use of municipally owned CATV systems (local acts authorized such systems in four municipalities in 1969). G.S. 160-382(d), which sets out the maximum period of usefulness of various undertakings and thereby sets an upper limit on the period of maturity for bonds financing those undertakings, was amended to set the period of usefulness for CATV projects at thirty years.

Contracts Creating Debt

Chapter 944, authorizing local units to submit to a vote any lease, contract, agreement, or other con-

6. For a full discussion of the original act, see Heath, *Water Resources*, 25 POPULAR GOVERNMENT, 22.

tractual obligation, the effect of which is to create debt within the meaning of the North Carolina Constitution, is discussed in the article on counties elsewhere in these legislative issues.

Taxation and Revenue: Local Legislation

Aside from the flood of local-option sales tax bills, very little local legislation was enacted in the area of taxation, expenditures, and tax collection. Most of this was typical of legislation of the past few sessions, validating bond elections, permitting specific local levies and expenditures, and establishing local modifications of the discount schedule. This last category of legislation should not reappear after this session, due to the passage of an act permitting counties and municipalities to set their own schedules of discounts for prepayment, on approval of the State Board of Assessment.

Special Assessments

Article 26 of G.S. Chapter 153, enacted by the 1965 General Assembly, permits counties bordering the Atlantic Ocean to carry on beach-erosion control and flood- and hurricane-protection projects, and to assess those property owners benefited. Assessments may be based on front-footage of the land abutting protective works (or abutting beaches or shorelines protected by the works), on acreage, on the valuation (as unimproved land) of benefited land, or a combination of these. Chapter 474 of the 1969 session (S 394) extends the provisions of this article to all municipalities in the eligible counties, at the same time removing a statutory limitation on the amount of the assessment.

Albemarle and Edenton were added to the growing list of municipalities that are authorized to assess for water and sewer lines on a flat rate based on prior average costs, and both are authorized to assess on the basis of the full frontage of a lot, and all lots equally, as well as the traditional basis of the frontage on the water and sewer line.

A number of acts modified the petition requirements for certain street improvements, reducing signature requirements from a majority to 50 percent or 35 percent of owners and frontage.

Finally, Chapel Hill was authorized to order the paving of sidewalks, and to assess on both sides of the street, even if the sidewalk is only on one side, without petition. The governing board is first required individually to view the area involved and make a determination that paving is necessary because of heavy pedestrian traffic or pedestrian safety. A hearing is also required with notice to each owner possibly liable for assessment.

ANNEXATION

Although North Carolina's 1959 annexation laws are admired throughout the nation, they sometimes appear to be without honor at home. Based on the proposition that land that is urban ought to be municipal, the laws permit municipalities to annex contiguous territory without referendums. Requirements must be met as to the character of the area to be annexed and as to a schedule of municipal services to the area after annexation; but if requirements are met, the resident of the area to be annexed can do little to impede the process. The procedures are a delight to planners, scholars, and professionals in municipal government, but they must, at times, be a nightmare to homeowners who do not want to be city dwellers, and by reaction, a nightmare occasionally to those governing boards using them. Some of the discontent bubbled up at this session of the General Assembly.

From the inception of the 1959 laws, their coverage has not been universal; a few counties and municipalities have always been excepted. (The one failure of the Local Government Study Commission package this session was a bill removing those exceptions.) But this number has been diminishing steadily, and at the beginning of the 1969 session, five counties and certain municipalities in three others were excluded from the provisions of the law pertaining to municipalities under 5,000, while six counties were excluded from the provisions pertaining to larger cities and towns. Most of the activity in this session resulted from efforts of a few other counties wishing to join the excluded list. Attempts to simply join the list of excluded counties failed. Thereafter, their efforts were more complicated. The next step was an attempt to amend the 1959 laws, as applied to Burke, Caldwell and Forsyth counties, to require a referendum upon petition from 25 percent of the voters in the area to be annexed. This is a stricter version of the pre-1959 law (still applicable in those few counties not included in the 1959 laws), which required a referendum upon presentation of a petition from 15 percent of the affected residents. (A later Senate bill [S 633] attempted to place the earlier provisions into the 1959 law, but it received short shrift in committee.) The 25 percent bills failed also. The next attempt was to place a proviso on the 1959 laws, effective as to one county only, to the effect that if within thirty days of notice of the annexation hearing, a majority of the voters in the new area file a petition with the city council, the annexation may not proceed. Again the General Assembly refused. The final unsuccessful local modification was a bill to permit Cherokee municipalities to use the pre-1959 laws in the alternative. Since the basic law would still be available, this version was a little more palatable and got out of the Senate; however, the House held firm on this one also. Thus each of several separate and variant attempts to blunt the force of the 1959 annexation laws as to certain counties was defeated, and usually in committee, by the legislature.

But clearly the 1959 laws are not wholly successful, as the large number of annexations by local legislation indicates (fifteen municipalities extended their borders in this manner, while another nine "redefined" theirs, which may have included some annexations). These facts, plus the strong challenge in this year's session, caused the House to pass, in the closing days of the session, a resolution directing the Local Government Study Commission to study annexation laws and report back to the next session of the General Assembly. Whether the Commission will recommend any significant change is problematic, but it is possible that North Carolina's widely respected annexation procedures may be in for some tough times in the years ahead.

The annexation news was not, however, all "anti." Harnett County was removed from the excepted list altogether. A 1967 act, directing Halifax County to vote on whether to end its exclusion was extended to permit the vote in 1970. Cumberland (the exclusion of which has caused great difficulty in planning the growth of Fayetteville) moved toward removing its exemption. It was deleted from the exemption list but subject to a proviso that if a majority of the voters in the new area file a petition protesting the annexation, within certain time periods, the annexation may not be effected. (This is the same proviso that was not allowed for Catawba County, already under the 1959 laws. The dissimilar reactions to the identical requests points up the current practice of the General Assembly to deny any proposed modification of the annexation laws as to counties already under their scope, but to be quite liberal in granting modifications as to counties completely out, apparently in the hope that they eventually will be persuaded to come in.) In addition, Fayetteville was authorized to call a county-wide referendum on whether this proviso should apply. If the voters of Cumberland County should decide that it not apply, Cumberland will be on the same footing as all other counties under the 1959 laws. Finally, a bill was introduced to remove Franklin County from the list of those exempted, and it passed the Senate in that form. However, as eventually ratified, it permitted annexations under the 1959 laws only where the residents of the area to be annexed either voted or petitioned for annexation.

Satellite Annexation

One of the noteworthy products of the 1967 General Assembly was Raleigh's satellite-annexation bill, granting the city the authority to annex noncontiguous areas under limited circumstances. This session a minor amendment was added to the act, to make it clear that residents of the area annexed could vote in all municipal elections in Raleigh, regardless of the time of annexation. In addition, and possibly presaging a trend, Fayetteville received authority, identical to Raleigh's 1967 authority, to annex territory noncontiguous to it.

INTERGOVERNMENTAL RELATIONS

Many states have what are known as joint exercise of powers acts. These permit any two or more municipalities and/or counties to do jointly anything that they might do singly. Obviously, as interlocal cooperation becomes more and more a tool of metropolitan solutions to metropolitan problems, such wide authority is very useful. North Carolina does not have such an act, and although there is much enabling authority for interlocal cooperation for specific functions, the gap is a difficulty. The range of local legislation permitting cooperation is proof of that. The closest that the state comes to a joint-exercise act is G.S. 153-246, the "Joint Administrative Functions Act." Passed in 1933 and unamended until this session, it was farsighted thirty-five years ago, but time has passed it by. Chapter 380 of the 1969 session (H 594) amended the act in important ways, and although more could have been done, the improvements are significant. Originally G.S. 153-246 authorized cooperation only by consolidated agencies or institutions or buildings jointly constructed, owned, and operated. Such means remain permissible, but now are joined by joint boards and commissions, simple agreements, joint purchasing, and any other appropriate means of cooperation. The original act restricted its authority to contiguous counties or to one or more municipalities in a county with the county. Again these remain, but authority is added for municipalities within a county to cooperate among themselves, without need for the county also to be party to any agreement. A final amendment permits the governing boards creating the cooperative relationship to delegate to any administrative apparatus fewer powers in the area of cooperation than those possessed by the boards themselves.

As noted, these changes make the act much more useful to local governments. But it remains applicable only to administrative functions, an undefined and unclear term. It could have been extended to include all functions. Also, there is still no general authority for municipalities in separate counties to cooperate across county lines. And finally, agreements under the section are good only for two years, albeit renewable.

A second act affecting intergovernmtntal cooperation is Chapter 806 (S 734). Under its terms, municipalities, counties and agencies thereof; school boards; the State Highway Department; and other agencies of the state are all authorized to exchange, lease, sell, buy, or enter into agreements regarding the joint use of land held by one unit, or any interest in that land. A public hearing, upon fifteen days' notice, must first be held. This authority should facilitate agreements for the joint exercise of functions on land held by one

unit, as well as the transfer of functions from one unit to another more capable of performing in an economical manner.

STREETS AND HIGHWAYS

Relations with the State Highway Department

The construction and improvement of municipal streets is closely tied to the State Highway Department. A municipality and the Department jointly agree as to which streets shall be part of the municipal system and which shall be part of the state system. In addition, under the Powell Bill, municipalities receive a share of revenue from the state gasoline tax to aid them in the construction and maintenance of municipal streets. As a final example, a small municipality may contract for the Department to construct and maintain its streets up to the limits of Powell Bill allocations to that municipality; and any municipality may contract with the Department as with any private contractor for construction and maintenance of municipal streets. Several acts passed by the 1969 General Assembly affected this complex of relationships between municipalities and the State Highway Department.

Chapter 798 (S 639) authorizes the Department and any municipality to contract for the municipality to maintain, widen, or reconstruct any street within the municipality which is a part of the state system, as well as install traffic-control devices on such streets. Such work is to be in accord with Department standards, and the municipality is to be compensated sufficiently to pay all of its costs. This is the other side of the coin from the authority of the Department to contract to maintain streets within any municipal system. Further contracts between municipalities and the Department are authorized by Chapter 978 (S 760). Under the authority of this act, municipalities may expend moneys on state-system streets within their borders for any of four purposes: (1) to construct curbs and gutters; (2) to add parking lanes; (3) to bear the cost of constructing drainage facilities attributable to run-off from streets on the municipal system; and (4) to construct sidewalks. (No Powell Bill money may be used for sidewalks.) Such projects may be done by the municipality or by the Department, with the apportionment of costs a matter of negotiation. Those costs that do accrue to the municipality may be assessed against abutting property owners.

Where a municipality does not participate in the latest census, G.S. 160-4.1 provides a method for receiving state funds, such as Powell Bill money, distributed on a population basis. Until this year only municipalities not counted in the census by reason of not being incorporated could use this section, but Chapter 873 (H 737) extended it to include municipalities not counted for any reason. An example of a benefiting municipality would be one that was inactive in 1960. Technical amendments to the Powell Bill itself were made by Chapter 665 (H 1031).

The TOPICS Program

Since February of 1967 the Bureau of Public Roads has, in cooperation with a number of municipalities around the country, been developing a program to solve some of the congestion problems of urban streets. The principal thrust of the effort, known as the "traffic operations program to increase capacity and safety," or TOPICS, has been to make engineering and operational improvements on existing municipal streets rather than attempt major construction or reconstruction of principal highways through the urban area. The Federal-Aid Highway Act of 1968 recognized this program, and authorized appropriations for it, to be distributed upon fulfillment of conditions in the act. Basically, the Secretary of Transportation is authorized to approve any project for the extension of federal-aid primary- or secondary-system roads into urban areas for improvements facilitating traffic flow. Examples of improvements would be grade separations at intersections, lane widening, ramps, channeling traffic, and the like. Such projects must be based on comprehensive planning as carried on under 23 U.S.C. 134, which requires local and state cooperation in a continuing process of highway planning. The federal share of such programs will be 50 percent.

Chapter 794 (S 630) facilitates the participation of North Carolina municipalities in this program. Under its terms, municipalities may contract with the State Highway Department for TOPICS projects, either on municipal or state-system streets; the Department may do or contract out the work on the municipal streets, and the municipality may do or contract out the work on the state streets. (Of course, each could do the work on its own system also.) Where municipal-system streets are involved, the nonfederal costs must be met by the municipality, and municipalities must agree to maintain these streets in accord with TOPICS purposes. If not, the Department will take over the maintenance and deduct the costs from the Powell Bill allocation.

Eminent Domain

Chapter 601 (H 383) provides procedures for a municipality involved in taking property for a street right-of-way and faced with taking so much of a parcel of land or of a building that what is left is without value to the owner. In such a situation, and upon making designated findings, the municipality may purchase the entire parcel or the entire building. Two municipalities received local authorization to purchase and condemn in similar situations, Fayetteville before the general law was passed (and indeed, apparently as the model of the general law) and Greensboro afterward in a simpler procedure.

Street Paving Authorities

One interesting failure deserves passing comment. H 1288 would have authorized the incorporation of

street-paving authorities in subdivisions outside any municipality. Formed by the residents of the subdivision, and requiring the assent of most of the residents, the authority would have been authorized to assess properties in the development for construction of streets and sidewalks. Once the construction was done, the authority would have been dissolved. After construction, maintenance would have been turned over to the State Highway Department, if it would have taken on the job. If the subdivision had been annexed before the dissolution of the authority, the authority would have been dissolved immediately and its debts would have become those of the municipality and its streets part of the municipal system. Such an authority would have provided an alternative to present methods of paving streets in subdivisions, which are usually either the developer's doing so and adding the costs to the price of lots or its not being done at all. The bill also would have removed yet another reason why subdivisions might want to become a part of municipalities. It passed the House, but was lost in the rush to adjournment in the Senate.

MISCELLANEOUS POWERS AND FUNCTIONS

Emergency Ordinances

The Omnibus Riot and Civil Disorder Act—Chapter 869 (H 32)—contains explicit authorization for municipalities (and counties) to enact ordinances dealing with the status of civil emergency. Such ordinances may restrict the movement of persons in public places; restrict business operations; regulate the possession, transfer and use of liquor; restrict the use of dangerous weapons and substances, including gasoline; and restrict such other activities as necessary to maintain control. The mayor (or county commissioners' chairman) may be designated to determine and proclaim a state of emergency, thereby implementing an emergency ordinance. Violations of such an ordinance would be misdemeanors. Municipalities may, instead of enacting their own ordinances, by resolution provide that the county's ordinance shall apply within the municipality. If an emergency exists within a city, the mayor may request the chairman of the county commissioners to extend the application of the municipality's ordinance to areas outside the municipality where necessary to contain and control the situation; it would not be necessary for the county also to have enacted an emergency ordinance.

Removal of Abandoned Vehicles

General law provides for the removal of abandoned or junk vehicles from public or private property and possible payment of the costs of removal from proceeds of the sale of the vehicle. Four municipalities received local authority to establish a charge for the removal of such vehicles from private property, to charge the owner of the private property for the removal, and if he does not pay, to place a lien on his land for the charge, collectible in the manner of tax liens.

Police Jurisdiction

As in years past, a number of municipalities received authority to extend police jurisdiction extraterritorially, usually two miles. One important local act directs that, upon approval of the commissioners of Mecklenburg County, and following agreement on implementation by Charlotte and Mecklenburg, the Charlotte city police shall have full jurisdiction throughout the county.

Alcoholic Beverages

No general laws were passed in this area directly affecting municipalities. As usual there were a great many local acts dealing with alcoholic beverages, providing for the distribution of profits from ABC stores, changing the methods of local enforcement of the ABC laws, and repealing geographical limits on the sale of beer and wine. In addition, seven municipalities were authorized to hold ABC referendums, and two others to hold ABC and beer and wine referendums, and all municipalities in Rockingham, Cleveland, and Stokes counties having at least one full-time salaried police officer were authorized to hold ABC referendums.

Purchasing and Contracting

Chapter 806 (S 734)—discussed under Intergovernmental Relations, above—authorizes the exchange of real property by municipalities with other governments. Personal property exchanges had been authorized by G.S. 160-159. As usual there was a good bit of local legislation falling, however, into familiar categories. A large number of private sales of specified land to specified buyers were authorized, while a number of cities raised the minimum price for municipal purchases requiring use of the bid procedure—usually from $2,000 to $3,000.

Miscellaneous

- *Auxiliary Police.* Chapter 206 (S 240) authorizes municipalities to establish auxiliary police, and grants such police workmen's compensation benefits. Thus the practice of many North Carolina cities and towns gains legal status and protection.
- *Water Safety Committees.* Chapter 1093 (H 1225) authorizes local governments singly or jointly to create local water safety committees of fifteen to thirty-five members, representing various interested viewpoints. The purpose of such committees is to facilitate communications between the public and local and state officials involved in water safety.
- *Air Pollution Control.* Chapter 538 (S 184) permits one or more municipalities and/or counties to establish local air pollution control programs. Such programs may plan the local fight against air pollution; control

Table I

LOCAL LEGISLATION AFFECTING CITIES AND TOWNS

	Number of New Laws							
	1957	1959	1961	1963	1965	1967	1969 Passed	1969 Killed
Structure and Organization								
Incorporation and Dissolution	7	11	6	9	8	12	17	3
Form of City Government	25	28	30	27	34	38	30	3
Election Procedures	41	44	34	35	34	27	27	1
Compensation of Officers	29	15	11	12	17	31	13	1
Qualification, Appointment	8	6	4	11	7	4	6	1
Retirement, Civil Service	10	17	11	22	31	15	28	1
Comprehensive Charter Revision	16	13	28	17	10	13	13	1
	136	134	124	133	141	140	134	11
Finance								
Taxation and Revenue	21	14	14	9	2	8	8	42
Expenditures	9	6	9	15	4	5	4	0
Tax Collection	10	12	8	13	2	11	8	1
Special Assessments	15	7	6	12	8	4	8	2
	55	39	37	49	16	28	28	45
Planning, Zoning, and Extension of Limits								
Planning and Zoning	22	19	21	24	32	22	18	3
Annexation	28	35	15	14	21	21	23	11
	50	54	36	38	53	43	41	14
Powers and Functions								
Streets, Traffic, and Parking	4	4	1	4	3	9	6	0
Regulatory Powers, Other	20	8	5	3	7	8	10	1
Police Jurisdiction	15	9	14	6	12	1	7	0
Local Courts	27	25	12	25	14	6	5	0
Beer, Wine, and Liquor	7	6	14	19	36	27	30	8
Other Functions	17	13	18	14	15	19	20	4
Purchasing	—	—	—	—	2	7	11	0
Sale of Property	40	18	19	23	17	27	16	1
Miscellaneous	7	4	4	3	10	16	29	1
	140	87	87	97	132	128	134	15
Grand Total	378	314	284	317	326	331	337	85

Note: The tabulation for the 1969 session shows both bills that passed and those that failed. For prior sessions, only bills enacted into law are shown. Before 1965, bills falling in the "purchasing" category were tabulated under other headings. It should be noted that legislation does not always fall with clarity into one category or another. When a bill seems to fall into more than one category, it is given a multiple entry. Total revisions of municipal charters are entered only under the charter-revision category even though they may contain clauses affecting multiple categories. When legislation was introduced in completely identical form in both houses of the legislature, an entry is made only for the bill that actually passed, or tabulated only once if both versions failed. The 1969 session's tabulation of 422 entries actually represents 385 separate bills. The unusual number of failed bills can be attributed largely to single-county local-option sales tax introductions.

and abate new and existing pollutants; monitor air quality; inventory emissions; adopt air quality and emission standards; and provide a schedule for the control and abatement of pollutants. Governments may pass ordinances to enforce the rules of the program. Permits may be required to deal in certain activities leading to pollution. Finally, the act provides that program administration may rest with the governing board, with a special air pollution board, or with the local board of health.

• *Cemetery Transfers.* Under the provisions of Chapter 402 (H 494) municipalities may transfer municipal cemeteries and any perpetual or trust funds to religious organizations agreeing to maintain the property as a cemetery.

• *Vital Statistics.* The rewrite of the Vital Statistics Law—Chapter 1031 (H 1060)—included a deletion from G.S. 160-200(22) of the authority to municipalities to regulate the registration of deaths, marriages, and births.

New Books in the Institute Library

August, 1969

Haddad, William F., and G. Douglas Pugh, editors. *The American Assembly. Black Economic Development.* Englewood Cliffs, N.J.: Prentice-Hall, 1969.

Bordua, David J. *The Police.* New York: Wiley, 1967.

Cleaveland, Frederic N., and associates. *Congress and Urban Problems.* Washington, D. C.: Brookings Institution, 1969. Paperback.

Eldefonso, Edward. *Law Enforcement and the Youthful Offender: Juvenile Procedures.* New York: Wiley, 1967.

Gordon, Chad and Kenneth J. Gergen. *The Self in Social Interaction.* New York: Wiley, 1968.

Gordon, Kermit. *Agenda for the Nation.* Washington: Brookings, 1968.

Hovey, Harold A. *The Planning-Programming-Budgeting Approach to Government Decision-Making.* New York: Praeger, 1968.

Spiegel, Hans B. C. *National Training Laboratories Institute for Applied Behavioral Science. Citizen Participation in Urban Development.* (Vol. 2 of Cases and Programs, Selected Reading Series 8). Washington, D. C.: 1969.

Schmandt, Henry J., and Warner Bloomberg, Jr. *The Quality of Urban Life.* Beverly Hills, California: Sage, 1969. (Vol. 3 of Urban Affairs Annual Reviews)

Wolfgang, Marvin E., ed. *Crime and Culture.* New York: Wiley, 1968.

Counties

By Joseph S. Ferrell

Most of the 1969 legislation of interest to counties is discussed in other articles in this or the subsequent issue of Popular Government. *The reader is particularly urged to see the following articles: Home Rule Legislation, Constitutional Revision, Election Laws, Elementary and Secondary Public Education, Health Legislation, Planning, Property Taxation, Public Personnel, and Social Services.*

Those involved with and interested in county government should be particularly pleased with the 1969 General Assembly. As the session opened, the Local Government Study Commission's "home rule" package was introduced. Later, the Commission's proposed revision of Article V of the North Carolina Constitution, which controls local finance, was presented. The Governor's legislative program included endorsement of the Commission's constitutional amendments and a proposal for a new State Department of Local Affairs. The North Carolina Association of County Commissioners and the North Carolina League of Municipalities asked for a local-option sales tax. Planning officials requested a comprehensive revision of local building inspection laws, authority for counties to engage in urban renewal, and several other measures. The Local Government Commission asked for several "housekeeping" amendments to the laws relating to bonded indebtedness. As the session progressed, more and more of these bills were enacted into law. When all of them were finally enacted with only insignificant modifications, observers were hard pressed to recall a legislative session that had expressed more concern with and sympathy toward the problems of county government.

On the whole, the 1969 General Assembly's new laws directly affecting county government are impressive. Counties have been very nearly released from dependence on local legislation in the crucial areas of local salaries and governmental form. Authority to enact local ordinances has been granted to counties, a move possibly unique and certainly most unusual in the nation. A major new source of local revenue has been authorized, subject only to voter approval. Constitutional amendments have been proposed that will enable the legislature to restructure local government if necessary. And a State Department of Local Affairs will focus attention on the problems of county and city government at the highest levels of state government.

GOVERNMENTAL FORM

For further details on this section, the reader is referred to the article on home rule in this issue.

- *Modification of Form of Government.* Chapter 717 (S 43) delegates power to modify the structure and mode of election of the board of commissioners.
- *Salaries and Allowances.* Chapter 180 (H 50) permits boards of county commissioners to fix their own compensation and allowances, and Chapter 358 (H 349) authorizes all boards of commissioners to fix the salaries of all elected and appointed officers and employees of their county, except those subject to the State Personnel Act.

• *Ordinance-Making Authority.* Chapter 36 (H 57) grants general ordinance-making powers to counties.

• *Vacancies.* Chapter 222 (S 247) revises the procedure for filling vacancies on the board.

• *Clerk to the Board.* Chapter 207 (S 249) permits the board to select a clerk other than the register of deeds.

• *Time of regular meetings, and meeting procedures.* Chapter 349 (S 251) authorizes the board to hold regular meetings on a date other than the first Monday of the month and revises the law relating to conduct of meetings.

GENERAL POWERS

• *County Exemptions Repealed.* Chapter 1003 (H 55) and Chapter 1010 (H 1214) remove the county exemptions from all powers granted in Chapters 153 and 160 of the General Statutes. See the articles on home-rule legislation and planning in this issue.

• *Registers' Fees.* Chapter 80 (S 44) repeals G.S. 153-9(12a), which granted certain counties authority to fix fees charged by the register of deeds and other officers, and substitutes a uniform fee schedule for registers of deeds. See the article on home-rule legislation.

• *Reapportionment.* The 1966 special session of the General Assembly reapportioned the Senate and House of Representatives and revised the congressional districts in response to an order of the federal court. That session also enacted legislation permitting county commissioners elected under a districting arrangement to either reapportion the districts or abolish the districts and elect the board at large. The act was not clear, however, as to whether a reapportionment could be made which apportioned one or more members to the county at large and the remainder among districts. Chapter 994 (S 742) amends G.S. 153-5.2 to make it clear that this is a possible alternative.

• *Disposal of Real Property.* The general law concerning disposal of surplus real property by a city requires a public auction. Counties are free to dispose of their real property as they see fit. Action by the Council of State is required for disposal of land belonging to the state. There is specific authority for school boards to dispose of school property according to procedures set out in Chapter 115 of the General Statutes. Often counties, cities, the state, and boards of education want to exchange tracts of land or convey property to one another in furtherance of some governmental objective in which each party is interested. In these instances, the general laws concerning disposal of real property are often a hindrance since the procedures and limitations applicable to each party are different. As a result, a local act has usually been obtained for the sale, exchange, or lease of property among governmental units. Chapter 860 (S 734) provides a general law procedure for the sale, lease, exchange, or joint use of governmental property among counties, cities, boards of education, the State Highway Commission, or any other state agency. The act requires that any such action may be taken only after a public hearing, notice of which shall have been published twice beginning at least fifteen days before the hearing. There is some question whether this act supersedes the existing authority for school boards to lease or exchange property. The problem is discussed in the article on elementary and secondary public education in this issue.

• *Joint Functions.* Since 1933 counties have been authorized by G.S. 153-246 to enter into agreements for the joint performance of similar administrative functions with other counties or with cities within the county. This statute was amended by Chapter 380 (H 594) to make it clear that joint agreements can be made which do not require a formal merger of the cooperating departments or the use of a joint facility. For example, G.S. 153-246, as amended, clearly permits a county and city to enter into a joint purchasing agreement without establishing a joint purchasing department.

• *"Quick Take" Condemnation.* Chapter 964 (H 959) would have authorized all counties to use the "quick take" condemnation procedure used by the State Highway Commission under Article 9 of Chapter 136 of the General Statutes. Under this procedure, the state can acquire immediate possession of the property it seeks to condemn by making a deposit into court of the amount it estimates the property is worth. Thus, a project cannot be delayed by denial of possession of a piece of land pending litigation over its value. This act was amended to make it applicable to Guilford County only. It seems likely, however, that other counties may be added to the act over the years.

FINANCE AND TAXATION

Local Option Sales Tax

It has become increasingly apparent over the last decade that the demands for services made by the people on local government have outdistanced their willingness to finance them from the property tax. Some observers are convinced that the property tax has been exploited to the limit of its usefulness as the major source of local revenue, and that further increases in effective property tax rates are economically unwise and politically dangerous. Others argue convincingly that the roots of dissatisfaction with the property tax lie in inefficient and inequitable local administration. Still others believe that discontent with the property tax is but a part of a general "tax-

payer's revolt" at the spiraling costs of government. As with most debates, there is some truth in all the positions. But whatever the cause, it is a fact that those closest to the courthouses and city halls of North Carolina have been actively pressing for a major new source of local revenue for at least four years. The 1967 General Assembly rejected a bill for a statewide local sales tax, but permitted Mecklenburg County to experiment with the idea. To the surprise of many, the Mecklenburg voters approved the levy of a 1 percent local sales tax in that county. The tax was challenged in the courts as unconstitutional and won judicial approval.

With the Mecklenburg precedent in hand and any constitutional doubts dispelled, the Association of County Commissioners and the League of Municipalities put on a sustained drive for a statewide local-option sales tax bill in 1969. They were successful over the opposition of many, including at first the Governor, who wished to reserve the sales tax for exclusive state use. (Approval of an additional 1 percent levy for a number of counties might well effectively preclude the state from increasing the basic rate to 4 percent within the foreseeable future.) Part of the successful strategy was a skillful use of the local-bill system. By the end of the session, 43 local bills authorizing a local sales tax on the Mecklenburg model had been introduced. This demonstrated that a majority of the House of Representatives, at least, were committed to vote for local-option sales taxes. It also virtually insured passage of the general bill because of the local-bill system. Under the unwritten rules of local legislation, it would have been nearly impossible to defeat any one of the 43 local sales tax bills unless the 1967 Mecklenburg act were repealed. It would have been just as difficult to repeal the Mecklenburg act because the Mecklenburg delegation was solidly behind it. Thus, if the statewide bill failed, it was almost certain that 43 local bills would be enacted. Given this state of affairs, and the fact that the Senate had passed a statewide measure *before* acting on the Governor's state tax program, House approval was secured.

The act itself, Chapter 1228 (S 178) as amended by Chapter 1287 (S 907), is a compromise. Six sales tax bills were introduced (S 178, S 258, S 342, H 293, H 328, and H 1055). Basically, two questions were at issue: how should the tax proceeds be distributed among the counties and cities, and should there be some state participation in the additional revenue either through retention in the state budget or through earmarking for education. On the distribution issue, the lines were drawn between the large, populous counties containing the trading centers on the one hand and the small, rural counties on the other. If the local sales tax were all returned to the county of collection, counties with large cities would benefit at the expense of the smaller counties, while the small units would benefit by distribution on a per capita basis. The act attempted to satisfy both categories by dividing the tax proceeds into two halves. One half will be distributed to the county of collection. This half will then be allocated to the county and the cities therein according to their proportion of the total property for tax levy of all governmental units in the county. This is the same formula used to allocate the intangibles tax among the county and its cities. The other half of the tax will be distributed to participating counties and cities on a strict per capita basis. The per capita figure is obtained by adding the population of all participating counties and the municipalities therein and dividing this into one half of the tax proceeds. As originally enacted, Chapter 1228 did not specify how population figures would be derived, thereby leaving federal census figures as the probable method. Chapter 1287 amended Chapter 1228 to authorize the use of population estimates supplied by the Director of Administration. Thus, fast-growing areas of the state would not be forced to rely on progressively out-of-date census figures.

As implied by its popular name, the local-option sales tax act will be implemented in a county only by vote of the people. On November 4, 1969, a referendum will be held throughout the state on the levy of an additional one-cent sales tax with the proceeds distributed as described above. If the proposition is defeated in a given county, another election can be called under the act not earlier than one year later either upon the initiative of the board of county commissioners (but not a city council) or upon a petition of 15 percent of the number of voters who participated in the last election for Governor. A special provision for Nash and Edgecombe counties requires approval in each county for the tax to be levied in either.

Property Tax

• *Exemptions.* The 1969 General Assembly withstood the biennial attack on the intangibles tax, turned down a proposal to grant preferential tax treatment to farm land located near urban areas, and defeated several proposals for additional exemptions from the property tax. The only exemption proposal gaining legislative approval provides that the impoundment of water on marshlands shall not be considered to increase the taxable value of the land if the impoundment is done for conservation or recreational purposes.

• *Discount Schedules.* In line with its general disposition to grant more home-rule powers to counties, this session of the General Assembly authorized counties, this session of the General Assembly authorized counties to adopt their own schedules of discounts for pre-payment of taxes. Formerly, variations from the general law schedule were secured by local act.

Privilege and Marriage License Taxes

• *Privilege Licenses.* The owner of a laundry has had to pay only one privilege license tax on his busi-

ness even though it may be conducted at more than one location. Dry-cleaning businesses, however, formerly had to pay a separate license tax for each location. Chapter 884 (H 1127) amends G.S. 105-74 to eliminate the language that required a license for each location of a dry-cleaning business.

• *Marriage License Taxes.* Chapter 80 (S 44) repeals the authority of county commissioners to levy a special tax on marriage licenses and fixes a uniform marriage license fee that will be paid into the county General Fund. No significant loss of revenue is expected from this repeal since the revised fee equals the old fee plus the tax.

Gas and Sales Tax Refunds

Local governments are required to pay the state gasoline and sales taxes on their purchases but are entitled to a refund of these taxes upon timely application to the Department of Revenue. The law requires that these applications be filed quarterly and formerly denied any refund if the application was late. Since 1963, the General Assembly has refused to enact any local bills authorizing refunds lost due to late application. Chapter 1298 (H 1411) modifies the refund statutes to allow late refunds, but subject to a penalty. Under the new law, if the application is filed on time, all the gasoline or sales tax paid will be refunded. If filed within 30 days after the required date, a penalty of 25 percent of the refund will be deducted. If filed after thirty days but within six months after the required date, the penalty is 50 percent of the refund. Applications more than six months late will not be honored.

Submission of Contracts to the Voters

Under the decision of the Supreme Court in *Vance County v. Royster*, 271 N.C. (1968), it seems probable that any contract made by the county which requires the payment of money in the future will be held to be a debt within the meaning of the Constitution. This means that many of these contracts will require voter approval. The law formerly provided machinery only for submitting the issuance of bonds and notes to the voters, since it was not contemplated that any other type of contractual obligation would require voter approval under the Constitution. Chapter 944 (S 678) authorizes the submission to the voters of any contract which creates a debt within the meaning of the Constitution. If the amendments to Article V of the Constitution proposed by Chapter 1200 (H 331) are approved, only a borrowing of money will come within the constitutional definition of "debt," and this act will be made unnecessary.

Time of Budget Adoption

Chapter 976 (S 743) amends the County Fiscal Control Act to fix the deadline for submission of the annual budget estimate as the "first regular meeting in July" rather than the "first Monday in July," and the last day for budget adoption as "the first regular meeting in August" rather than "July 28." These amendments were made in response to the enactment of Chapter 349 (S 251) which permits adoption of a date other than the first Monday as the regular meeting day.

Bond Procedures

• *Facsimile Seals and Signatures on Bonds.* Chapter 29 (H 139) permits the use of facsimile seals and signatures on bonds, notes, or other evidences of indebtedness issued through the Local Government Commission. Heretofore, the signatures on each bond had to be manually affixed, which often required a trip to New York by the chairman and clerk to the board of commissioners. Under Chapter 29, the county seal and all signatures but one may be printed on the bond or note. At least one manual signature will still be required, but this may be the signature of the representative of the Local Government Commission on the Commission's certificate.

• *Bond Issuance Deadline Stayed by Litigation.* Chapter 99 (H 175) clears up on oversight in G.S. 153-102. The County Finance Act requires that bonds must be issued within five years after the bond order takes effect, unless the order is repealed. There was no provision for extending this deadline should the bond issue be challenged in court and the issuance of the bonds delayed by court order. In at least one instance, litigation over a bond issue had not concluded at the end of the five-year period, and the bonds could not be issued even though the court upheld the validity of the issue. Chapter 99 amends G.S. 153-102 to provide that if the issuance of bonds is prevented or prohibited by litigation, the period of time in which the bonds may be issued is extended by adding the period of time involved in the litigation to the five-year period fixed by G.S. 153-102.

• *Bond Bid Deposits.* Chapter 943 (S 632) amends G.S. 159-13 to allow bond bidders to make their bid deposit with official bank checks or cashier's checks in addition to certified checks. Formerly, the law permitted only certified checks.

Miscellaneous Finance Legislation

• *Agricultural Census Reports Payments.* Chapter 796 (S 634) increases the payments made by the State Department of Agriculture for its census reports from 20 cents to 40 cents per report.

• *State Assumes Cost of Postconviction Appeals Transcripts.* G.S. 15-220 and G.S. 15-222 formerly required the county to pay the cost of supplying a transcript of the original trial to indigent defendants pursuing postconviction appeals. Chapter 1296 (H 1200) amends these statutes to require the state to bear this expense after July 1, 1969.

• *Aid to Sheltered Workshops.* Chapter 802 (S 663) authorizes counties to appropriate nontax funds and render other forms of assistance to "private, nonprofit, charitable organizations offering work and training activities to the physically or mentally handicapped, such organizations being commonly known as sheltered workshops." The enabling act goes on to require that the resolution appropriating funds to such organizations "shall specifically state the object to which the funds are to be applied, and the commissioners shall require a periodic accounting for the expenditure of such funds to insure that they are spent for the intended purpose."

MISCELLANEOUS

• *Fire Marshal May Investigate Fires.* Curiously, the legislature that enabled counties to appoint a fire marshal did not give him the legal authority to investigate fires. Chapter 894 (S 611) remedies this oversight by amending G.S. 69-1 to include the county fire marshals in the list of those authorized to investigate fires.

• *Status of Library Employees Clarified.* Chapter 488 (H 540) amends G.S. 160-70 to provide that the employees of a county or municipal library are to be considered employees of the county or municipality, as the case may be. This clears up any problem with workmen's compensation coverage or eligibility for the Local Governmental Employees' Retirement System.

• *Register of Deeds' Bond.* Chapter 636 (H 837) amends G.S. 161-4(a) to fix the amount of the register of deeds' bond at not less than $10,000 nor more than $50,000, the actual amount to be fixed by the board of county commissioners. Heretofore, the commissioners were required to take a "sufficient" bond, but no amount was suggested. Similar legislation is needed for other bonded officers and employees. Chapter 636 is effective on December 1, 1969.

• *Aid for Airport Construction.* The 1967 General Assembly set up a state aid program for construction of local airports. State aid is limited, however, to 25 percent of the total cost. Chapter 293 (H 347) increases the permissible state aid for purchase of land and easements, runway lights, and approach facilities to 50 percent. Chapter 1109 (H 1384) makes the State Department of Conservation and Development the state agency designated to accept federal grants under the Aviation Facilities Expansion Act of 1969. The Department will have authority to disburse grants under this act to local governments in aid of airport construction or improvement.

• *Local Government Study Commission Continued.* The Local Government Study Commission was continued for another biennium by Resolution 111 (H 1381). No change was made in the subjects to be investigated by the Commission, or in its composition.

• *Omnibus Riot and Civil Disorder Act.* One of the major pieces of legislation to come out of the 1969 General Assembly was the Omnibus Riot and Civil Disorder Act. It is discussed at some length in the article on criminal law, but counties will want to become particularly familiar with the authority it grants to enact local ordinances, issue proclamations of states of emergency, and impose curfews in riot situations. The ordinance-making procedure provided by the Riot and Civil Disorder Act was intended to override the procedure provided in G.S. 153-9(55) as amended by Chapter 37.

THE COURTS

By C. E. Hinsdale

This year, for the third session in a row, the General Assembly enacted an impressive volume of legislation affecting the courts. The 1969 output is not so significant or far reaching as that of the earlier two sessions, but it is nevertheless solid and constructive. The new district court system was extended to the last seventeen counties in the state; the Judicial Department Act of 1965 was further refined; jurisdiction and procedures with respect to children were modernized; laws respecting the representation of indigents were expanded and codified; a public defender was established in two urban judicial districts; a permanent Courts Commission was created; and many recent enactments concerning the General Court of Justice were examined, polished, and approved.

Extension of the District Court System

Judicial districts 17, 19, 22, 23, and 28, scheduled to adopt the district court in December, 1970, thus completing the statewide switch-over that began in 1966, were given a quota of judges and magistrates, and additional seats of court for these seventeen counties were specified (see table on page 35) (H 1221, Ch. 1190).

Amendments to G.S. Chapter 7A, Judicial Department

The same act that extended the district court system to the remaining counties in the state also made a number of minor, perfecting amendments to Chapter 7A of the General Statutes, the basic law establishing the unified General Court of Justice. Most of these changes affect the District Court Division, and only the most noteworthy changes will be mentioned here. Three judicial districts (18, 25, 26) received an additional district court judge, bringing the current total to 93 and the total in December, 1970, to 112. Two districts (14, 27) received an additional full-time assistant prosecutor. The office of prosecutor will be superseded in January, 1971, by the office of full-time assistant solicitor, and the law provides at that time for a total of 71 full-time assistant solicitors for the 30 districts of the state. Belhaven and Hamlet were added as additional seats of court in the third and twentieth districts, respectively, bringing the 1970 total number of seats of district court to 135. The fifth judicial district received an additional superior court judge, bringing the number of regular superior court judges to 41.

Two minor adjustments were made in the trial courts' jurisdiction. The first of these permits magistrates, who are frequently available to try cases at irregular hours, to try not-guilty-plea worthless-check cases if the check is for $50 or less. The General Assembly ignored an argument that this would open the door to return of the discredited "collection agency" practice of the justice of the peace, favoring instead some relief for the small (frequently one-man) business which is at an economic disadvantage in having to prosecute bad-check writers in the district court during regular business hours. (This particular amendment was made by H 888, Ch. 876.) The second change concerns the authority of the superior court over misdemeanors appealed from the district court for trial de novo. Formerly, it was generally agreed that, for example, the superior court could not accept a guilty plea to careless and reckless driving on an appealed conviction for drunk driving. G.S. 7A-271 was amended to provide specifically that, on appeals for trial de novo, the superior court could

accept a guilty plea to a "lesser-included or related charge," and, to be doubly sure, a second amendment gave the superior court jurisdiction over appealed misdemeanors to the same extent "as the district court had in the first instance."

Two changes in the small-claims statute deserve mention. To eliminate the rare but not unknown circumstances of an out-of-county plaintiff showing up, as notified, for trial only to find that service of process had never been had on the defendant, an amendment to G.S. 7A-213 requires the clerk of superior court to obtain return of service on the defendant before notifying the plaintiff of the time and place of trial. And in summary ejectment cases, under an amendment to G.S. 7A-217, service as formerly allowed under G.S. 42-29 (by leaving a copy of the summons with an adult at the last known residence or by affixing the summons to the premises claimed) is once more legal.

The increasing incidence of attorneys' appearing on behalf of children in juvenile court with no official present to represent the state prompted an amendment to G.S. 7A-61 and 7A-160 making the prosecutor (solicitor, after January 1, 1971) responsible for representing the state in juvenile cases when the juvenile is represented by an attorney.

An amendment to G.S. 7A-192 makes it clear that the district court has jurisdiction over cases initially acted upon in the superior court but transferred to the district court, pursuant to Chapter 7A, when the district court was established in a particular county.

Additions to the District Court System in December, 1970

Dist.	*Judges*	*County*	*Magistrates Min.-Max.*	*Add. Seats of Court*
17	4	Caswell	2-3	—
		Rockingham	4-8	Reidsville Eden Madison
		Stokes	2-3	—
		Surry	4-6	Mt. Airy
19	5	Cabarrus	4-7	Kannapolis
		Montgomery	2-3	
		Randolph	4-6	
		Rowan	4-8	
22	4	Alexander	2-3	
		Davidson	5-7	Thomasville
		Davie	2-3	
		Iredell	4-6	Mooresville
23	2	Alleghany	1-2	
		Ashe	2-3	
		Wilkes	4-6	
		Yadkin	2-3	
28	4	Buncombe	6-10	

This will make it clear that the district court may enforce continuing judgments in domestic relations cases (support orders, for example) without having to send the matter back to superior court.

Of particular interest to attorneys is an amendment to G.S. 7A-258(a) which liberalizes the superior court judge's power to transfer civil suits from one trial division to another. Formerly, a suit had to be in the "improper" trial division (usually, this had reference to the pleaded amount in controversy) if the judge was to have authority to transfer it. Now, for example, if an automobile accident gives rise to an action for property damages for less than $5,000 in the district court and an action for personal injuries for more than $5,000 in the superior court, on motion the superior court judge may consolidate the actions for trial in the same trial division, if he deems the transfer will facilitate the administration of justice and if all parties consent.

Also of particular interest to attorneys representing convicted misdemeanants who appeal to the superior court, as well as to harried clerk-bookkeepers, will be the repeal of language in G.S. 7A-288 and G.S. 7A-304 that permitted "appeals back," without cost, to the district court within certain specified time limits. Henceforth the appellant will be liable for superior court costs after he gives notice of appeal whether he pursues his trial de novo or not. The repealed provision, inserted into the statute in 1967, was designed to decongest appellate criminal dockets in the superior court. In practice it apparently had no such effect. Henceforth the defendant who gives notice of appeal must be prepared to pay both district and superior court costs if he loses the appeal. Of course, if the defendant wins (that is, if he is acquitted) on appeal, no costs are payable to either court. Only time will tell the effect on appellate dockets of this new provision.

Amendments to Chapter 7A of particular interest to the clerk of superior court, since they will reduce paper work, are elimination of mileage for jurors (with a compensating raise in the daily juror's fee from $7 to $8) and repeal of the requirement for submission of certain time-consuming criminal statistics to the Attorney General. Hereafter, such statistics as may be needed to operate the Judicial Department efficiently will be collected by the Administrative Office of the Courts pursuant to authority of G.S. 7A-343.

Miscellaneous additional changes in Chapter 7A: a court reporter's original notes (tapes, etc.) are state property, and the superior court clerk is responsible for their custody; district court judges, in future elections, will run for numbered seats; and the office of township constable (G.S. Ch. 151) is abolished effective January 1, 1971.

The foregoing amendments to Chapter 7A, with the single exception noted, were made by H 1221, Chapter 1190.

Representation of Indigents

Starting with the landmark case of *Gideon v. Wainwright* (1963), the U.S. Supreme Court in a series of decisions has steadily expanded the right of indigent persons to counsel in criminal cases. The flow of cases prompted the 1965 and 1967 sessions of the General Assembly to patch North Carolina's indigency statutes accordingly, but several cases decided since the adjournment of the 1967 General Assembly convinced the Courts Commission that our statutes dealing with the right of indigents to counsel required thorough revision. As the Commission's recommendations were approaching bill form, in January, 1969, the North Carolina Supreme Court decided *State v. Morris*, which went somewhat beyond the specifics of the federal cases and held that an indigent defendant is entitled to counsel if the authorized punishment for the offense charged exceeds six months' confinement and a $500 fine. The *Morris* holding was incorporated in the Court Commission draft, and this section of the draft was accepted by the Assembly without change. North Carolina thus has a modern statute granting free representation of counsel to criminal indigents to the extent of case-law requirements, at least as of the time of enactment. (Further extension of the right to counsel is not unlikely. Of concern here is a possible Supreme Court holding that indigents facing civil commitments to mental institutions are entitled to counsel, a situation which the new North Carolina statute leaves uncovered.) Lawyers and judges concerned with the application of the new law (Chapter 7A, Article 37) will want to study its exact language, which is too lengthy to quote here (H 164, Ch. 1013).

The new law defines an indigent as one who is "financially unable to secure legal representation and to provide *all other necessary expenses of representation*," and provides that fees for expert witnesses and other necessary expenses must be borne by the state (emphasis supplied). Provision is also made for a person who can pay a portion but not all of the costs of his defense to do so on order of the trial judge; unpaid portions become a judgment lien against the defendant, recorded in the office of the clerk of superior court. In ninety-seven counties of the state, the State Bar Council will, as before, issue implementing regulations concerning rosters of local counsel available for assignment, mechanics of determinations of indigency, etc. In three counties, the present system of assigning counsel from the local district or county bar will be replaced by a public defender system.

The Public Defender

The office of Public Defender is authorized, effective January 1, 1970, in the twelfth (Cumberland and Hoke counties) and eighteenth (Guilford County) judicial districts (G.S. 7A-520). The duty of the defender is to represent indigents charged with crimes under the same circumstances and to the same extent as counsel assigned by the court to represent indigents in the other ninety-seven counties of the state. The defender is nominated by secret ballot of the local district bar and is appointed by the Governor for a four-year term. His salary is the same as that of a full-time district solicitor. His office is supported by the state. In conflict cases, or in any case in which the trial judge deems it necessary, counsel from the bar at large may be assigned to represent a particular defendant instead of the defender, but it is contemplated that, assuming a sufficient number of assistant defenders are provided by the state, the defender will represent the vast majority of the indigents in the two chosen districts (H 164, Ch. 1013). Success of the defender system in these two districts will pave the way for expansion of the system to additional urban districts, as has occurred in recent years in about 300 counties (mostly metropolitan) throughout the country (H 164, Ch. 1013).

Selection of Jurors

The workability of the 1967 major revision of the jury selection law has been proved by two years' operation. Only a few very minor adjustments were made in the law this year. One amendment (G.S. 9-4) emphasizes that it is the duty of the jury commissioners to screen the names of persons on the raw list of prospective jurors and remove those who are disqualified. A second adjustment to the same section lowers the number of names required for the raw list from three times as many as were drawn in the previous biennium to "not less than two times and not more than three times" as many. This will result in a saving of time and money, especially in the larger counties. Jurors deferred by a trial judge from one session to another are to be treated the same as jurors initially summoned for the second session, thus making it clear that deferred jurors are also eligible to be drawn for grand jury service. Custodians of property tax and voter registration records are required, by an addition to G.S. 9-2, to cooperate with the jury commission in the compilation of the raw list. All qualified persons remain eligible for jury service; attempts to exempt various occupational groups from service were defeated (S 5, Ch. 205).

Permanent Courts Commission Created

The temporary Courts Commission, created by the 1963 General Assembly to implement the new judicial article of the Constitution, has seen all of its major recommendations adopted by the last three sessions of the General Assembly. So successful has it been that a permanent Courts Commission, superseding the temporary Commission (which had only eighteen months to go) was created effective July 1, 1969 (G.S. 7A-600). The charter of the new commission is modeled closely after that of the temporary commission: 15 members, appointed for overlapping terms

by the Speaker of the House and the President of the Senate, with a mandate to study continuously the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and the General Court of Justice, and to make recommendations to the General Assembly from time to time for such changes therein as will facilitate the administration of justice (S 786, Ch. 910). By joint resolution the legislature gave the new Commission its first task: a study of all phases of the selection, compensation, discipline, removal, retirement entitlement, retirement compensation, and survivor benefits of all judges and solicitors of the General Court of Justice, with recommendations as deemed appropriate (S 549, Res. 62).

Rules of Civil Procedure

The effective date of the new rules of civil procedure (G.S. Chapter 1A) was postponed from July 1, 1969, to January 1, 1970. At the same time various editorial changes and three changes of importance were made in the rules as adopted in 1967. The three important changes deal with Rule 4 (expanding and making more flexible the various procedures for service of process outside the state), Rule 41 (permitting the plaintiff to take a nonsuit at any time before resting his case), and Rule 50 (clarifying the procedure for a motion for judgment notwithstanding the verdict) (S 651, Ch. 895). Judges, lawyers, and clerks will want to study the text of the changes carefully before January.

Chief District Judges

Chief district judges are required by an amendment to G.S. 15-20 to "devise and issue a recommended policy which may be followed on the use of a summons instead of a warrant of arrest," and by G.S. 15-103½ (new) to "devise and issue recommended policies which may be followed on the use of bail and the amounts thereof; the use of release on a person's own recognizance, and the use of unsecured appearance bonds and the amounts thereof" (S 337, Ch. 1062). While one of the purposes of these provisions may be to achieve some uniformity in the matters quoted, the policies arrived at will still vary from district to district (there being twenty-five chief district judges, with five more to be appointed in 1970). If statewide uniformity in such matters is desirable, it could be achieved under the provisions of G.S. 7A-148, which since 1966 has authorized chief district judges in annual conference to take actions that will "promote the uniform administration of justice."

The authority of chief district judges has been extended in another direction. By repeal of G.S. 122-90, and amendment of G.S. 122-91, chief district judges are authorized to commit alleged mentally ill "criminals" to state mental hospitals for observation prior to trial (H 994, Ch. 767). This latter amendment should expedite the disposition of alleged felons who are suspected of mental incompetence.

Judicial Council

The Judicial Council acquired four additional members: a judge of the Court of Appeals, to be appointed by the Chief Judge; a judge of the district court, to be appointed by the Chief Justice; a second member of the Senate, to be appointed by the President of the Senate; and a second Representative, to be appointed by the Speaker of the House of Representatives (H 1297, Ch. 1015).

Clerks of Superior Court

Superior Court clerks will be particularly interested in the following selected list of new laws, not a part of Chapter 7A. An amendment to G.S. 1-239(b), which required the clerk to notify the attorney of any party in whose favor a judgment had been rendered prior to paying the amount of the judgment held by him to the party, authorizes waiver of the notice by the attorney. Waiver is indicated by signing the judgment docket (S 64, Ch. 18). G.S. 28-39.1 is amended to validate through May 1, 1969, conveyances of real estate in this state by foreign executors *and administrators* (S 733, Ch. 1067). G.S. 28-107.1 (new) provides that the funeral expenses of a decedent are a debt of the decedent's estate for which the estate is primarily liable (H 902, Ch. 610). An amendment to G.S. 30-15 (H 77, Ch. 14) raises the year's allowance of a surviving spouse from $1,000 to $2,000, and an amendment to G.S. 30-17 (H 422, Ch. 269) raises the year's allowance of a child from $300 to $600. G.S. 31-1 is amended to permit *any* person of sound mind, eighteen years of age and over, to make a will (H 181, Ch. 39). G.S. 39-13.5 (new), effective October 1, 1969, permits creation of a tenancy by the entirety in a partition proceeding (S 112, Ch. 748). G.S. 40-12.1 (new) requires the clerk to index and cross-index Chapter 40 condemnation proceedings (H 1062, Ch. 864). Effective October 1, 1969, a new Uniform Federal Tax Lien Registration Act is effective (S 120, Ch. 216; G.S. Chapter 44, Article 11). Under this act, liens on all real property and certain personal property for federal taxes shall be filed in the office of the clerk of superior court. The clerk's duties with respect thereto are spelled out in detail in the act. (Liens recorded with the register of deeds prior to October 1 remain there). The law relating to mechanics' and materialmens' liens was rewritten and transferred to Chapter 44A, effective January 1, 1970 (S 77, Ch. 1112). G.S. 46-17.1 (new) provides new authority for dedication of streets in partition proceedings where none of the property is being sold (S 67, Ch. 45). G.S. 122-63 is amended to authorize the clerk, with the approval of the examining physicians, to order an alleged mentally ill or inebriate person to obtain outpatient care under local supervision rather than send the person to a state hospital. If the program of local treatment fails or is not followed by the patient, the clerk can order the patient back be-

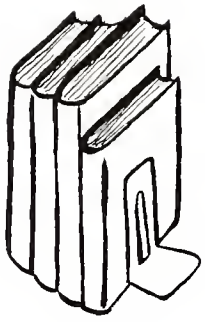
fore him for other action. Under this new procedure, outpatient treatment can also be preceded by a period of hospitalization, if the physicians so recommend. (S 827, Ch. 1127).

Major Proposals That Failed

By a narrow margin the House defeated a proposal to elect superior court judges by vote of the nominating district (rather than by statewide ballot). Measures to amend the Constitution to prohibit nonlawyers from holding the office of judge, to permit retirement age limits for judges, and to authorize waiver of jury trial in superior court were also defeated. A proposal to permit a misdemeanor defendant, by requesting a jury trial, to bypass the district court and be tried initially in superior court passed the House but failed in the Senate. These proposals, or at least some of them, will undoubtedly come up for consideration by the 1971 General Assembly.

Other Laws

Readers interested in this summary will also be interested in the articles contained in Popular Government's *two 1969 legislative issues (September and October) concerning criminal law and criminal procedure, motor vehicle law, and the new juvenile jurisdiction and procedure statute discussed in the article on juvenile corrections and family law.*



ELEMENTARY AND SECONDARY

Education

By Robert E. Phay

Readers of this article will find further details on certain aspects of it in the articles on constitutional revision, counties, family law, and personnel in the two legislative issues of Popular Government.

The 1969 General Assembly produced a volume of significant legislation for public schools. Largely as a result of the recommendations of the Governor's Study Commission on the Public Schools, it rewrote important areas of the school law and gave authority to provide new programs and new directions in public school operation.

It also made major increases in state appropriations for schools, appropriating $970 million for the operation of the public school system over the next biennium—an increase of $272 million (includes state matching Social Security and retirement funds that were accounted for separately in past budgets) over the preceding biennium. The major increment is in teacher and other professional employee salaries. Salaries will be increased 20 per cent over the two-year period and will be based on the index salary concept. Although this salary increase will not reach the national average—a goal sought by the State Board of Education, the North Carolina Education Association, and the United Forces for Education—the increase is substantial. Other major budget increases are to the State Board of Education, the State Department of Public Instruction, and the Advancement School. Vocational education, teacher improvement, and programs for the mentally handicapped will also receive substantial increases. Also, a small beginning toward public kindergartens was made with a $1 million appropriation for pilot work in this area. Although not everything sought for the public schools was obtained, much was provided. The North Carolina public school system should move forward under the appropriations and statutory authorizations enacted by this General Assembly.

PUBLIC SCHOOL STUDY COMMISSION

The Bills That Passed

Proposed changes in the public school system by the 1969 General Assembly were dominated by the report and recommendations of the Governor's Study Commission on the Public Schools in North Carolina. This Commission, producing the most comprehensive examination of the public school system ever made in this state, made 172 recommendations, many of which required statutory authorization or change in the school law.

Among the numerous bills introduced to implement the Commission's recommendations, eighteen were ratified into law. They include:

- *Textbooks and Instructional Materials.* This act repealed Articles 25 and 26 of Chapter 115 of the General Statutes and enacted a new Article 25A. The new article provides for the State Textbook Commission, omits all the former provisions dealing with rentals, and authorizes the shifting, from the State

Board to the local school boards, of responsibility for supplementing textbooks and library materials. Local school boards are now required to adopt written policies concerning the procedures to be followed in its unit for selection and procurement of books and instructional material. A new G.S. 115-206.13 authorizes the transfer of textbook funds appropriated to the State Board to the Nine Months School Fund for allocation to each administrative unit based on its average daily membership (Ch. 519).

• *Student Teachers.* The enactment of a new Article 18B to Chapter 115 dealing with the student teacher (Ch. 638), represents the first statutory recognition of the student teacher in the North Carolina school law. This article defines student teaching, amends G.S. 115-146 to give student teachers authority to exercise control and maintain order in the classroom when this responsibility is given to them, and clarifies the legal position of the supervising teacher. Teacher institutions and school boards with student teachers in their schools should bring this new law to the attention of their student teachers.

• *Teacher Allocation.* G.S. 115-59 was rewritten to provide a new system for allocating teachers by the State Board of Education (Ch. 539). The allocation of state-paid teachers has been a confused area of school operation: over twenty different categories, often conflicting, have been used for teacher allocation. These many categories have now been reduced to three—general, vocational, and special education—and the basing of allotments solely on the average daily attendance has been changed to permit consideration of other factors and hence greater flexibility in teacher allotments.

• *Public Kindergartens.* A public kindergarten program for five-year-olds was a high-priority Commission recommendation. The original Commission bill called for an appropriation of $18 million, which would have financed public kindergartens for 25 percent of the five-year-olds in North Carolina during the 1969-71 biennium. At this level of appropriation a complete kindergarten program could have been established by the 1976-77 school year. The request was cut, however, from $18 million to $1 million (Ch. 1213). This minuscule appropriation will be used to finance eight pilot projects in selected school systems.

• *Multi-County School Unit Consolidation.* The Commission emphasis on merger of school units was represented by new authorization for adjoining county school units and any city units located within the counties involved to merge into a single unit (Ch. 519). G.S. 115-74.2 authorizes such a consolidation when the school units involved adopt a plan for merger that is approved by the Board of County Commissioners and the State Board of Education.

• *State Funds for Summer Programs.* G.S. 115-79, which lists the objects of expenditures for which state funds may be spent, was amended to permit the use of state funds to support or finance school programs conducted in the summer if they are approved by the State Board of Education (Ch. 517).

• *Other Successful Bills.* Other ratified acts include authorization to the State Board of Education and to local school boards in G.S. 115-37 to establish a program of individualized instruction, sometimes called the nongraded classroom organization (Ch. 487); authorization to the State Board and to local boards of education in G.S. 115-35 to engage in educational research and special educational projects (Ch. 517) (this authority had been questioned by an Attorney General's ruling); authorization in G.S. 115-183 to local school units to use school buses for instructional programs and to transport children with special needs, such as those with mental and physical handicaps (Ch. 47); requirements that funds appropriated to transport special education pupils be used to find ways of transporting heretofore excluded children with physical and mental handicaps (Ch. 1293); authorization to local school boards in G.S. 115-125 to condemn up to fifty acres for a single school-facility site (Ch. 516); strengthening of vocational education programs in the middle grades, for which $3 million was appropriated (Ch. 1180); and the adoption of the index salary concept in the Appropriations Act requiring salary increases to be computed on a percentage basis in order to keep proper salary differentials between different employee positions. All of these ratified acts grew out of recommendations of the Public School Study Commission.

The Bills That Failed

The story of Commission-recommended bills that failed is primarily the story of inadequate state revenues. Among the important bills that did not pass were:

• *School Incentive Fund.* This proposal would have encouraged local school financial support with $12 million in matching state grants. The fund program is aimed primarily at those units that provide relatively little local support but could provide more.

• *Public School Salaries to National Average.* The 20 percent raise for school personnel over the next biennium represents a substantial salary increase, but the national average for teacher salaries will not be reached this biennium. Governor Scott has said that he expects this goal to be reached by the 1971 General Assembly. It should be noted that these increases totaled approximately $50 million, which would be equivalent to half of the $100 million in new money raised by the Governor's General Fund tax package.

• *State Capital Outlay Grants.* This proposal would have provided $10 million a year to help local school units in capital building programs.

• *Transportation for City Students.* The requested $4

million appropriation would have provided transportation to city public school children on the same basis as it is now provided for students in county administrative units. (In August a three-judge federal district court declared unconstitutional a state law [G.S. 115-190.1] that authorizes school bus transportation for city pupils living farther than 1½ miles from school in areas annexed since February 6, 1957. The court held that the state must provide bus transportation for all city students living over 1½ miles from school or none at all on the basis that the 1957 date is arbitrary and "creates an unreasonable statutory classification." The effect of the ruling is to prohibit the state from financing bus transportation to an estimated 40,000 city pupils. The court upheld, however, the city-county distinction as constitutionally valid, thereby permitting the state to continue busing all county students living more than 1½ miles from school without providing the same bus transportation to city students.

The court granted, at the state's request, a six-months' delay in the execution of its ruling. The state has until March 1, 1970, to find a solution to the problem, which may necessitate a special session of the General Assembly.)

• *Food Service.* A proposed $5.8 million appropriation would have provided state assistance to local units in school food services.

• *Appointment of State Superintendent.* A proposed constitutional amendment would have eliminated the popular election of the State Superintendent of Public Instruction and made him appointed by the State Board of Education.

• *Recodification of the Public School Law.* A proposed commission would have revised and recodified the school law.

• *School Fiscal Officer.* This legislation would have authorized city and county boards of education to appoint a school fiscal officer to be responsible for all school funds in the unit. (Under current law, city administrative units operate in this manner, but county boards depend upon the county treasurer or county accountant for disbursement of local funds.)

Although these programs and appropriations did not receive favorable action this session, many if not all will be back for reconsideration in two years.

SCHOOL DISRUPTION

More than twenty bills were introduced dealing with various aspects of the problems of riots, civil disorders, and school unrest. Most of these bills did not deal specifically with public schools, but some did. Among the enacted bills that school boards and school administrators will need to be familiar with are these:

• *Omnibus Riots and Civil Disorders Act.* This act clarifies the powers of local governments to impose curfews and take riot-control measures. It enacts G.S. 14-288.4, which prohibits disorderly conduct and unauthorized occupation of educational buildings, and G.S. 14-288.18, which sets out a permissive injunction procedure for the chief administrative officer in the event of school disorders (Ch. 869). The chief administrative officer is defined to be the superintendent of the public school unit.

• *Disorderly Conduct and Injuries to Public Buildings.* This act rewrites G.S. 14-132, making it a misdemeanor to engage in disorderly conduct or commit a nuisance in or near a public building or unlawfully deface a public building or facility (Ch. 869).

• *Public Building Evacuation.* This legislation authorizes the Governor to order public buildings evacuated during public emergency or imminent threat thereof in order to maintain public order or afford adequate protection for lives or property (Ch. 1129). This authority is codified as G.S. 14-288.19.

• *Sit-Ins in Public Buildings and Streets.* The punishment for sit-ins in public buildings as prohibited by G.S. 14-132.1 was increased to a fine of up to $500, imprisonment up to six months, or both (Ch. 740). The same punishment now applied to a violation of G.S. 20-174.1, which provides that "no person shall willfully stand, sit or lie upon the highway or street in such a manner as to impede the regular flow of traffic."

• *Weapons on School Grounds.* The Winston-Salem/Forsyth school administrative unit adopted a local weapons-control bill (Ch. 1187). It prohibits the carrying of specified weapons, concealed or unconcealed, on school property. Violation is a misdemeanor. School boards should note that they can adopt, if necessary, the same provisions of this act as a matter of school board policy. A board could not, however, make violation of the policy a misdemeanor.

Several other "campus unrest" bills were enacted but apply only to higher education.

A number of highly publicized school-disorder bills failed or died in committee. They include H 551, the "Watkins bill," which would have required a mandatory six-months-to-four-years' expulsion for students and dismissal of faculty who disrupt operations of educational institutions, and H 280, which would have made carrying weapons onto school property a misdemeanor, permitted search of students believed to have a weapon, and made it unlawful to remain on school property after being told by school officials to leave.

In reviewing the disruption bills the General Assembly chose to enact or reject, one can say that despite the substantial public pressure upon the General Assembly to solve problems of school unrest through new law, the legislature was fairly selective in its enactments in this emotion-charged area. Apparently the opinion expressed by many legislators that adequate legislation already existed to handle this problem prevailed.

CONSOLIDATION AND CREATION OF SCHOOL UNITS

The authorization of new school administrative units by the 1967 General Assembly represents a significant departure in the state's public school system. In recent years, the trend has been toward school merger and the reduction of small city school units. Contrary to the Study Commission's recommendation that the county be the basic unit for the administration of schools, and despite objections from the State Board of Education and the State Superintendent of Public Instruction, three new school administrative units were authorized by special acts whose underlying motives, as some alleged, included avoidance of further desegregation. New units, which have recently received voter approval (including approval for a 50-cent special school supplement), were to have operated during the 1969-70 school year in Scotland Neek (Ch. 31), Warrenton (Ch. 578), and the Littleton-Lake Gaston area of Warren and Halifax counties (Ch. 628), but they are now enjoined from operating pending judicial determination of the constitutionality of these acts.

One reaction to the creation of these new school administrative units was the introduction of H 336. This bill would have required the State Board of Education and the State Superintendent to reduce in stages the state money provided for the administration of city administrative units in which the average daily attendance is less than 7,500. As expected, this bill died in committee.

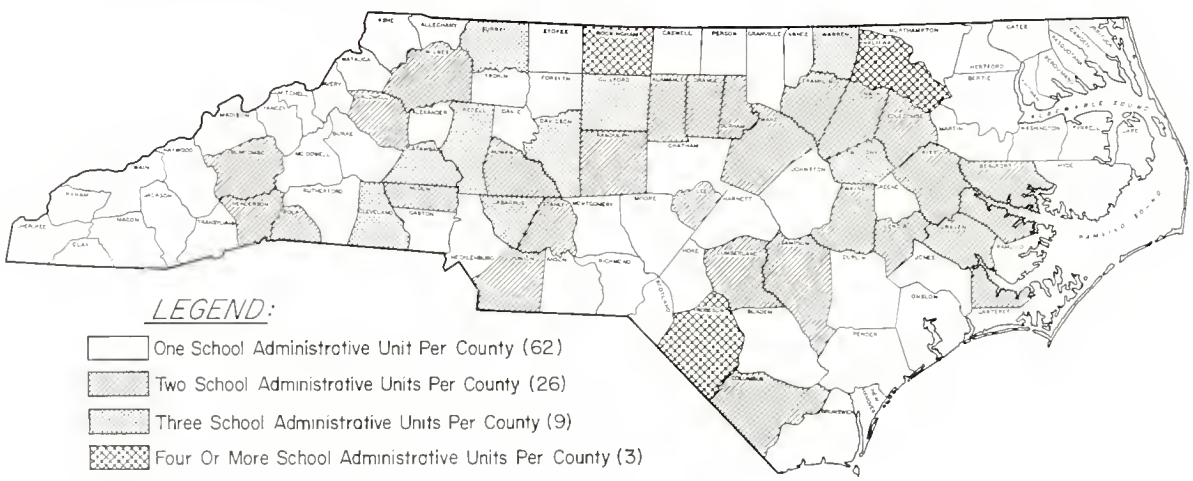
Another reaction was the filing by Warren County Negroes and the U. S. Justice Department of suits in the federal district court for the Eastern District of North Carolina seeking to have the local acts creating these new units declared unconstitutional on the basis that they have no educational justification and were enacted to avoid school desegregation. In late August Judges Butler and Larkins enjoined the opening of the three new school units pending a determination of their constitutionality. Attorneys have been given until October 1 to file additional information on this issue.

These suits have significance to all administrative units that have not completely desegregated their schools. For one of the first times, the State Board of Education and the State Superintendent of Public Instruction have been made parties to a local school-desegregation suit and then denied permission to withdraw from it.[1] In ruling on their request to withdraw, Judge Butler commented that the State Department of Public Instruction and the State Board of Education must "actively seek the desegregation of the public schools of North Carolina." If this opinion as to responsibility is upheld, the state may be held legally responsible for the total school desegregation of local school units. It is conceivable that the State Board may have to require complete school desegregation by local units as a condition of receiving state funds. The progress of these suits, along with the suit brought by the U.S. Justice Department against state education officials in Georgia, will be watched closely in the days to come. Their impact will be far greater than the three new units in Halifax and Warren counties.

Although three new units have been created, several school-unit mergers have occurred since the 1967 session of the legislature. Burke, Cherokee, Gaston, McDowell, and Vance counties have consolidated their school units, thereby eliminating eight city units.

1. Denial of request to withdraw also was made by Judge Algernon Butler at about the same time in a Johnston County school desegregation case.

CONSOLIDATION AND CREATION OF SCHOOL ADMINISTRATIVE UNITS



This leaves a total of 155 school administrative units for the 1969-70 school year. Consolidation also was authorized by local acts in Lincoln and Wilson counties, subject to voter approval. Merger of the Raleigh City and Wake County units, encouraged by resolution, could reduce the number of school administrative units still further in the next year. (See the map of school units on page 42.)

COUNTY ORDINANCE AUTHORITY

A potential area of conflict between the school board and the board of county commissioners has been introduced in G.S. 153-9(55). This statute grants general ordinance-making authority to the board of county commissioners and is one of the home-rule powers given to local government by the 1969 General Assembly. This authority, as set forth by G.S. 153-9(55), grants counties power to enact ordinances "in exercise of the general police power not inconsistent with the Constitution and laws of the State or the Constitution and laws of the United States."

The police power has been defined by the North Carolina Supreme Court as follows: "The police power is that inherent and plenary power in the State over persons and property which enables the people to prohibit all things inimical to the comfort, safety, health, and welfare of society."[2] Although the exercise of the police power is more restricted when granted to local governmental units, it is apparent that the authority to enact ordinances in exercise of the general police power is, indeed, a very broad grant of authority. This ordinance-making authority over the areas of health, safety, and welfare may produce conflict between the school board and the board of county commissioners unless the commissioners are careful not to encroach into the school area.

The type of encroachment that may occur is seen in a recent action by the board of county commissioners in Bertie County. It proposed, but rejected on second hearing, an ordinance barring nonresident students from attending county schools. The ordinance would have provided that a resident student must live with at least one parent or legal guardian to be eligible to attend school. Irrespective of the ordinance's merits, this type of action by commissioners on an issue that is basically a school matter—school attendance—represents a potential source of trouble for these two boards and probably exceeds the statutory grant. In the area of school matters it would appear that G.S. 153-9(55) is specifically limited because, in the words of the statute, an ordinance may not be adopted that is "inconsistent with . . . the laws of the state." Since the General Assembly has given school boards the responsibility and authority to provide for and operate the public school system, setting school policy by way of an ordinance is out of bounds for the boards of county commissioners.[3] Boards of commissioners are cautioned to be careful to leave school matters to the school board, while the school board is encouraged to be more diligent in attempting to work with the commissioners and gain their full support and cooperation.

COUNTY SCHOOL BOARD ELECTIONS

The 1967 General Assembly enacted a general law that became effective July 1, 1969, providing that all *county* school boards must elect school board members (1967 Session Laws, Ch. 972). (Note: This act does not apply to city units or to county units with local acts providing for elected boards.[4]) The 1967 act was confusing in several places and needed amendment to clarify its provisions. The 1969 General Assembly enacted S 576 (Ch. 1301), rewriting the two key provisions—G.S. 115-18 and G.S. 115-19. G.S. 115-18 now reads: "The County Board of Education in each county shall consist of five members elected by the voters of the county at large for terms of four years." Note that all voters in the county, including voters in city administrative units, vote for the county school board members under this new statute.[5]

G.S. 115-19 now provides that: "The County Boards of Education shall be elected on a nonpartisan basis at the time of the primary in 1970 and biennially thereafter. . . ." G.S. 115-19 as first rewritten by the 1967 act provided for either partisan or nonpartisan elections but provided no mechanism for exercise of the option. As now rewritten, the election must be nonpartisan and held in May of even-numbered years at the time of the primary. There are, of course, some partisan elected county school boards, but they are authorized by local acts rather than by general law.

G.S. 115-19 also provides that the board must have staggered terms with half the terms expiring every two years. With five-member boards, terms will expire on a three-and-two alternating basis. Phasing into staggered terms will be no problem for existing

2. Drysdale v. Prudden, 195 N.C. 722, 734, 143 S.E. 530, 536 (1928).

3. G.S. 115-35 grants the following authority to the school board: "All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon county and city boards of education. Said board of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units."

4. The general county school board election procedure will apply only to the following forty-four county school boards, which do not have local election acts: Alamance, Alleghany, Ashe, Beaufort, Bertie, Brunswick, Camden, Chatham, Clay, Columbus, Cumberland, Currituck, Dare, Davidson, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hyde, Iredell, Jones, Lee, Lenoir, Madison, Martin, Mitchell, Northampton, Pamlico, Pender, Perquimans, Pitt, Polk, Rockingham, Rowan, Sampson, Stokes, Surry, Union, Warren, Wilkes, and Wilson.

5. This does not apply to counties like Orange that have local acts that provide for an elected school board and also exclude voters residing within a city administrative unit, or to counties like Surry with local acts that both set up voting districts and specifically except the county from the application of the new school election law.

five-member county boards that were appointed on a staggered basis by former Omnibus School Board Acts. New members will be elected to fill the vacancies as they occur. Setting up staggered terms will not be quite so easy for boards in which all terms expire at the same time. For these boards, all members will be replaced at the first election when the terms expire. The three candidates receiving the highest number of votes will be elected for terms of four years, with the next two highest elected for terms of two years. Thereafter, all candidates will be elected for terms of four years as the terms expire.

Greater difficulties in phasing into a five-member, staggered board will be encountered by boards with more or less than five members and boards with more than two classes of members, e.g., a board with six-year terms with two terms expiring every two years. These boards are required to adopt a resolution specifying how staggered terms are to be set up for a five-member school board. The resolution must be adopted by March 6, 1970 (fourteenth day before the deadline for filing notice of candidacy for county offices in 1970), and must designate the terms of office to be served by members elected to fill vacancies. Terms must be for either two years or four years. The arrangement outlined in the resolution must ultimately produce a five-member board with four-year terms, half of which expire every two years. The resolution must be filed with the county board of elections, the State Board of Elections, and the State Board of Education. Because of the variation in board size, length of term, and expiration date of terms, each board individually must work out its solution. The resolutions will not be uniform in their provisions—only in their result.

One major problem was not taken care of by the General Assembly in the switch from the omnibus appointment procedure to the general election procedures. Under the Omnibus Acts, terms expire on the first Monday in April in odd-numbered years. Under the new election procedure, however, terms are to expire in December of even-numbered years, which is four months earlier than previously. G.S. 115-22, which was rewritten by the 1967 act, provides that elected board members must qualify by taking the oath of office on or before the first Monday in December next succeeding their election. A failure to qualify within that time constitutes a vacancy. Thus candidates elected in May of 1970 to replace appointees whose terms expire the following April are unable to qualify in December because no vacancy exists until the following April.

The General Assembly recognized this problem as to appointments made by the 1969 Omnibus Act, and for these appointments it suspended the new general law and provided that board members elected to replace 1969 appointments shall take office in April when the appointed term expires.[6] No such provision, however, was made for appointments by the 1965 and 1967 Omnibus Acts except for three-member boards.[7]

School boards with members appointed by the 1965 or 1967 Omnibus Acts[8] with terms in April, 1971, can do one of the following three things:

1. Hold elections in May, 1970, with the understanding that the appointed members whose terms do not expire until the following April will resign their appointed office four months early to allow the elected members to take office on the first Monday in December of 1970. This is the best solution, but it depends upon the appointed members' resigning their office; they cannot be compelled to resign. With many boards, the person appointed and the person elected in May, 1970, will be the same individual.

2. Hold elections in May, 1970, and swear in the elected members on the first Monday in April of 1971. This solution to the problem runs squarely into the statutory language of G.S. 115-22 that the elected members must qualify by taking office on or before the first Monday in December next succeeding their election. To justify waiting until April to swear in the elected members, the school board would have to argue that the statutory language of G.S. 115-22 is merely directive and should not be applied literally. To apply it literally would defeat the obvious intent of the General Assembly that candidates elected in May, 1970, replace appointed members who have terms expiring in April, 1971. The General Assembly, so the argument would run, expressed this intent by its amendment of the 1969 Omnibus Act. Its failure to make the same procedure apply to the 1965 and 1967 Omnibus Acts was an oversight. This oversight is corrected by not applying G.S. 115-22 in its literal terms, thereby avoiding substantial violence in the switch from the appointed to the elected system.

If the procedure of swearing in elected candidates in April is followed, the school board runs the risk of a lawsuit, the result of which is unclear.

6. The 1969 Omnibus Act took care of the problem of the four-month overlap from December to April by providing that elections shall be held in May, 1970, to fill terms expiring in 1971 and in May, 1972, to fill terms expiring in 1973. This applies only to appointments made by the 1969 Omnibus Act. This solution to the problem is better than no solution, but it creates lame-duck members who hold office eleven months after their replacement has been elected.

7. Three-member boards will have no problem. A special provision was added for the three-member boards in the 1969 Omnibus Act providing that elected members to replace *all* previous appointments by omnibus acts shall take office in April.

8. The 1965 Omnibus Act (1965 Session Laws, Ch. 175) appointed school board members who will hold office until April, 1971, to the following 32 county school boards: Alamance, Anson, Avery, Bertie, Buncombe, Cabarrus, Carteret, Catawba, Cherokee, Clay, Davie, Duplin, Edgecombe, Franklin, Gaston, Gates, Guilford, Harnett, Henderson, Iredell, Johnston, Lee, Mitchell, Pitt, Richmond, Rowan, Stokes, Transylvania, Wayne, Wilkes, Wilson, and Yadkin.

The 1967 Omnibus Act (1967 Session Laws, Ch. 130) appointed school board members who will hold office until April, 1971, to the following 32 county school boards: Alleghany, Beaufort, Brunswick, Camden, Carteret, Chatham, Chowan, Cumberland, Currituck, Dare, Davidson, Duplin, Graham, Hertford, Hoke, Iredell, Jones, Lincoln, Macon, Madison, Martin, Pasquotank, Pender, Perquimans, Randolph, Robeson, Rockingham, Rutherford, Stanly, Stokes, Surry, and Washington.

3. Hold no election in May, 1970. Let the appointed members hold over in office until May, 1972. In May, 1972, hold elections to replace the holdover appointees and swear in the elected members following their election.

School boards that are faced with this problem in the coming year are listed in footnote 8. I also point out that a similiar problem exists for members appointed by the 1967 Omnibus Act to six-year terms that expire in April of 1973. I assume, however, that the 1971 General Assembly will correct the problem and school boards will not have to deal with it.

PROPOSED CONSTITUTIONAL CHANGES

The 1969 General Assembly approved seven constitutional amendments for submission to the people in November, 1970. One of these proposals is a revision of the State Constitution. Proposed Article IX, the education article, has been rearranged to improve the order of the subjects dealt with and its language modified to eliminate obsolete provisions and to make the article reflect current practices. The following changes affecting public education are significant:[9]

Sec. 2(1)—Extends the mandatory school term from six to a minimum of nine months.
—Eliminates the possibly restrictive age limits on tuition-free public schooling.
—Omits the unconstitutional language on the separation of the races in the public schools.

Sec. 2(2)—Authorizes the units of local government responsible for public education "to use local revenues to add or to supplement any public school or post secondary school program." This new authority gives constitutional footing to the statutory authority given to school boards by G.S. 115-80(a). (Note that the constitutional provision does not restrict this authority to current operating expenses, as G.S. 115-80(a) does.)

Sec. 3 —Makes it mandatory (rather than permissive) that the General Assembly require public school attendance.
—Omits the obsolete limitation of compulsory attendance to a total of sixteen months.

Sec. 4(1)—Modifies membership on the State Board of Education by removing the State Superintendent of Public Instruction as one of the three ex officio voting members and replaces him with an additional at-large appointee. Continuity of board membership is not otherwise affected.

Sec. 4(2)—Retains the State Superintendent as the Board's secretary and makes him the chief administrative officer of the Board. By making him an officer of the Board, the conflict created by the present Constitution in granting both the State Superintendent and the State Board the administrative responsibility for the state school system is eliminated.

Sec. 5 —Restates, in abbreviated form, the duties of the State Board of Education. There was no intention of reducing the Board's authority.

Sec. 6 —Restates present Sec. 4, dealing with the state school fund, without substantive change.

Sec. 7 —Restates present Sec. 5, dealing with the county school fund, without change except to delete obsolete references to "proceeds from the sale of estrays" and militia-exemption payments.

The new Article IX also eliminates section 12 of the present Constitution. This section is the Pearsall plan authorizing expense grants and local-option school closing. It was declared to be unconstitutional in its entirety by the federal court in 1966.

COMPULSORY ATTENDANCE LAW

G.S. 115-166, the state's compulsory attendance law, was rewritten to make the following changes:

1. The Pearsall provisions exempting a child from the compulsory attendance requirements if assigned against the wishes of his parents to a school with a child of another race were eliminated. They had been declared unconstitutional by the federal court in *Hawkins v. North Carolina* (1966).

2. The requirement that a child be both assigned and enrolled in a school before being in violation of the law was amended to delete the requirement of enrolling the child. Now the child must attend the public school to which he is assigned. A criminal action lies against the parent or guardian for failure to enroll him and see that he attends.

3. A provision was added to exempt from the compulsory attendance statute a child so afflicted by mental, emotional, or physical incapacity as to make it unlikely that the child can substantially profit by public school instruction. If the parent or guardian can produce evidence of such disability to the superintendent, the child need not be presented for enrollment.

A related statute, G.S. 115-165—dealing with the power of the school superintendent to deny school admission to a child severely afflicted by mental, emotional, or physical incapacities—was rewritten to liberalize and clarify the appeal mechanisms available to a parent in appealing a decision excluding his child from school attendance. A former provision making it a misdemeanor for a parent to persist in forcing his child's attendance was eliminated.

INVOLUNTARY BUSING OF STUDENTS

One of the more controversial statutes enacted this session is G.S. 115-176.1, prohibiting the assignment

9. References are to the proposed section numbers.

of students to a school on the basis of race or for the purpose of achieving racial balance (Ch. 1274). The new statute also provides that those administrative units that set up attendance zones must assign pupils to schools within those attendance lines unless it has reasons it considers sufficient to assign or reassign a student out of the zone in which he lives. It further provides that "involuntary busing" for the purpose of achieving racial balance is prohibited and that public funds may not be used for such busing.

The statute's intent, as expressed in its title and as reported by the news media,[10] is to prohibit involuntary busing of students from the geographical attendance zone in which they live to a school outside that zone to desegregate schools. G.S. 115-176.1, however, does far more than prohibit this practice. The crux of the statute is the requirement that: "No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins." This requirement of the statute, when considered separately, places those North Carolina school systems that have assigned students on the basis of race in conflict with the state statute. If this is the case, the statute runs squarely into federal constitutional requirements and would be unconstitutional in light of recent federal court decisions.[11]

One can argue, however, that the prohibition against the assignment of pupils on the basis of race or to achieve racial balance is not an absolute prohibition, and when good reason exists, such as complying with constitutional law, assignments can be made on the basis of race or to achieve racial balance. Basis for this argument is found in the statute, which provides that the board may make assignments of students out of established attendance districts for any "reason which the board of education *in its sole discretion deems sufficient* [emphasis added]." This authorization, one can argue, gives the school board the power to assign students on the basis of race or to achieve racial balance in order to comply with HEW requirements or court order or for educational reasons it thinks justify the assignment. In such cases the school board is exercising the discretionary authority granted by the statute. If the statute is given this meaning, assignments such as those by the Charlotte-Mecklenburg school board (students so assigned as to place a greater percentage of black students in predominantly white schools) would not be in conflict with the statute because the assignments would have been made for what the Charlotte-Mecklenburg school board considered sound "educational reasons," and necessary to comply with constitutional requirements. Such assignments would be permissible, so the argument goes, despite the fact fact that the Charlotte-Mecklenburg school board, as other school boards in the state have done, assigned students to schools on the basis of race and for the purpose of achieving racial balance. If the statute is so interpreted, it seems that what appears to be the basic intent of the statute—to prevent assignments and involuntary busing of children to schools on the basis of race—is defeated. Any other interpretation, however, appears to be in conflict with recent federal court decisions placing an affirmative duty *upon* school boards to desegregate their school system, which includes assignments based on race if that is necessary to desegregate schools.[12]

Besides assignment of students out of the attendance zone in which they reside on the basis of race, other school desegregation plans may violate the new statute. For example, some systems have used the grade-placement approach in which a complete grade in the entire school system is assigned to a particular school. The Lexington and Goldsboro city school systems are examples. Other systems have paired grades in which a predominantly white school and a predominantly black school have combined their grades and assigned all students in certain grades to the predominantly white school and all students in other grades to the predominantly black school. The Anson County school system is an example. Other systems have used the pie system in drawing attendance lines so that black students are more evenly distributed in the schools. The Chapel Hill and New Hanover school systems are examples. In the Chapel Hill system, attendance lines are drawn so that there are exactly 25 percent black students in each school. (Freedom-of-choice plans are specifically exempted by G.S. 115-176.1 from its prohibition against assignments based on race.)

In all of the cases just cited, one can argue that no violation of G.S. 115-176.1 exists because assignments were not made on the basis of race, but were made on the basis of grade or zone. If one construes the statute narrowly, this is correct. It is common knowledge, however, that the grade-placement and pairing device and the drawing of assignment zones to distribute minority races evenly are methods of assigning children to a particular school to achieve racial balance. Whether a court would consider these situations to be in violation of the statute is problematical. If the statute were so interpreted, it would be unconstitutional on the basis of federal court decisions.[13]

Although no court has yet ruled on the new statute's constitutionality, two courts have considered it. In a suit brought in the Rowan County Superior Court by a group challenging the Rowan County desegregation plan on the basis that it bused pupils in violation of G.S. 115-176.1, Judge John D. McConnell

10. See, *e.g.*, *The News and Observer*, Wednesday, July 2, 1969.
11. See, e.g., Green v. New Kent County School Board, 391 U.S. 430 (1968). See also, Hawthorne v. Lunenburg, a case in which the Fourth Circuit this past summer held: "The famous *Briggs v. Elliott* dictum—adhered to by this court for many years—that the Constitution forbids segregation but does not require integration, is now dead."
12. See Green v. New Kent County School Board, 391 U.S. 430 (1968).
13. *Ibid.*

refused to apply the new statute on the basis that the Rowan desegregation plan was adopted prior to the enactment date of the new statute. The plaintiffs in this case have announced their intention to appeal Judge McConnell's opinion to the North Carolina Supreme Court.

The second suit, *Swan v. Charlotte-Mecklenburg Board of Education*, is in the federal district court for Western North Carolina and involves the Charlotte-Mecklenburg desegregation plan. Judge James B. McMillan, in accepting the school board's plan for the 1969-70 school year, made this comment about the new "anti-busing statute":

> The Board correctly and constructively concluded that the so-called "anti-busing law" adopted by the General Assembly of North Carolina on June 24, 1969, does not inhibit the Board in carrying out its constitutional duties and should not hamper the Board in its future actions. Leaving aside its dubious constitutionality (if it really did what its title claims for it), the statute contains an express exception which renders it ineffectual in that it does not prevent "any transfer necessitated by overcrowded conditions or *other circumstances which in the sole discretion of the School Board require reassignment.*"

The plaintiff in the Mecklenburg case has requested a ruling on the constitutionality of the anti-busing statute, but it awaits a three-judge court. A decision on it will probably not be forthcoming until late fall at the earliest. Until a court rules on the constitutionality of the statute, school boards that have assigned students on the basis of race to desegregate schools—a federal constitutional requirement—are in a dilemma, since the statute prohibits public funds from being used to bus students for this purpose. Hopefully, the question of the statute's constitutionality will be decided soon.

REAL PROPERTY TRANSACTIONS

School boards, which have been required by G.S. 115-126 to sell real property only at public auction, have new authority in the sale, lease, exchange, or joint use of real property when dealing with governmental units (Ch. 806). G.S. 160-61.2 authorizes local school boards, upon such terms and conditions as it deems wise, to "exchange with, lease to, lease from, sell to, purchase from or enter into agreement regarding the joint use by" any municipality or county or agency thereof or any state agency or department. The only requirement for such real property transactions is that it be taken after public hearing and with proper notice.

A question has been raised as to the effect of the new statute on the provisions of G.S. 115-126 relating to sale, exchange, and lease of real property. In my opinion, G.S. 115-126 is not repealed or superseded by the new statute. G.S. 160-61.2 represents new authority to the school board. It provides a choice of procedure when dealing with governmental units over real property.

Without going into a detailed analysis, I point out that despite the standard repealer clause of the new act, repeal of statutes by implication is not favored in the law. Furthermore, the new statute is concerned only with governmental units, while G.S. 115-126 applies to all parties. If, for example, G.S. 115-126(e), dealing with the lease of real property, is considered repealed by the new procedure, the result is that a hearing and notice is required when leasing property to governmental units but is not required when dealing with the lease of property to private parties. Surely this result, which obtains if one considers G.S. 115-126 now repealed, was not the intent of the General Assembly.

OTHER LEGISLATION

Other important enactments in the area of public education include:

- *Interstate Teacher Certification.* North Carolina may now enter into the interstate agreement on certification of education personnel (Ch. 631).
- *Teacher Payroll Deductions.* The State Board of Education is authorized to empower school boards and boards of trustees of community colleges and technical institutes to establish voluntary payroll-deduction plans for group insurance and credit union loans and accounts (Ch. 890).
- *School Day Length.* G.S. 115-36(a) is amended to authorize superintendents, in event of emergency or act of God, to terminate classes before the required six hours without loss of credit to the pupil or loss of pay to the teacher. It also permits local school boards to provide for school attendance of less than six hours for handicapped pupils and pupils in the first and second grades.
- *Study Commissions.* The emotionally disturbed child (R. 75) and student financial aid (R. 56) will be examined by special legislative commissions created for this purpose.
- *Curriculum Studies.* The State Board has been directed to study the feasibility of adding to the public school curriculum courses in economics and the free-enterprise system (Ch. 1230) and environment and natural resources (Ch. 1103). The legislature also required a special study by the Board on the location and development of comprehensive vocational rehabilitation centers (Ch. 1169).
- *Refund of Student Fees.* G.S. 115-150.4 requires charges and fees collected from students or parents to be refunded by the school system on a prorated basis if the pupil is transferred or leaves the school to which the fees were paid for valid reasons (Ch. 756).
- *Retirement System.* Changes in the state retirement system are discussed in the article on state personnel in the October issue of *Popular Government.*

• *Mobile Classroom Units.* A provision was added to G.S. 115-129 to authorize local school boards with insufficient building space for anticipated pupil enrollment to acquire relocatable or mobile classroom units. Units must meet standards of the School Planning Division and state and local building and electrical codes, but firms furnishing less than four units are not subject to state standards for general contractors.

• *Deleted Race References.* Numerous references to race were eliminated from the school law, including the education expense-grant article (G.S. 115-274 through -295), which was adopted in 1956 as part of the Pearsall plan. The retention of the local-option school-closing provisions (G.S. 115-261 through -273) is unexplained. As part of the Pearsall plan, these provisions, like the education-expense provisions, have been judicially declared to be unconstitutional.

• *Hearing-Impaired Children.* The State Board of Education is required to begin a program for hearing-impaired children, preschool and school age, beginning with the 1969-70 school year. Local school boards are also authorized to establish programs for these handicapped children (Ch. 1166).

• *Local Finance.* The major school bills that would have had an impact on local finance, such as the incentive-grant program and state capital outlay grants to local school units, failed. The authorization for a referendum on November 4, 1969, in each county on the levy of an additional one-cent sales tax for local government, however, has great significance to school finance. This tax, if approved, represents a substantial broadening of the local tax revenue base and new revenues for local government.

CONCLUSION

As the beginning of this article notes, the 1969 General Assembly has been a major one for public schools. With the substantial amount of new legislation as just reviewed and with major increases in state financial support, North Carolina's public school system should move forward.

Election Laws

By Henry W. Lewis

Recodification of the primary and general election laws in 1967 served to call attention to provisions and procedures that had been unexamined in a number of cases for many years. Not unexpectedly, re-examination suggested to election officials and others the desirability of changes, and proposals in the 1969 General Assembly reflected this concern.

Full-Time Registration Mandatory by 1971

Under the terms of Chapter 750 (S 457) all counties must install full-time registration by January 1, 1971. This will follow in orderly sequence the mandatory adoption of loose-leaf registration books in all counties by January 1, 1970 (G.S. 163-65). The effective date of the change suggests a legislative desire to have the full-time system available for use in the general election of 1970, but it is possible that some counties might not complete installation in time for use at that time, and this may produce problems because the 1969 act has repealed existing registration procedures. In all likelihood the State Board of Elections will adopt regulations covering registration procedures for primaries and elections held before the full-time system is installed.

Once the new system becomes effective, the familiar pattern of specified registration periods prior to elections and primaries will become obsolete. Under the full-time system, the books will be kept open "at all reasonable hours and times consistent with the daily function of all other county offices." Counties with populations less than 14,001 will, at their option, and under regulations of the State Board of Elections, be permitted to keep their books open less than full-time. Should they elect to do so, however, they will not be permitted to use special registration commissioners but will have to rely wholly upon registrars.

The new act makes provision for the employment of an executive secretary for the board of elections in all counties. The executive secretary will have power to register voters and, under appropriate authorization from the county board of elections, the chairman of the county board may delegate his administrative duties, including those concerning the registration of new resident voters in presidential elections (G.S. 163-73), to the executive secretary, although the chairman will remain liable for their proper execution.

New Registration Required in Some Counties

Under G.S. 163-65(a), as rewritten in 1967, "In lieu of a bound book, the county boards of elections shall install a loose-leaf registration book system in all of the precincts of the county prior to January 1, 1970." Under Chapter 171 (H 49) nineteen counties are required to conduct new registrations as a part of the change from the bound book to the loose-leaf system. For this one occasion the registration times prescribed in G.S. 163-67(a) are suspended, and the new registration must be conducted between April 1, 1969, and September 30, 1969. In conducting the new registrations, the books must be kept open at announced locations on all week days during the three-week registration period. The counties affected by this act are Alleghany, Ashe,[1] Avery, Carteret, Camden, Caswell, Chatham, Cherokee, Clay, Columbus, Dare, Haywood, Macon, Polk, Rutherford, Sampson, Stokes, Watauga, and Yancey. Each county must notify the State Board of Elections of the time it selects for conducting the required registration.

1. Ch. 298 (H 472), ratified after the act referred to in the text, extends the deadline for a new registration in Ashe County to January 1, 1970. The same act empowers the Ashe County Board of Elections, in conducting the new registration, "to provide for the registration of disabled voters now on the registration books who are suffering from continuing chronic disability preventing their attendance at the polling place."

Literacy Test

The Constitution of North Carolina has long required that persons be able to read and write any section of the Constitution in the English language in order to register and vote in any primary or election in this state (Art. VI, sec. 4). Under Chapter 1004 (H 327), the voters of the state will be permitted to decide at the next general election whether this literacy requirement shall be retained. If repeal is approved, it will take effect on July 1 following the referendum.

Pay of Precinct Officials

For counties which have not yet adopted full-time and permanent registration, Chapter 24 (H 9) increases the minimum per diem compensation of precinct registrars from $15 to $20 and that for judges of elections and assistants from $10 to $15.

Creation of Precincts

Heretofore, G.S. 163-128 has carried two limitations on the power of county boards of elections to establish precincts for voting purposes: (1) "No precinct shall encompass territory from more than one township," and (2) "There shall be one voting place in each precinct conveniently located for a majority of the voters therein." Chapter 570 (S 65) has rewritten these requirements to provide that "There shall be at least one precinct encompassed within the territory of each township," but allowing a county board of elections to establish precincts encompassing "territory from more than one township." Should a county board establish a precinct containing territory from more than one township, it must by resolution provide for "separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the township in which such voters reside." The former provision of G.S. 163-128 concerning the location of the precinct voting place was dropped.

Organization Meetings of County Board of Elections

Under G.S. 163-31 the county board of elections has heretofore been required to meet on the ninth Saturday before the primary for the purposes of taking oaths of office and organizing. Under Chapter 208 (H 174) this meeting date has been shifted to Monday following the ninth Saturday before the primary. Similarly, the date for appointing precinct officials has been moved from the seventh Saturday before the primary to Monday following the seventh Saturday before the primary.

Conduct at Voting Place

Chapter 1039 (S 13), originally proposed for statewide application, was amended before enactment to apply to only six counties: Cumberland, Durham, Franklin, Guilford, Warren, and Vance. Under the general law (G.S. 163-146), "No political banner, poster, or placard shall be allowed in or upon the voting place during the day of a primary or election." Under the 1969 local act this ban is extended to campaign workers, and the protected area is expanded to any location within 500 feet of the voting place. G.S. 163-147 bans electioneering on primary and election days "within the voting place or within 50 feet thereof." For the affected counties, the 1969 act extends the 50-foot limitation to 500 feet for all persons other than candidates.

Watchers' Access to Voting Enclosure

The recodification of the election laws enacted in 1967 disclosed that in counties with full-time and permanent registration, watchers appointed by political party chairmen (G.S. 163-45), although empowered to observe and take notes at the voting place, were not allowed within the voting enclosure while the polls were open for voting. Under Chapter 1280 (H 487) watchers in such counties will be released from this restriction. Nevertheless, the act is not made statewide in application; in the following fifteen counties the restriction remains effective: Alamance, Beaufort, Cumberland, Dare, Gaston, Guilford, Hyde, Lenoir, Martin, Mecklenburg, Onslow, Randolph, Stanly, Tyrrell, and Wayne. Presumably these counties will still continue under the restriction after the full-time registration system becomes statewide in 1971.

Assistance to Blind Voters

Heretofore, when voting in primaries and other elections, blind persons have been entitled to the assistance permitted any voter whose physical disability makes him unable to enter the voting booth or unable to mark his ballots without help (G.S. 163-152). Chapter 175 (S 215) adds special provisions for assistance to blind voters. The new act permits a blind voter to have help at any primary or election from any person of his choosing without regard to whether the person selected is a resident of the precinct in which the blind voter seeks to cast his ballots. To qualify under this provision, the blind voter must obtain a certificate of his need from the North Carolina Commission for the Blind, an optometrist, or a physician and present it at the time he registers or at some other time before an election for recordation by the registrar or special registration commissioner. Upon receiving such a certificate, the registering official must enter the words "blind voter" on the registrant's record of registration and forward the certificate to the chairman of the county board of elections to be filed permanently with the voter's duplicate registration record.

Anti-Single-Shot Voting

Under G.S. 163-151(3) primary election voters in twenty-four counties have heretofore been subject to

the "anti-single-shot voting law." In cases in which there are multiple positions to be filled in a single office (e.g., three county commissioners), this statute requires the voter to cast his ballot for as many candidates as there are nominations to be made. This year three counties were deleted from the statute's coverage: Duplin [Ch. 917 (H 1151)], Hoke, and Scotland [Ch. 190 (H 309)].

Abstracts of Votes Cast

Chapter 971 (S 659) requires the preparation of two rather than one duplicate abstract of the votes cast in each county. In the case of national, state, and district offices and referendums, both duplicates must be forwarded to the chairman of the State Board of Elections. In the case of county offices and referendums, one duplicate is to be forwarded to the chairman of the State Board and the other is to be retained by the county board of elections.

Assistance to Counties in Election Litigation

If a county becomes involved or anticipates becoming involved in litigation in which uniform administration of the general election laws of the state (Chapter 163 of the General Statutes) is or may be threatened, Chapter 408 (H 606) authorizes the county board of elections, by majority vote, to petition the State Board of Elections for assistance. Upon receipt of such a petition the State Board, in its sole discretion by majority vote, is empowered to assist the county board. The Attorney General is required to render assistance to the State Board in such cases or, in his discretion, to recommend the employment of private counsel. Local acts dealing with this subject are not disturbed by the 1969 act.

Presidential Electors

The North Carolina statutes have heretofore made no provision for the resignation of presidential electors. Under Chapter 949 (H 436) an elector is permitted to resign prior to the date on which electors meet to cast their ballots for president; failure to resign by that time is deemed acceptance of election and commitment to vote for the presidential candidate of the political party which nominated the elector. If a presidential elector does not resign yet fails to appear at the required meeting and vote for the candidate of his party, his absence is to be treated as a resignation. Vacancies caused by resignations must be filled by the remaining presidential electors in attendance.

Numbered Seats in Legislative Districts

G.S. 163-117 provides that in each senatorial and representative district entitled to elect more than one state senator or member of the state House of Representatives the positions are to bear identifying numbers—Senate Seat 1, Senate Seat 2, etc., House Seat 1, House Seat 2, etc.—and each seat is to be considered a separate office. At the time this statute was enacted, twenty-one House and twelve Senate districts were exempted from its application. This year two House districts and one Senate district were removed from the exempt list: the 25th House district [Ch. 544 (H 917)], the 41st House district [Ch. 189 (H 294)], and the 4th Senate district [Ch. 559 (S 543)]. At the same time the 30th House district was added to the exempt list [Ch. 302 (H 98)]. Thus, there are now twenty House and eleven Senate districts in which the numbered-seat requirement is inapplicable.

Significant Bills That Failed

Although a number of proposals to make substantial changes in election procedures and voter qualifications were introduced in the 1969 General Assembly, those that failed to obtain approval sought more far-reaching changes than those that were adopted. Efforts to reduce the required state residence for voting from one year to six months were unsuccessful (H 45 and H 490). Three bills offering constitutional amendments to lower the minimum voting age—two to eighteen (H 67 and S 50) and one to permit under-age servicemen to vote (S 22)—suffered defeat. Equally unsuccessful were attempts to establish a presidential preference primary in this state (H 10 and H 183) and to set up a commission to study political party procedures for nominating presidential candidates (H 426). A resolution to create a commission to study possible abuses in registration and voting also failed of adoption (H 1385). Three measures dealing with the absentee ballot were defeated: one would have prohibited its use in county bond elections (S 680); one would have extended its use to primaries (H 68); and one would have permitted its use in municipal elections (S 636). A similar fate met efforts (1) to modify the pledge of candidates in primary elections (H 173), (2) to permit the use of electronic tabulating equipment in voting and counting ballots (H 1061), and (3) to prohibit the posting of political posters on property without the owner's permission (H 156).

HOME-RULE LEGISLATION

By Joseph S. Ferrell

North Carolina local governments have historically enjoyed less freedom from direct legislative control than local governments do nationally because of this state's extreme reliance on local legislation in the General Assembly. Every city of any size is organized under a charter granted by a local act that can be modified only by another local act.[1] Each county is subject to literally dozens of local acts, some more than fifty years old. These local acts often regulate local affairs in minute detail. A rather extreme example of some years ago fixed the salary of the sheriff, specified how many deputies he might hire, set their salaries, specified their exact duties, and allocated specific rooms in the courthouse to various county officials. An Institute of Government staff member who was asked to determine what local acts then in force applied to the sheriff of that county found more than twenty of them.

The unusual reliance on local legislation in North Carolina has had three major effects over the years: (1) the general laws have not been revised to reflect modern practice because the ease of obtaining local acts has eliminated most of the pressure for revision; (2) local governing boards have fallen into the habit of shifting political responsibility for controversial local decisions onto their representatives and senators; and (3) the General Assembly devotes too much of its limited time to matters of only local concern.

The 1967 General Assembly created the Local Government Study Commission and directed it to study the whole range of local government in the state. One of its specific duties was to devise means to reduce the volume of local legislation. The Commission, early in its deliberations, realized that the major benefit to be derived from reducing the volume of local legislation would be the strengthening of local government by freeing it from rigid legislative control. Thus, the Commission's solution was to propose legislation delegating more "home rule" authority to local government in the hope that two objectives might be achieved: (1) encourage local governments to assume more responsibility for purely local decisions; and, incidentally, (2) reduce the volume of local legislation in the General Assembly, thus making the legislative process more efficient.

Few study commissions have been so successful in their legislative program as the Local Government Study Commission was in this effort. All but one of its recommendations were enacted into law with only minor changes. The one recommendation that was not enacted would have repealed the remaining county exemptions from the 1959 municipal annexation laws. Even this recommendation had the effect of prodding the largest county still exempted, Cumberland, to secure passage of two local acts that may pave the way for eventual inclusion in the general law.

1. Prior to its repeal by Chapter 629, Session Laws of 1969, Article 23, Chapter 160 of the General Statutes, set out a procedure for amendment or repeal of city charters. The procedure was almost never used.

This article will discuss and evaluate the 1969 General Assembly's efforts to grant "home rule" to our counties, cities, and towns.

"HOME RULE" DEFINED

The phrase "home rule" means different things in different states. In some states, "home rule" means that the constitution grants to local voters the power to adopt city or county charters that cannot be amended or repealed by the legislature except by general laws applicable to all cities or counties of a defined class. This system is known as constitutional home rule. In other states, "home rule" means that the legislature has enacted laws granting local voters the right to draft and adopt charters within legislatively prescribed limits. This system is known as legislative home rule. When coupled with a strong constitutional prohibition against local legislation, which is typical nationally, legislative home rule may have the same practical effect as constitutional home rule in that the legislature is powerless to legislate for a particular county or city except under the guise of general laws. Finally to some, "home rule" is a slogan encapsulating a complex of notions having in common a distrust for the state or federal governments and a desire to be left alone.

None of these definitions quite describe the product of the Local Government Study Commission bills enacted by the 1969 North Carolina General Assembly. Nevertheless, it have been christened the "home rule package" by the press and the name seems likely to stick. John Morrisey, executive secretary of the North Carolina Association of County Commissioners, has suggested that the bills might be called "home rule with a string attached." By this he means that there is no constitutional barrier to either total repeal of the acts or an ignoring of them by subsequent legislatures. In other words, the 1969 General Assembly has put local government on trial. If local governments do not make use of the new powers delegated to them and continue to request local acts, or if they abuse their new authority, it may be taken away by repeal or by continuation of the local-act tradition.

MODIFICATION OF FORMS OF COUNTY GOVERNMENT

Counties

The General Statutes of North Carolina provide that each county shall be governed by a three-member board of commissioners, elected for terms of two years, from the county at large. This system prevails in about five counties. The other 95 counties have obtained modifications by local act. Thus, the typical North Carolina county is governed by a five-member board of commissioners elected at large for four-year, staggered terms. Nearly half the counties are divided into commissioner districts that are used either as representation or election areas.

Chapter 717 (S 43) provides a procedure whereby the counties may modify the composition and mode of election of the board of county commissioners. When this power has been delegated in other states, one or two basic plans have been used. Either the county voters have been authorized to draft and adopt a charter within very broad bounds or they have been authorized to select one of several alternative forms of government. Chapter 717 is a compromise between these two plans. It sets out options, rather much like building blocks, which can be put together in any number of combinations in order to tailor a form of government that will incorporate all the features desired locally but none of those not wanted. However, it does not permit the adoption of any variation not set out in one of the permissible options. For example, Chapter 717 permits a county to select as the terms of office for the board of county commissioners two years, four years, overlapping four-year terms, or a combination of two-year and four-year terms so arranged that a majority of the board is elected biennially. The options as to term of office can be combined with a board composed of three, four, five, six, or seven members, with or without a districting system, and with or without a separately elected chairman.

A change in governmental form under Chapter 717 can be initiated only by resolution of the board of commissioners and must be approved by the voters. This is less flexible than the procedure for initiating change in city charters also enacted by the 1969 General Assembly. The bill as introduced would have permitted the county commissioners to make a change without voter approval, subject to the right

The Local Government Study Commission

Representative Samuel H. Johnson, Co-chairman
Senator Jack H. White, Co-chairman
Representative Julian F. Fenner, Secretary
Former Senator LeRoy G. Simmons
Senator J. J. Harrington
Senator Thomas R. Bryan
Representative Robert Z. Falls
Representative Roberts H. Jernigan
Representative Herschel H. Harkins
Former Representative James R. Sugg
Mr. Weldon Weir
Mr. Forest Lockey
Mr. Frank Holding
Prof. Robert S. Rankin
Mr. M. C. Benton, Jr.

of the people to petition to put the change to a vote and also would have permitted the people to initiate a change by petition. Both of these procedures were eliminated in the House Committee on Local Government. Efforts to reinstate the petition procedure were made on the floor in each house, but were unsuccessful.

Cities

In 1916 the voters ratified an amendment to the Constitution which was thought to prohibit local legislation for cities. The Supreme Court eventually held in *Kornegay v. Goldsboro*, 180 N.C. 441 (1920), that the amendment did not have the intended effect, but the 1917 General Assembly, assuming that there would be no more local acts for cities, enacted the Municipal Corporations Act of 1917. This act set out comprehensive powers for cities and prescribed a procedure for local adoption of one of four alternative forms of city government. These forms were known as Plan A, Plan B, Plan C, and Plan D. Each plan was complete in itself. For example, Plan B provided for a twelve-member city council elected from wards for two-year terms, and a mayor elected at large for a two-year term. Any city that wanted election from wards had no choice as to how many councilmen it would have, or what their terms of office would be. The inadequacy and confusion of this old, unused procedure was brought to widespread public attention in the fall and winter of 1968 in Greensboro, where a group of citizens were interested in having the city council elected from wards rather than at large, as provided in the city charter. The 1917 procedure was initiated by a petition and a vote was held on whether to adopt Plan B. Had the voters approved Plan B, they would have gotten a ward system, but they also would have abolished the city-manager system, increased the size of the council to twelve members, and acquired a full-time mayor paid not more than $5,000 per year—all part of Plan B in addition to the ward system. The voters rejected Plan B, and many observers speculated that its undesirable features were a major factor in the defeat.

Chapter 629 (H 53) repealed that portion of the 1917 Municipal Corporations Act relating to adoption and modification of alternative forms of government and inserted a new Article 21 in Chapter 160 of the General Statutes setting out a procedure for local amendment of city charters within options prescribed in the act. The concept of constructing a form of government by use of specified options works in the same manner as that in the county bill discussed above. In addition to options as to the number of members of the governing board, their terms of office, and the use of wards, the options include changing the name and style of the municipal corporation (by "style," the act means whether it is to be called a city, town, or village—there being no legal difference between the three terms), whether there will be a municipal primary, and whether the mayor will be elected by the people or the governing body and for what term of office.

Chapter 629 also specifically permits any city or town not now having a city or town manager to employ one to exercise powers and perform duties set out in the act.

The act provides three procedures for effecting a change in the form of city government: (1) action by the governing board without voter approval, but subject to be petitioned to a vote; (2) action by the governing board subject to voter approval; and (3) initiative by petition of 25 percent of the number of voters participating in the last regular municipal election. There are elaborate provisions for determining the priority and validity of petitions and ordinances, and safeguards designed to minimize use of the statutory machinery for partisan or factional purposes.

SALARIES

Governing Boards

As of today, the salary of every board of county commissioners in the state is fixed by local act of the General Assembly. Most city governing boards have authority to fix their own salaries, but several are subject to local acts setting maximum figures. The 1969 General Assembly delegated authority to all city and county governing boards to fix their own compensation and allowances.

Chapter 180 (H 50) permits boards of county commissioners to fix their own compensation and allowances without limit, effective for all seats on the board following the next general election. Chapter 181 (H 51) does the same for cities. Both acts require that any such action must be taken at least two weeks before the filing deadline, and the county act provides that both a notice of intention to increase salaries and a notice of the new salaries must be published in a newspaper. The notice must be "at least three columns in width and at least six inches in height." The procedural requirements are rather strict, and are intended to restrain unreasonable action. No notice of intention was required in the city act, and no size-of-notice specifications were included.

Employees and Elected Officials

It is unusual for any city salaries other than those of the governing board and mayor to be fixed by local act. In the counties, however, a majority of the registers of deeds and sheriffs receive a salary fixed by legislative act. In several counties nonelected officers and employees receive salaries fixed by legislative act—even the janitor in one instance. In 1955 the General Assembly gave a few counties authority to fix all local salaries. The number of counties sub-

ject to the 1955 act grew over the years until 58 were included by the end of the 1967 General Assembly.

Chapter 181 (H 52), besides permitting city governing boards to fix their own salaries, repeals all charter provisions relating to city salaries and authorizes the governing boards to fix them without limit or procedural restriction.

All salaries and allowances of all officers and employees of all 100 counties will henceforth be fixed in accordance with Article 6A, Chapter 153 of the General Statutes, as revised by Chapter 358 (H 394). This act authorizes the boards of county commissions to fix the salaries and allowances of all elected and appointed officers and employees, and the number of salaried deputies and assistants to be employed by the sheriff and register of deeds. The act contains rather elaborate limitations on the commissioners' authority over the salaries of elected officers and their office staff. The salary of an elected officer may not be reduced during his term of office; any action fixing the salary or allowances of elected officers in election years must be taken at least two weeks before the filing deadline (except cost-of-living salary increments given to all county employees alike); an elected officer is given the right to hire, supervise, and discharge his own deputies and assistants; the sheriff and register of deeds are each entitled to at least one deputy; elected officers are given a veto over salary reductions applicable to their offices alone; and a grandfather clause prohibits reduction of any salary being paid to an elected officer pursuant to a local act as of July 1, 1969, as long as the incumbent holds the office he then holds.

The only procedural requirement of Chapter 358, other than that applicable to fixing the salary of elected officers in election years, requires that any salary increases of more than 20 percent may be made only at the time of annual budget adoption and must be published in a newspaper.

COUNTY ORDINANCES

Cities have had authority to enact local ordinances with criminal sanctions attached for over a century. Chaper 36 (H 57) grants similar authority to counties for the first time. Henceforth, all counties will have authority to adopt local ordinances in exercise of the general police power. The procedural requirements attached to the exercise of this power perhaps most clearly illustrate the General Assembly's determination to make sure that counties do not exercise their new authority hastily or rashly. County ordinances must be passed on two separate readings; there must be a public hearing; two notices must be published; and the ordinances must be recorded in a special ordinance book. A minimum of 50 days is required for the adoption of a county ordinance under Chapter 36. Hopefully, experience with Chapter 36 over the next two years will allay some of the fears expressed by those legislators who insisted on such restrictive procedures, and the 1971 General Assembly may modify them somewhat.

BOARDS OF COMMISSIONERS

Vacancies

Under the old law, vacancies occurring on boards of county commissioners were filled by appointment of the clerk of superior court. Beginning in 1959, many counties obtained authority for the remaining members of the board to fill such vacancies. After the clerk of superior court became a state rather than a county officer upon implementation of the district courst system, most of the counties wanted authority for the board to fill its own vacancies. Chapter 222 (S 247) rewrote G.S. 153-6 to authorize all boards of county commissioners to fill vacancies in the board with the requirement that the person appointed be a member of the same political party and a resident of the same district (if commissioner districts are used in the county) as the member causing the vacancy. Also, the board is required to consult the proper political party executive committee, but is not bound by its recommendations.

Meetings

Chapter 349 (S 251) was not sponsored by the Local Government Study Commission, but it too gives boards of county commissioners additional discretion in the management of their own affairs by permitting them to fix the date of their regular meetings. (The 1967 General Assembly allowed county commissioners to designate a site other than the courthouse as the site of their regular meetings.) This act also clarifies such questions as whether the chairman of the board may vote, the duty of members to vote on all questions, the procedure for calling special meetings, and the authority of the board to adopt rules of procedure to govern its meetings. Chapter 1036 (H 1338) revised and clarified the procedural part of Chapter 349 but made no substantive change.

Clerk to the Board

The old law provided that the register of deeds is ex officio clerk to the board of county commissioners. Over the years, many counties obtained local acts authorizing the board to appoint someone else in this capacity. Chapter 207 (S 249) makes this authority applicable to all 100 counties.

UNIFORM FEES FOR REGISTER OF DEEDS

Though not strictly a "home rule" bill, Chapter 80 (S 44) was sponsored by the Local Government Study Commission. It fixes a uniform schedule of fees to be charged by registers of deeds, completely revises the general law fee schedule, repeals all local acts

fixing register of deeds fees, and repeals the authority to fix these fees heretofore enjoyed by some 40 counties. The major benefit expected from this bill is certainty in knowing what the fee for recording given documents or obtaining copies will be in any county in the state.

COUNTY EXEMPTIONS REPEAL

Perhaps the most significant of the Local Government Study Commission bills, from a substantive point of view, were Chapters 1003 (H 55) and 1010 (H 1214). These two bills removed the county exemptions from thirteen sections or articles of the General Statutes, thus extending the authority granted by these statutes to all 100 counties or all municipalities in the state. Especially important is the removal of all exemptions from the planning, zoning, subdivision control, and building-regulation laws. Chapter 1003 repealed the county exemptions of G.S. 153-9(47) (appointment of plumbing inspectors) and G.S. 160-181.10 (preservation of open spaces and areas). Chapter 1010 repealed G.S. 153-294.19 (counties excepted from authority to make special assessments for extension of water and sewer services); G.S. 153-266.9 (counties excepted from authority to regulate subdivision of land); G.S. 153-266.22 (counties excepted from authority to enact zoning ordinances and building codes); G.S. 160-227.1 (counties excepted from authority for cities to regulate subdivision of land within one mile of corporate limits); and G.S. 160-181.2 (counties excepted from authority of cities to zone within one mile of corporate limits). Chapter 1010 also repealed the county exemptions of G.S. 153-9(52) (appointment of county building inspectors). Other statutes made uniform by one or the other of these acts include: G.S. 153-9(43) (authority for counties to levy special taxes for expenses of county accountant, farm and home agents, and veterans' service officer); G.S. 153-9(35½) and -9(35¾) (authority to cooperate in soil and water conservation work); G.S. 153-10.1 (authority to regulate disposal of trash and garbage); G.S. 160-60.1 (authority to give warranty deeds); G.S. 153-152 (authority to contract with hospitals for medical care of the poor); and G.S. 154-3 (authority to appoint county surveyor).

NORTH CAROLINA DEPARTMENT OF LOCAL AFFAIRS

Since 1959 at least eighteen states have created state departments or agencies primarily concerned with the affairs of local government in general. Several factors have contributed to the surge of interest in such agencies. Philip Green of the Institute of Government suggested in a report to the Local Government Study Commission that there are four primary factors: (1) reapportionment of state legislatures has caused the states to be more concerned with urban problems; (2) the public has become increasingly conscious of the social and economic problems confronting local governments due to the widespread riots of recent years; (3) the federal government's creation of the Department of Housing and Urban Development has led many to believe an equivalent state agency is needed to serve as a focal point around which local assistance programs can be coordinated; and (4) many state leaders are becoming increasingly concerned that the states may be losing their influence over local government.

In North Carolina both the Governor and the Local Government Study Commission recommended the creation of a state agency for local affairs to the 1969 General Assembly. The Commission's proposal called for the creation of a new division within the Department of Administration to be closely coordinated with a strengthened Division of State and Regional Planning. The Governor asked for an independent Department of Local Affairs and a strengthening and restructuring of the state planning function. The Commission made no effort to oppose the Governor's proposal, since the differences between the two were primarily organizational and not functional in nature.

The Governor's proposal was enacted by Chapter 1145 (H 484). The new Department of Local Affairs consolidates the Division of Community Planning of the Department of Conservation and Development, the Recreation Commission, and the Governor's Committee on Law and Order into one agency with no change of function or program in any of the three. The Department is also empowered to undertake a broad range of new activities which will make it the primary state agency concerned with the local governmental affairs not directly connected with one of the state "line" departments. Specifically, the Department is authorized to (1) study and sponsor research in local government and intergovernmental relations; (2) collect, analyze, and disseminate information useful to local government; (3) act as a clearinghouse of information and a referral agency with respect to state, federal, and private services and programs available to local government; (4) render technical assistance to local governments in obtaining federal grants; and (5) inform and advise the Governor on local governmental affairs.

Particularly with regard to assistance in dealing with federal agencies, the Department can fill a major need of many small units of local government. The number and complexity of federal grant programs has become such that some larger cities in North Carolina and elsewhere have employed staff for the sole purpose of keeping abreast of the field. Also, the Local Government Study Commission found during its public hearings that a common complaint from local officials was that there was no central agency in Raleigh capable of directing them through the maze of state agencies. This aspect of the Department's work can develop into a real boon for local govern-

ment. Finally, the Department's responsibility to advise the Governor on local affairs fills a long-standing need.

CONSTITUTIONAL AMENDMENTS

The first item in priority in the recommendations of the Local Government Study Commission was revision of those portions of the State Constitution concerning local government. The Commission recommendations were accepted in full by the General Assembly by enactment of Chapter 1200 (H 331) and will be submitted to the people in the fall of 1970. While many relatively minor changes will be made by these amendments, several are particularly important.

• *Repeal of the 20-Cent Limitation.* Most important for counties is the repeal of the 20-cent limitation on the property tax levy for the general fund. This limit was last raised in 1952 and has become increasingly inadequate with the passage of time.

• *Repeal of the Poll Tax.* The amendments to Article V would forbid the levy of poll taxes by the state or any unit of local government.

• *Subordinate Service Districts.* Heretofore the Constitution has been interpreted as requiring a unit of local government to levy the same tax rate throughout its territorial extent regardless of the type or level of services being provided to different areas. One practical result of this limitation is that urban services cannot be provided on less than a county-wide basis unless (1) nontax revenues can be found to finance them; (2) a special district is created; (3) county-wide revenues are used. The first alternative is usually impossible financially, and the third alternative is always politically unacceptable. The amendments to Article V proposed by Chapter 1200 would permit the General Assembly to authorize counties or cities by general law to create subordinate service districts in which services would be provided in addition to or to a greater extent than those provided throughout the unit, financed by taxes levied only in the area served. Thus, a county might provide fire protection to less than the whole county and levy taxes to pay for the service only in the area receiving it. In this manner, the constitutional necessity for special districts would be completely eliminated in North Carolina. The subordinate service area authority would also make city-county consolidation practical and easy to accomplish.

• *Redefinition of "Debt."* Several decisions of the Supreme Court over the past five years have expanded the Court's definition of the word "debt" to the point that it seems probable that any contractual obligation extending beyond the current fiscal year would be considered a "debt" and therefore subject to voter approval in certain instances. Before these decisions, it was commonly thought that the Constitution required voter approval of bond issues or other forms of borrowing money, but not other forms of incurring contractual obligations in the future. The Article V amendments, in rather intricate fashion, attempt to make it clear that the Constitution requires voter approval for the borrowing of money secured by a pledge of the taxing power but not for revenue bonds or other types of contractual obligations.

• *Elimination of the "Necessary Expense" Concept.* The North Carolina Constitution now requires voter approval of all local tax levies and all local borrowing except for "necessary expenses," as this term is defined from time to time by the Supreme Court. The Article V amendments eliminate this concept from the Constitution and substitute for it a requirement that the voters must approve all local tax levies and borrowing except "for purposes authorized by general laws uniformly applicable throughoute the State." The practical effect of the new language is to give the General Assembly the power to determine what is and what is not a necessary expense for counties and cities, provided it does so on an absolutely uniform basis.

• *The Revised Constitution.* In addition to the act proposing revision of Article V of the Constitution, the General Assembly also proposed a complete editorial revision of the Constitution by enacting Chapter 1228 (H 231). Three of the proposed changes are of particular interest to local governments. First, the General Assembly is given the power to determine what combination of appointive or elective and appointive offices may be held by the same persons. This eliminates the barrier to appointment of one person to several positions in smaller cities and counties. For example, under the Revised Constitution, the legislature could permit one person to hold the offices of both city clerk and city tax collector at the same time. Under the present Constitution, many combinations of offices are not permitted, and others are of doubtful constitutionality. Second, the language of Article VI is revised to make it clear that the Constitution requires candidates for elective office to be residents of the subdivision they seek to govern, but does not require appointed officers to be legal residents of the county or city. Third, all of the obsolete 1868 provisions for county government are repealed.

Both the Revised Constitution and the Article V amendments are discussed in the article on constitutional revision in this issue.

JUVENILE CORRECTIONS AND FAMILY LAW

By MASON P. THOMAS, JR.

Other articles in these legislative issues—e.g., those on social services and penal and correctional administration—will be of interest to readers of this section.

JUVENILE COURT REVISIONS

Need for Revision

When the juvenile court was established in North Carolina in 1919, the clerk of superior court became juvenile judge on a part-time basis in the 100 counties. After the passage of 50 years involving many changes, the juvenile court laws (contained in Article 2 of G.S. Ch. 110) seemed dated and inadequate for the following reasons: (1) juvenile jurisdiction is now placed in the district court so that the clerk of superior court is no longer a part-time juvenile judge; (2) the 1919 legislation defined jurisdiction broadly and left procedures to the discretion of the judge, resulting in a variety of interpretations and approaches to juvenile proceedings from place to place within the state; and (3) recent decisions of the U.S. Supreme Court (namely *Kent* and *Gault*) more precisely define the due process constitutional rights of children in juvenile delinquency hearings. The North Carolina Courts Commission therefore decided to study juvenile court practices and procedures with a view to proposing a revision of juvenile court laws.

After study and evaluation, the Commission reached the following conclusions: (1) Article 2 of G.S. Ch. 110 should be rewritten entirely, except for two sections that should be transferred to more appropriate General Statutes chapters (G.S. 110-39, which makes it a misdemeanor to contribute to the delinquency or neglect of a child, and G.S. 110-25.1, which establishes a procedure for the local health director to refer cases to the county social services director if a birth certificate that shows a third illegitimate child was born to an unwed mother). (2) The revision should more precisely define jurisdiction, update juvenile procedures to meet new constitutional requirements, and incorporate juvenile jurisdiction appropriately into the district court. Thus, juvenile jurisdiction and procedures should be incorporated into G.S. Chapter 7A, which defines jurisdiction and procedures of the district court. Statutes dealing with juvenile services should be rewritten without substantive change and remain in Article 2 of G.S. Chapter 110 under a new title, "Juvenile Services." (3) While the Commission recognized that certain questions are being raised about the organization of juvenile services (probation, detention, training schools, after-care) in state and county governments, these issues were left for further study and future action by the General Assembly. (4) There was also some feeling that the age jurisdiction of the district court in juvenile cases should include children who are sixteen or seventeen. The Commission concluded that for the present, juvenile jurisdiction in the district court should include only children less than sixteen years of age.

The recommendations of the Courts Commission (H 627) were enacted by the General Assembly without substantive changes as Chapter 911. The new law (effective January 1, 1970) is summarized below.

Jurisdiction

Juvenile procedures in the district court are applicable to children less than sixteen years of age who fit into any of four categories—delinquent, undisciplined, dependent, or neglected—or who come within the Interstate Compact on Juveniles. Juvenile jurisdiction may be exercised only by the district judge, thus excluding magistrates from hearing juvenile cases.

In order to avoid applying the stigma of the label "delinquent" to a child whose behavior does not constitute a crime, the definition of delinquency has been narrowed to apply to a child who has committed a criminal offense (under state law or local ordinance), including motor vehicle violations, or a child who has violated the conditions of his juvenile probation. A new category of jurisdiction is created to include noncriminal behavior applicable to children—"undisciplined child"—which includes children (classified as delinquents under former law) who are unlawfully absent from school, regularly disobedient to parents and beyond their disciplinary control, or regularly found in places where it is unlawful for a child to be or who have run away from home. A "dependent" child is one in need of placement, special care, or treatment because there is no parent to be responsible for his care or because his parent is unable to provide care. A "neglected" child is one who does not receive proper care or supervision or discipline, or who has been abandoned, or who is not provided necessary medical or remedial care, or who lives in "an environment injurious to his welfare," or who "has been placed for care or adoption in violation of law."

Transfer of Felony Cases

The authority of the judge to hear felony cases involving children fourteen or fifteen years of age as juvenile cases or to transfer them to superior court for trial as an adult has been rewritten to give the district court judge more discretion to decide whether to hear or transfer the case and to conform with new constitutional requirements for waiver of juvenile cases prescribed by the *Kent* decision.

The judge must conduct a preliminary hearing to determine probable cause when any child who is fourteen or fifteen is alleged to have committed a felony, after notice to the parties by summons and petition. The preliminary hearing must "provide due process of law and fair treatment to the child, including the right to counsel, privately retained or at state expenses if indigent" (requirements of *Kent*). If the judge finds probable cause, he has discretion to hear the case under juvenile procedures in the district court, or he may transfer the child to superior court for trial as an adult. If the felony is a capital offense, the district judge has no discretion; he must transfer any capital case involving a child fourteen or fifteen years of age to superior court for trial as an adult.

When the judge is hearing a case that he has discretion to transfer, the attorney for the child has a right to examine any court or probation records considered by the judge in deciding the transfer issue, and the order of transfer must specify the judge's reasons (also *Kent* requirements). When a child is transferred to superior court for trial, the district court judge has discretionary authority to order that the child be detained in a juvenile detention home or separate section of a local jail for juveniles, pending superior court trial.

Initiating a Juvenile Case

The juvenile jurisdiction of the district court is invoked when a petition is filed. Any person may file a verified petition with the clerk of superior court based on "knowledge or information that a case has arisen which invokes the juvenile jurisdiction . . ." of the district court. The petition must contain identifying information concerning the child and "allege the facts which invoke the juvenile jurisdiction of the court."

Intake

There is no provision for intake or any informal screening of juvenile cases prior to signing a petition. After the petition is filed, any judge exercising juvenile jurisdiction (there may be several in a single district) "may arrange for evaluation of juvenile cases through the county director of social services or the chief family counselor or such other personnel as may be available to the court. The purpose of this procedure is to use available community resources for the diagnosis or treatment or protection of a child in cases where it is in the best interest of the child or the community to adjust the matter without formal hearing."

Notice

After a petition is filed, the clerk of superior court is to cause a summons to be issued when so directed by the court. The summons is to be directed to the parents and to the child, requiring them to appear at the specified time and place for a juvenile hearing. The revision requires personal service of the summons and petition by leaving copies with the parents and the child five days prior to the hearing, but this five-day notice requirement may be waived by the judge "in the best interest of the child." If it is impractical to obtain personal service, the judge may authorize service of the summons and petition by mail or by publication. If a parent fails to appear for a hearing and bring the child after personal service without

reasonable cause, the court may find such parent to be in contempt of court.

The new law requires that there be a parent or other responsible adult to appear with the child in juvenile cases. If personal service upon the parent is not possible and there is no parent, guardian, or custodian to appear with the child, the court must appoint a guardian ad litem, or guardian of the person, to appear with the child in the juvenile hearing.

Temporary Custody

If it appears from a petition that an emergency exists (child in danger, subject to serious neglect) or that the best interest of the child requires that the court assume custody, the judge may order that an officer or other authorized person assume immediate custody of the child prior to a juvenile hearing on the merits. In such case, the court is required to hold a hearing on the merits at "the earliest practicable time within five (5) days after assuming custody, and if such hearing is not held within five (5) days, the child shall be released."

Juvenile Detention

The new law makes no change in the types of facilities where children may be lawfully detained. It does specify new procedures for notice to parents if a child is detained and sets a limit on how long a child may be detained without a hearing.

In general, it is unlawful for a child under sixteen years of age to be placed in a local jail where he will have contact with the adult jail population. A child alleged to be delinquent or undisciplined may be detained before or after a hearing on the merits if his behavior is such that he requires secure custody for the protection of the community, or if the best interest of the child requires that he be detained.

The practical problem posed for judges and law enforcement personnel is the lack of suitable juvenile detention facilities in the state. There are only seven, located in urban counties. Thus, to be practical, the law allows a judge exercising juvenile jurisdiction to order detention of a child in a local jail under specified conditions: (1) if no juvenile detention home is available; (2) if the judge finds a pressing need for the child to be held in secure custody; (3) if the jail has a separate section where the child will have no contact with the adult jail population. The new law adds a requirement that in case of jail detention, "the jailer or other personnel responsible for administration of the jail shall provide close supervision of any child so detained for protection of the child."

The new procedural requirements in detention cases are: (1) The court must notify the parent, guardian, or custodian of the child's detention. (2) A child may not be detained more than five days without a juvenile hearing. (3) If the judge orders that the child continue in detention after a hearing, the court order must be in writing and contain appropriate findings of fact showing the reasons for continued detention.

Juvenile Hearing

"The juvenile hearing shall be a simple judicial process designed to adjudicate the existence or nonexistence of the conditions . . ." specified in the definitions of the categories of jurisdiction—i.e., whether the child is delinquent, undisciplined, dependent, or neglected—and "to make an appropriate disposition to achieve the purposes of this article." The juvenile hearing is divided into two parts: adjudication and disposition.

During adjudication, the judge must be concerned with the facts and whether the child is within the juvenile jurisdiction of the court. He must follow specified procedures to protect the constitutional rights of the child, which will tend to make the adjudication part of the hearing more structured and formal than the disposition. The law states: "In the adjudication part of the hearing, the judge shall find the facts and shall protect the rights of the child and his parents in order to assure due process of law, including the right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination." If the petition alleges the child to be delinquent or undisciplined and the child could be committed to a state institution, such child has a right to assigned counsel in cases of indigency (all requirements of *Gault*).

The court may continue any case for further factual or social information. After the adjudication part of the hearing, the court may proceed to the disposition or continue the case for disposition after the court has such social, medical, psychiatric, psychological, or other information as needed to develop a disposition related to the needs of the child or in the best interest of the state. "*If the court finds that the conditions alleged do not exist, or that the child is not in need of the care, protection or discipline of the State, the petition shall be dismissed.*

"The disposition part of the hearing may be informal, and the court may consider written reports or other evidence concerning the needs of the child. The child or his parents . . . shall have an opportunity to present evidence if they desire to do so, or they may advise the court concerning the disposition which they believe to be in the best interest of the child."

In all cases, the court order must be in writing, with appropriate findings of fact and conclusions of law.

Probation

The organization of juvenile probation services is essentially unchanged. The county director of social services or the chief counselor (in districts containing

a county with a population over 85,000 where family counselors are available to the district judge) is the chief juvenile probation officer, who is to supervise the work of any persons providing juvenile probation services.

The court order placing a child on probation must include the following: (1) it must specify conditions of probation designed by the court to meet the needs of the child (the statute suggests six possible conditions of probation); (2) it must specify the period of time that the child is to be on probation. The court may review a child's progress on probation at any time during the period of probation and change the conditions or period of time as appropriate in the particular case (after notice and a hearing). At the end of the period of probation, the child must appear with the juvenile probation officer for a hearing before the judge so that the probation may be ended, or continued under the same or modified conditions, or so that the court may "enter such other order as the court may find to be in the best interest of the child."

Use of Juvenile Jurisdiction

The judge must consider the needs of the child in selecting a disposition: "The judge shall select the disposition which provides for the protection, treatment, rehabilitation or correction of the child after considering the factual evidence, the needs of the child, and the available resources. . . ." He has discretion in making the adjudication or disposition: "In cases where the court finds a factual basis for an adjudication that a child is delinquent, undisciplined, dependent or neglected, the court may find it is in the best interest of the child to postpone adjudication or disposition of the case for a specified time or subject to certain conditions." The court has a continuing responsibility for children within its jurisdiction: "The court shall have a duty to give each child subject to juvenile jurisdiction such attention and supervision as will achieve the purposes of this article." The court may review a child's case at any time by motion in the cause or by petition.

Once jurisdiction attaches to a child under the age of sixteen, such child continues within the juvenile jurisdiction of the district court until he becomes twenty-one or until jurisdiction is terminated by court order; however, if he commits an offense after he becomes sixteen, while subject to the juvenile jurisdiction of the district court, he is subject to prosecution as an adult in any court.

Alternative Dispositions

The law specifies the alternatives that a judge may consider in making the disposition. He may use the following in all categories of jurisdiction: (1) He may dismiss the case or continue the matter in order to allow the child or parents to take appropriate action. (2) If the child needs more adequate care, supervision, or placement, the judge may order that the child be supervised in his own home, subject to specified conditions applicable to the parents or the child; or he may place the child in the custody of a parent, relative, private agency or other suitable person, or in the custody of the county department of social services (in which cases he can require financial support from the parents).

There are two alternatives applicable only to children adjudicated to be delinquent or undisciplined: (1) probation; (2) continue the case to allow the family an opportunity to meet the needs of the child through better supervision, placement in a specialized resource or with a relative, or through some other plan approved by the court.

Training School

The revision limits commitment to training school to children who have been adjudicated delinquent. This change in policy means that many children classified as delinquent under the former law due to truancy, being beyond parental control, or running away from home may not be committed to training school unless they have been adjudicated "undisciplined" and placed on probation and have violated their juvenile probation so that the new definition of "delinquency" is applicable. Thus, the law requires any judge exercising juvenile jurisdiction to give an undisciplined child an opportunity to show that he can adjust on probation in the community before being institutionalized in a state-supported training school.

Training school commitments will now be to the North Carolina Board of Juvenile Correction, rather than to any of the institutions operated by the Board. The Board is authorized to assign a committed delinquent "to whatever facility operated by such Board as the Board or its administrative personnel may find to be in the best interest of the child." Under former law, commitments were for indefinite terms and the Board of Juvenile Correction had discretion to keep a child until the institution felt he was ready for return to the community. The revision provides for an indefinite term, but provides that the indefinite term may not extend beyond the eighteenth birthday of the child (except that if a child is involved in a vocational training program when he becomes eighteen, the Board is authorized to keep him until the training program is completed). Within the eighteenth-birthday limitation, the Board continues to have discretionary authority to determine when a child is ready for release and should plan for child's return to the community with the appropriate aftercare resource (county department of social services or family counselor).

Under former law, the jurisdiction of the juvenile court was terminated upon commitment to training school. Now the child continues within the juvenile

jurisdiction of the district court after commitment to training school until he becomes twenty-one or until jurisdiction is terminated by court order. The Board of Juvenile Correction has authority to determine how long he will remain in the institution, subject to the eighteenth-birthday limitation. But the Board may make a motion in the case when the child is ready to leave the training school "to protect the best interest of a child" so that the court may enter an appropriate order (such as placing the child in the custody of some responsible relative). If the Board finds that a committed delinquent "is not suitable for the program of any facility operated by the Board," it is also authorized to make a motion in the district court so that the court may enter an appropriate order.

Professional Evaluation/Medical or Psychiatric Treatment

In any case in which the court finds a child to be within its juvenile jurisdiction, it may order that he be examined by a professional (physician, psychiatrist, psychologist, etc.) if the court needs a professional evaluation to determine his needs. If such evaluation shows that the child needs treatment, the court may allow the parents to arrange for such care, or if they decline, it may order the needed treatment and require them to pay the cost; if the court finds the parents are unable to pay for the needed treatment, "such cost shall be a charge upon the county when approved by the court."

Commitment of Mentally Ill or Retarded Children

The new law gives the district court exercising juvenile jurisdiction new authority to commit a mentally ill or mentally retarded child to a state institution. If the court finds a child within its juvenile jurisdiction to be in need of institutional care because of mental illness or mental retardation, it may commit him to the appropriate state institution if two physicians certify in writing that such commitment is in his best interest. After such a court commitment, the child may be released only by the governing board or administrative personnel of the state institution. The state institution must report to the court from time to time on the progress of a committed child. If he is released during his minority, he must be returned to court for such orders as the court finds to be in his best interest.

Guardian of the Person

The law authorizes the court to appoint a guardian of the person for a child in any case in which there is no parent to appear in the juvenile hearing with the child or when the court finds such appointment would be in the best interest of the child. Such guardian of the person must operate under the supervision of the district court, may serve with or without bond as prescribed by the judge, and is required to file only such reports as the court requires. The authority of such guardian of the person may include the following: care, custody, and control of the child, or the right to make a suitable placement for the child; the right to represent the child in legal actions before any court; the right to consent to certain actions by the child in place of the parents (including but not limited to marriage, enlisting in the armed services, major surgery, or "such other actions as the court shall designate where parental consent is required"). Such guardian of the person may have this authority for whatever period of time the court designates prior to the child's twenty-first birthday.

Juvenile Records

The district court must keep a "complete record" of juvenile cases to be known as the juvenile record, which must be withheld from public inspection. The child, his parents, and his attorney or other authorized representative have a right to examine the child's juvenile record. Otherwise, a juvenile record may be examined only by order of the district judge.

The revision contains new authority for dividing juvenile records into two parts, social and legal, so that a higher degree of confidentiality can be given to social information about the child and his family. The social part (including family background, medical information, social reports, reports of interviews with the child and his parents, or other information that the judge finds should be protected) may be filed separate from other district court records under "rule of the Administrative Office of the Courts." The legal part includes the summons, petition, court order, written motions, transcript of the hearing, or other papers filed in the proceeding.

Termination of Parental Rights

The district court has new authority to terminate parental rights when the court has adjudicated a child to be neglected or dependent in four situations: (1) abandonment by the parent for six months; (2) cases involving a third illegitimate child to an unwed mother when the court finds that the living conditions endanger the health or general welfare of the child; (3) when a parent has willfully failed to contribute adequate financial support to a child placed in the custody of an agency or child-care institution, or living in a foster home or with a relative, for a period of six months; (4) cases in which a parent has so physically abused or seriously neglected a child that it would be in the best interest of the child that he not be returned to the abusing or neglecting parent.

Termination cases must be heard in a special hearing, after notice to the parents by personal service of a summons and the petition requesting termination or by publication under the new Rules of Civil Procedure. The new law states: "Before entering an order of termination of parental rights, the court shall con-

sider all available facts and social information concerning the child to evaluate whether the parent may re-establish a suitable home for the child, for the policy of law is to preserve natural family ties where possible in the best interest of the child."

When the court enters a termination order, it must place the child in the custody of the county department of social services or a licensed child-placing agency, which as custodian may make placement plans for the child and is given statutory authority to give consent on behalf of the child in the following instances: his adoption, marriage, enlistment in the armed forces, or surgical or medical treatment.

Appeals

Any child, parent, or other person who is a party to a juvenile case in the district court may appeal from an adjudication or disposition to the Court of Appeals. Notice of appeal must be given in open court at the time of the juvenile hearing or in writing within ten days after the hearing. Pending disposition of an appeal, the judge has discretionary authority to enter a temporary order concerning the custody or placement of the child involved in the case.

The appeal hearing in the Court of Appeals will be upon the record on questions of law, rather than a hearing *de novo*.

COURTS AND CHILDREN

Indigent Child's Right to Counsel

Chapter 1013 (H 164) creates a public defender program in three counties (Guilford, Cumberland, Hoke) and establishes state responsibility to furnish counsel to indigent persons in other counties, including an indigent child subject to the juvenile jurisdiction of the district court in cases in which a juvenile hearing could result in commitment to a state institution or transfer of the child to superior court for trial on a felony charge as an adult. The right to legal services begins when the summons and petition are served or when the child is taken into custody or placed in a juvenile detention facility; it continues through disposition of the case and any appeals.

Parental Control Over Teenagers

Juvenile jurisdiction in the district court terminates with the sixteenth birthday. This means that a child of sixteen or seventeen may leave home or live in a hippie house and juvenile authorities have no authority to intervene, even when the parents request help.

Chapter 1080 (S 788) adds a new section to the law to provide that any child under eighteen (unless married, serving in the armed forces, or otherwise emancipated) is subject to the supervision and control of his parents. It authorizes a parent to bring a civil action in district court against the child and prescribes procedures for the child to appear before the court to answer the parent's complaint, including the right of the sheriff to enter any house or building to search for the child, to serve the order, or to take the child into custody to bring him before the court. The court may also order any other person not to harbor, keep, or allow the child to remain in such person's home. Within thirty days after the hearing on the original order, the child (or someone on his behalf) may file an answer to the complaint; in such case, the district judge will hear the matter, make findings of fact, and render judgment.

TRAINING SCHOOLS

New Names

Several of the schools operated by the North Carolina Board of Juvenile Correction received new names, eliminating the terms "training and industrial" from the official names of the institutions: State Home and Industrial School for Girls became Samarkand Manor (Ch. 837, H 1113); Stonewall Jackson Manual Training and Industrial School became Stonewall Jackson School; Morrison Training School became Cameron Morrison School; Leonard Training School became Samuel Leonard School (Ch. 901, S 770); and Eastern Carolina Industrial Training School for Boys became Richard T. Fountain School (Ch. 771, H 1090).

Chapels

The General Assembly appropriated $50,000 each to two institutions—Samarkand Manor and State Training School for Girls (Dobbs Farm) for the construction or renovation of a chapel. The appropriations were contingent on an equal amount being raised for the chapels from other sources by June 30, 1971 (Ch. 1261, S 551; Ch. 1262, S 562).

SCHOOL ATTENDANCE

Basic Attendance Law Rewritten

Ch. 799 (S 643) rewrites G.S. 115-166 (dealing with the duty of a parent to keep a child between ages seven and sixteen in school) to require the parent to keep the child in the school to which the child is assigned (under former law, the parent was required to keep the child in the school to which he was assigned and enrolled, suggesting that if the child were not enrolled, there was no duty on the parent to require attendance; the new law also eliminates the exception that a child assigned to a racially mixed school against the wishes of his parents need not attend). The law further provides that a parent need not present a child for enrollment if the child is afflicted by "mental, emotional, or physical incapacities" so that it is unlikely that he could profit from public school if the parent presents an evaluation to this effect to the school superintendent. The act provides harsher penalties for parents who fail

to send their children to school—a fine of $50 or 30 days' imprisonment or both (formerly, a fine of $5 to $25, or on failure to pay the fine, 30 days in the county jail).

Children Excluded from Public Schools

Chapter 340 (S 353) rewrites G.S. 115-165 dealing with the authority of the school superintendent to exclude certain children from public school attendance. Children afflicted by mental, emotional, or physical incapacities who cannot substantially profit from public school "shall not be permitted to attend." If such a child is presented for enrollment, the superintendent must have an examination (medical, social, psychological, and educational) made to determine whether the child can profit from public school. If he receives a report indicating that the child cannot profit, he may exclude him.

The new law gives the parent of a child so excluded the right to appeal the decision of the superintendent to the school board, and if the school board rules against admission of the child, the parent may appeal the board's decision to the courts. In cases in which a child is excluded, a complete record of the transaction shall be made available to the parent. The new law eliminates a provision in the former law making it a misdemeanor for the parent of a child who has been excluded to persist in forcing attendance.

ADOPTIONS

Effect of Legitimation on Adoption Consent

Chapter 534 (S 486) amends G.S. 48-6(a) (providing that the consent of the unmarried mother is sufficient for adoption when the child has not been legitimated prior to such consent) and adds new G.S. 49-13.1 (providing for a new birth certificate when the illegitimate child is legitimated) to clarify that legitimation of the child subsequent to the signing of adoptive consent by an unmarried mother does not affect the validity of the mother's consent to adoption nor make the consent of the father who has legitimated the child necessary for the validity of the adoption.

Birth Certificates

Under G.S. 48-29, when an adopted child receives a new birth certificate, the place of birth of the child on the birth certificate is shown as the place of residence of the adoptive parents. Ch. 977 (S 747) amends G.S. 48-29 to provide that the place of birth of a child adopted by the spouse of the natural parent shall be the same on the new birth certificate as on the original when so requested by the adoptive parent.

Name Change in Adult Adoptions

Chapter 21 (H 96) amends G.S. 48-36 to authorize the clerk of superior court to issue an order changing the name of an adopted person who is twenty-one or older when requested by the adoptive parents and the person adopted. The order would change the name of the person adopted, but the name of the natural parents would be unchanged on the birth certificate. The bill also authorizes such adopted person over age twenty-one to seek a new birth certificate under G.S. 48-29 which would reflect the new name and show the adoptive parents on the birth certificate in place of the natural parents.

NONSUPPORT

Handicapped Dependents

Chapter 889 (H 1220) adds new G.S. 14-322.2, making it a misdemeanor and a continuing offense for a parent to fail willfully to support adequately a physically handicapped or mentally retarded child who becomes eighteen years of age and is unable to be self-supporting.

Punishment for Nonsupport

The North Carolina Supreme Court recently ruled that an indigent person charged with a misdemeanor for which the punishment could exceed six months is entitled to assigned counsel at state expense. Under previous law, the punishment for criminal nonsupport of a wife, child, or parent (a general misdemeanor) has been up to two years' imprisonment. To avoid the requirement of appointment of counsel in first-offense cases, Chapter 1045 (H 1259) amends three nonsupport statutes (G.S. 14-322, dealing with abandonment and nonsupport of wife and child; G.S. 14-325, dealing with nonsupport of a husband while living with the family; and G.S. 14-326.1, dealing with nonsupport of a needy parent in certain circumstances) to reduce the punishment for nonsupport to a fine not exceeding $500 or imprisonment for not more than six months, or both in the discretion of the court; and for the second offense, by fine or imprisonment not exceeding two years, or both in the discretion of the court.

NEW CRIMINAL OFFENSES

Removal of Child From State

Chapter 81 (S 48) provides that it is a felony to take or keep a child less than sixteen years of age outside the state if a court of competent jurisdiction has awarded custody of the child, if the person takes the child outside the state with intent to violate the court order. The bill provides that keeping a child outside the state in violation of a court order for more than seventy-two hours constitutes prima facie evidence that the offender intended to violate the court order. The offense is punishable by fine or imprisonment for up to three years, or both in the discretion of the court.

Exhibiting Defective Children

Chapter 457 (S 451) adds a new Article 1A entitled "Exhibition of Children" to G.S. Ch. 110, making it a misdemeanor to exhibit any child under eighteen years of age who is mentally ill or mentally retarded or who has a physical deformity, whether the exhibiting is for profit or not. The prohibition applies to parents or others who may have control over such a child. Excepted are television transmissions or exhibitions by governmental agencies or by religious, charitable, or educational organizations where no individual profits. Violators may be punished by a fine from $5 to $50 or 30 days' imprisonment, or both. Each day of violation after notice from a county director of social services to cease constitutes a separate offense.

OTHER YOUTH LEGISLATION

Children's Working Hours

G.S. 110-2 prescribes the hours during which children under sixteen years of age may lawfully be employed—between 7:00 a.m. and 6:00 p.m. Chapter 962 (S 838) amends G.S. 110-2 to add one hour during which children under sixteen may work (until 7:00 p.m.) and to allow such children to work until 9:00 p.m. on days when school is not in session.

Youth Council Act

Chapter 404 (S 2) creates a statewide program of youth councils, but provides that the program will operate without state funds. Apparently foundation funds are available to finance the program, designed to develop youth leadership and interest in civic affairs. At the state level, the program is under the supervision of a Youth Advisory Board (eight adult and eight youth members, appointed by the Governor for four-year terms) which is advisory to local youth councils (existing now and to be developed). The Youth Advisory Board must meet quarterly (or when called by the chairman), may elect its own chairman from the adult members, and may employ an executive secretary (who serves at the pleasure of the Governor) with the approval of the Governor.

Youth will also participate at the state level through the State Youth Council composed of youth members elected on a representative basis from local councils as prescribed by the Youth Advisory Board. The Youth Council is to study problems affecting youth, recommend solutions to state and local governments, and promote statewide activities for youth, and it also elects representatives to the Youth Advisory Board. Local youth councils are to be composed of high school students and other youth between sixteen and eighteen, but younger teenagers may also be involved. The executive secretary is to coordinate the activities of local youth councils, serve as adviser to the State Youth Council under policies of the Youth Advisory Board, and make an annual report.

PENDING STUDY

Study of Emotionally Disturbed Children

By joint resolution of the Senate and House (Res. 75, S 629), the General Assembly created the Study Commission on North Carolina's Emotionally Disturbed Children composed of nine members (the Governor, the Lieutenant Governor, and the Speaker of the House are each to appoint three members, with the Governor designating one of his appointees as chairman) to study in depth the needs of the emotionally disturbed children in the state, including prevention, educational intervention, and treatment. The Commission is to report to the 1971 General Assembly.

PLANNING

DEVELOPMENT, AND LAND-USE REGULATION

By Philip P. Green, Jr.

Although it passed no major legislation concerning zoning or subdivision regulation, the 1969 General Assembly must be given high marks for the assistance it gave to local planning efforts. Most noteworthy were measures to strengthen the support for local planning from the level of state government, grants of vastly expanded regulatory powers for county governments, and extensive revisions of the laws relating to local building inspection.

But of almost equal significance was the fact that the General Assembly at last swept the books clear of the many exemptions of particular local units from enabling acts granting planning powers. Between them, Chapters 1003 (H 55) and 1010 (H 1214) repeal all exemptions from the enabling acts for county zoning (G.S. Ch. 153, Art. 20B), county subdivision regulation (G.S. Ch. 153, Art. 20A), county plumbing inspection [G.S. 153-9(47)], county building inspection [G.S. 153-9(52)], county regulation of carnivals (G.S. 153-10) and trash and garbage disposal (G.S. 153-10.1), county water and sewer assessments (G.S. Ch. 153, Art. 24A), municipal and county acquisition of open space (G.S. Ch. 160, Art. 14A), municipal extraterritorial zoning (G.S. 160-181.2), and municipal subdivision regulation (G.S. Ch. 160, Art. 18, Part 3A).

Not only do these repealers have the effect of making such powers available to many local units that have heretofore been barred from using them, but also they remove any lingering doubts that these enabling acts might be in violation of Article II, section 29, of the State Constitution (which prohibits certain categories of special acts).

STATE GOVERNMENT

Department of Local Affairs

Local planning officials have a special interest in the new state Department of Local Affairs, created by Chapter 1145 (H 484). This is because one of the three initial divisions of the department is a Community Planning Division, composed of personnel formerly in the Division of Community Planning of the Department of Conservation and Development (which has furnished staff assistance to many local governments in the state under the so-called 701 program). Other components are a Recreation Division (formerly the North Carolina Recreation Commission) and a Law and Order Division (formerly the Governor's Committee on Law and Order). Both of these agencies have also helped many local planning agencies in the past.

Giving further emphasis to the planning function, the act provides for a Committee on Community Planning to advise the director of the department. This is to be composed of the president of the North Carolina chapter of the American Institute of Planners (currently Robert E. Stipe of the Institute of Government staff) and nine members appointed by the Governor, of whom at least five are to be members of municipal county, or joint planning boards.

The new department is expected initially to continue unchanged most of the functions of its component agencies, while undertaking a more extensive program of helping local governments to identify and make use of state and federal sources of assistance. It will serve as a central contact point for local offi-

cials with the state government, maintain an inventory of data concerning local government problems, and advise the Governor concerning necessary legislative and administrative action for meeting local problems.

State and Regional Planning

Coupled with the new department in the recommendations of the Local Government Study Commission was a beefed-up Division of State and Regional Planning in the Department of Administration, to replace the State Planning Task Force Division. This recommendation is carried into effect by Chapter 1144 (H 483). The act contemplates, in addition to activities designed to improve the quality of state planning, that the division will take the lead in developing (in cooperation with local and federal governments and private organizations) "a system of multi-county, regional planning districts to cover the entire State, and . . . assist in preparing for those districts comprehensive development plans coordinated with the comprehensive development plan for the State."

Housing Assistance

Another state-level act of considerable interest to many local officials is Chapter 1235 (H 1019), which sets up a major new program for financing lower-income housing. The act creates a North Carolina Housing Corporation and directs it to engage in a broad-scale program of loans to developers and purchasers of such residences. It may issue up to $200,000,000 in bonds, whose proceeds may be used to make federally insured mortgage loans and construction loans, and a further $5,000,000 of notes to be used for temporary loans to persons for whom federal assistance is not available.

The program is to be administered by a nine-member board, consisting of the State Treasurer, the Director of the Department of Administration, the Director of the Department of Conservation and Development, the Director of the Department of Local Affairs, the State Health Director, and four members appointed by the Governor. Chapter 1162 (H 1020) appropriates $500,000 for the operations of the Housing Corporation during the 1969-71 biennium.

Regulation of Surface Mining

Planning officials concerned about the possible impact of strip-mining operations on their counties were given additional hope of effective state regulation by Chapters 1204 (H 970) and 1161 (H 971). Following a threat of widespread surface mining in some Piedmont counties, the 1967 General Assembly brought the state under the Interstate Mining Compact and created a State Mining Council to consider further appropriate actions by the state. On that council's recommendations, the position of State Mining Engineer has now been created in the Department of Conservation and Development to administer a new program of registration for all existing and new mining operations.

On the basis of data collected under this program and further studies by the Mining Engineer, the Mining Council is directed to recommend legislation to the 1971 General Assembly (a) designating or creating a state agency to regulate the mining industry, (b) specifying the legal responsibility for reclamation of mined-out land, and (c) creating a system for licensing mining operations sufficient to insure adequate conservation and land-reclamation measures in connection with such operations.

Historic Preservation

The state will embark on another new program of importance to local officials as a result of Chapter 577 (H 508). This act authorizes the Department of Archives and History to establish a registry of historically or architecturally significant buildings worthy of preservation. While no mandatory powers are granted for the preservation of such structures, the department is enabled to enter into agreements with private owners under which a seal would be placed on the building to identify its significance and the owner would covenant not to alter, move, or demolish the structure without first giving the department sixty days' notice of his intent. This period presumably would be used by the department to negotiate a means of preserving the structure intact.

Protection of Waterways

Two acts grant new powers for protection of the state's valuable waterway resources. Chapter 791 (S 311) establishes a requirement for a permit from the Department of Conservation and Development before an excavation or filling project is begun in any estuarine waters, tidelands, marshlands, or state-owned lakes. Chapter 792 (S 312) prohibits the deposit of trash, garbage, and other waste material in navigable waters and requires permits for the erection of signs and other structures in such waters. Enforcement of this act in coastal waters is a responsibility of the Department of Conservation and Development and of the Wildlife Resources Commission in inland waters.

Highways

Two measures relating to the State Highway Commission will be of special interest to local governments. Chapter 733 (S 719) establishes a broad program of relocation assistance for persons and businesses displaced as a result of new highway construction, in accordance with requirements of the Federal Aid Highway Act of 1968. In addition to providing advice and assistance to displaced persons, the Highway Commission may pay actual and reasonable expenses of relocation of a household, a business, a farm operation, or a nonprofit organization. As an

alternative to actual expenses, a householder may elect to receive up to $200 as a moving-expense allowance and $100 as a dislocation allowance; an owner may be paid up to $5,000 in order to acquire a comparable dwelling, and a tenant may be paid up to $1,500 in order to lease or make a down payment on comparable housing. A business or farm operation may be paid an amount equal to average annual net earnings, not exceeding $5,000. Certain miscellaneous payments are also available.

Chapter 946 (S 718) makes clear that owners of property abutting new limited-access highways on new locations will not be entitled to compensation for access rights denied them when the highway was built.

NEW COUNTY POWERS

General Laws

County governments of the state will take on a new look closely comparable to that of municipal governments under a wide variety of measures enacted this year. In addition to the previously mentioned acts which eliminated the exemptions from many county enabling acts, the counties were given general regulatory powers for the first time under Chapter 36 (H 57), which rewrote G.S. 153-9(55). The act contains rather specific procedural requirements and exempts certain subject matter from coverage, so it should be studied carefully by the county attorney before use. In general, ordinances adopted under its terms will apply only to unincorporated areas and areas within "defunct" towns, unless municipal governing bodies give consent for coverage of incorporated areas.

County governments also entered the area of urban renewal for the first time. Chapter 1208 (H 1276) amends the municipal Urban Redevelopment Law (G.S. Ch. 160, Art. 37) to permit the creation of a county redevelopment commission or a regional redevelopment commission (with jurisdiction over two or more contiguous counties), either of which would have all of the powers of an urban redevelopment commission. Chapter 913 (H 1049) amends the provisions of Article 15 of Chapter 160 of the General Statutes (providing for municipal minimum housing standards ordinances) to allow counties to exercise powers under its terms in unincorporated areas and in any municipality whose governing body has given its approval. With the approval of the county commissioners, municipalities may exercise such powers within the area of their extraterritorial zoning jurisdiction.

Chapter 785 (S 597) removes the population restriction which formerly permitted only counties over 60,000 to create housing authorities. In addition, it allows the board of county commissioners to designate itself as a housing authority, if it prefers, rather than creating a separate agency. In conjunction with Chapter 913 described above, this act will make it easier for many counties to qualify for some of the newer types of federal housing assistance.

Chapter 811 (H 919) establishes procedures under which counties may create (on election of the affected voters) rural recreation districts, which can levy a special tax up to 15 cents on $100 valuation for provision of recreational programs and facilities.

And finally, counties received a major influx of new powers with respect to building inspection, as described below.

Special Acts

There was comparatively little activity in the way of special acts relating to county planning. Perhaps the most significant act was one which authorized Guilford County to require certain improvements as part of its subdivision regulation. Brunswick County came under the county zoning and subdivision-regulation enabling acts before the statewide cancellation of exemptions. Forsyth County's required notice for zoning amendments was modified slightly. Yancey County came under the provisions of a rural redevelopment commission enabling act. Alamance, Forsyth, and Rockingham counties came under the enabling act for acquisition of open space before the statewide cancellation of exemptions. Local acts applying to Alamance, Chowan, Dare, and Lenoir counties extended or modified building-regulation powers before passage of the statewide acts described below.

BUILDING INSPECTION

Building Laws

Section 143-142(a) of the General Statutes places a continuing duty on the State Building Code Council to review all the state's building laws and to make recommendations to the General Assembly for their revision. This biennium the council made a full-scale review, prepared a package of recommendations, and was fortunate enough to see most of them enacted intact. Its six bills—Chapters 1063 (S 690), 1064 (S 691), 1065 (S 693), 1066 (S 694), 1070 (S 689), and 1229 (S 692)—strip from the statutes many obsolete and unused provisions (largely enacted in 1905 and unchanged since that time) and replace them with an up-to-date set of laws that should provide a clear legal basis for much that local building inspectors have been doing.

The two most important acts (Chapters 1065 and 1066) provide municipalities and counties with authority to establish inspection departments composed of whatever types of local inspectors they deem necessary. They permit great flexibility in organization. Normally a county department will exercise jurisdiction over unincorporated areas of the county, and a municipal department over its incorporated area. However, a municipality may request that the county inspectors function within that municipality; and on the other hand, it may request that the county furnish

inspection services within the municipality's extraterritorial zoning jurisdiction, and if the county refuses or fails to do so within a stated time, the municipality may exercise such jurisdiction. Two or more municipalities or counties or combinations thereof may create a joint inspection department. Or a municipality or county may designate another unit's inspector to serve as a member of its own inspection department.

The acts spell out procedures, powers, and duties of the inspection department in considerable detail, providing for issuance of permits, making of inspections, issuance of certificates of approval, stop orders, revocation of permits, condemnation of unsafe buildings (for which former procedures were considered legally inadequate), and equitable enforcement of building laws to supplement criminal penalties.

Although not Building Code Council recommendations, two acts make a beginning on the regulation of one of the fastest-growing problems in the construction industry: the mobile home. Chapter 463 (S 296) first was enacted, requiring that every new mobile home over 32 feet in length manufactured after January 1, 1970, and sold in North Carolina must have at least two doors. This was broadened considerably by Chapter 961 (S 526). That act empowers the Commissioner of Insurance to promulgate rules and regulations governing construction of mobile homes, in general compliance with standards issued by the U.S.A. Standards Institute, and forbids the manufacture or sale after July 1, 1970, of any mobile home that fails to comply with such rules and regulations. Enforcement is to be by local building inspectors under the supervision of the Commissioner of Insurance, in the same manner as enforcement of the State Building Code. However, a mobile home bearing the seal of a recognized testing laboratory approved by the State Building Code Council will be exempt from such local inspections and deemed in compliance with the law.

Another act, Chapter 567 (H 805), clarifies the law slightly by specifying that the State Building Code may govern means of ingress to, as well as egress from, buildings which it regulates.

Finally, Chapter 868 (S 762) makes a number of technical amendments to Article 15 of G.S. Chapter 160, the enabling act under which municipalities have enacted minimum housing standards ordinances (and which counties may now utilize also, as a result of Chapter 913, described above). The most important change is provision for creation of a Housing Appeals Board, which will bring the enabling act more closely in phase with the provisions of the Southern Standard Housing Code.

NEW MUNICIPAL POWERS

General Laws

The major new planning laws directly applicable to municipalities have to do with urban renewal programs. Chapter 1217 (S 761) amends the urban redevelopment law (G.S. Chapter 160, Article 37) and the housing authorities law (G.S. Chapter 157) to provide alternative forms of organization. Now a municipality will have the option of creating a redevelopment commission, giving urban renewal responsibility to a housing authority, or exercising urban renewal functions itself (with the governing board functioning as a redevelopment commission and a designated department of the city government serving as its operating arm). Similarly, a municipal governing board may, if it chooses, designate itself to carry out the functions of a housing authority. The act also permits the abolition of either a redevelopment commission or a housing authority and the assumption of its responsibilities by the local governing board.

Chapter 254 (S 191) amends the urban redevelopment law slightly to enable North Carolina municipalities to take advantage of the new federal Neighborhood Development Program procedures which call for annual funding of renewal activities rather than project funding.

Municipalities are also much affected by the new laws relating to building regulation and inspection and the repeal of exemptions from certain municipal planning enabling acts, described earlier. In addition, they will benefit from Chapter 601 (H 383), which authorizes a municipality to acquire an entire parcel of land or building where the proposed right-of-way of a street necessitates taking of such a portion that the remainder would be largely useless.

Special Acts

The repeal of all exemptions to the extraterritorial zoning and municipal subdivision-regulation enabling acts came too late to prevent the usual spate of special acts accomplishing the same thing: acts applying to Mt. Pleasant, Hamlet, Chapel Hill, and Pittsboro with respect to extraterritorial zoning and to Lake Waccamaw and municipalities in Buncombe and McDowell counties with respect to subdivision regulation. Wilmington was brought under the act by which nine municipalities are now authorized to establish special zoning requirements for historic districts. Cumberland and Vance County municipalities were finally removed from the coverage of the old "four-corner" zoning proviso. Durham was authorized to amortize nonconforming uses, Elizabeth City was given airport zoning authority over the Coast Guard air base, and Winston-Salem's notice requirement for zoning amendments was modified. Durham, Fairmont, Mt. Airy, Rocky Mount, and St. Pauls all secured special acts relating to housing code enforcement.

Probably the single most important special act was Chapter 551 (S 455), which authorizes municipalities in Alamance, Buncombe, Cleveland, Durham, Rockingham, and Wake counties to spend nontax

funds for relocation assistance to persons displaced by reason of governmental action.

CITY AND COUNTY POWERS

Three acts make significant changes in powers enjoyed by cities and counties. Chapter 538 (S 184) sets forth extensive provisions authorizing municipalities, counties, and groups thereof to establish, administer, and enforce local air pollution control programs, subject to the approval of the Board of Water and Air Resources. Chapter 473 (S 378) spells out legislative intent that local government powers with respect to building regulation, zoning, subdivision regulation, and acquisition of open space be relied upon as the basic regulatory mechanism in the management of flood plains. And Chapter 35 (H 131) broadens the definition of "open space" that can be acquired under Article 14A of G.S. Chapter 160 to include undeveloped or predominantly undeveloped land in an urban area that has value for (a) park and recreational purposes, (b) conservation of land and other natural resources, or (c) historic or scenic purposes.

PROPERTY TAXATION

By Henry W. Lewis

NEW TAX STUDY COMMISSIONS

This year marks the third consecutive session of the General Assembly that has provided for commissions to study the state's revenue structure. But not since 1957 has so much emphasis been placed on examination of the ad valorem tax structure. Resolution 92 (S 789) creates a "Commission for the Study of the Local and Ad Valorem Tax Structure of the State" consisting of nine members—three to be appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House; it is charged with reporting to the Governor by October 1, 1970, for transmittal to the Advisory Budget Commission and to the 1971 General Assembly. The commission is to recommend such changes in the local tax system as will make it as productive as possible, "fair when compared with the local tax systems of other states and . . . with other parts of the tax structure of this State," and not hindering "the location or expansion of business." To expedite the task, the Administrative Officer of the State Board of Assessment is to serve as secretary of the commission, and the State Board of Assessment, the Commissioner of Revenue, the Director of Tax Research, and all local taxing officials are directed to "make themselves and their staffs available." The commission is authorized up to $30,000 for expenses.

Resolution 73 (H 898) recreates the general Tax Study Commission to Study the Revenue Structure of the State of North Carolina. The resolution follows the pattern of similar 1965 and 1967 legislation, with a few important changes. The size of the commission is this year raised from nine to eleven members, five rather than three to be appointed by the Governor, three by the Speaker of the House, and three by the President of the Senate. The commission is authorized to spend $50,000 for its work, an increase of $20,000 over the 1967 commission's budget. Most important, however, is the addition to this year's resolution of the following provision:

> It shall be the special duty of the Commission to make a thorough and comprehensive study of exemptions from property taxation and of exemptions from other taxes, to determine whether or not such exemptions are in the best interest of the State, and to make such recommendations as to state policy with respect to tax exemptions and to recommend such changes in the laws providing for exemptions as it may deem advisable.
>
> As a part of its study of property tax exemptions, the Commission shall determine the annual tax loss resulting from the various exemptions in selected counties representing different geographic and economic areas of the State.

This commission is to submit its report to the Governor by September 1, 1972, for transmittal to the Advisory Budget Commission and the 1973 General Assembly.

It is significant that both commissions are charged with consideration of the property tax, and it is also

This article has been prepared with the assistance of Michael Heaney, research assistant at the Institute of Government.

significant that one is required to report its findings in time for legislative action in 1971 (the one studying the local tax system) while the other (dealing with exemptions) is not scheduled to report until time for action in 1973. The need for coordination of effort would appear to be strong.

LISTING AND ASSESSING PROPERTY FOR TAXATION

The Office of County Tax Supervisor

No statewide acts of the 1969 General Assembly dealt directly with the office of county tax supervisor, but one act was passed affecting the number and salaries of county officials and employees *generally*, and is important in considering this topic.

• *Compensation.* The general act dealing with the pay of county officials is Chapter 358 (H 394), which repeals Article 6A of Chapter 153 of the General Statutes and inserts in lieu thereof a new Article 6A. Essentially, the new article empowers county boards to fix the number and salaries of employees of county offices (as did the replaced article) and further authorizes the boards to fix the fees charged by county officers and employees for the performance of duties. The revision prohibits the reduction of salaries of elected officials during their terms of office, except by consent; sets the time for fixing such salaries in election years (at least fourteen days before the deadline for filing candidacy); and prohibits a salary increase for any county employee of more than 20 percent above the prior year's figure, unless the increase is enacted at the same time as the annual budget and publicized previously in a local newspaper. This new act does not contain a clause excluding certain named counties from its operation, as did the replaced act; therefore, as of the act's effective date, July 1, 1969, all counties in the state will be empowered to proceed under its terms despite the existence of local acts dealing with salaries.

Tax Records

• *References to Race.* Under G.S. 105-323, county tax officials are required to make out for the respective townships "a scroll designed primarily to show tax valuations and a tax book designed primarily to show the amount of taxes or [a book which] may consist of one record designated to show both valuations and taxes." Heretofore such records were to be divided into four parts—one part each for white, colored, and Indian individual taxpayers, and one for corporations, partnerships, firms, and associations. This year, effective July 2, Chapter 1279 (H 1054) deleted all reference to race from the statute, so that now the records are to be divided into two parts only, one for individual taxpayers and one for corporations, partnerships, etc. Chapter 1279 also struck out the provision in G.S. 105-335 requiring counties to number "white and negro polls, separately" in their reports of valuation and taxes to the State Board of Assessment.

Listing Procedures

• *Listing by Mail.* The pattern of legislation concerning listing by mail set by Forsyth and Guilford in 1965 and successfully copied by eleven more counties in 1967 continued this year. A typical act (for example, the Alexander County act [Chapter 900, Session Laws of 1967]) contains the following provisions:

(1) The board of county commissioners is empowered to regulate the administering of oaths to persons listing property, to regulate property listing by agents, and to regulate listing by mail.

(2) In the case of listing by mail, the property owner's signature is deemed to be equivalent to "an oath or affirmation" as prescribed in G.S. 105-308 or G.S. 105-310, and any fraud in this connection is made subject to the penalties prescribed in those statutes.

(3) The county commissioners are empowered to divide or combine townships within their county for tax-listing purposes, and to approve the tax supervisor's appointment of one or more list takers for each such combined or divided unit.

(4) The provisions of G.S. 105-306(26) (tax list must contain oath of taxpayer), G.S. 105-308 (taxpayer's oath), G.S. 105-309 (listing by agents) and G.S. 105-310 (listing by mail) are made to apply to the county, "except insofar as they are not consistent with regulations . . . adopted (by the county commissioners) pursuant to the authority contained in Section 1 of this Act."

(5) "The provisions of G.S. 105-307 making it a misdemeanor for one to fail to list properly his property for ad valorem tax purposes" are made applicable to the county, but those provisions may be amended by regulations of the county commissioners adopted pursuant to this act.

This year, twelve additional counties have obtained legislation on the subject: Catawba (Ch. 523 [H 554]), Cleveland (Ch. 149 [H 260]), Cumberland (Ch. 1195 [H 1380]), Iredell (Ch. 446 [S 183]), Jackson (Ch. 91 [H 179]), Lincoln (Ch. 497 [H 815]), Pitt (Ch. 270 [H 446]), Polk (Ch. 558 [S 524]), Stanly (Ch. 768 [H 1070]), Swain (Ch. 91 [H 179]), Transylvania (Ch. 91 [H 179]) and Union (Ch. 706 [H 1097]). The Cleveland, Pitt, Stanly, and Union acts are identical to the Alexander model described above, and contain all five of its main provisions. The Catawba act is identical to the Alexander model, except that authority is invested in the county tax commission, rather than in the board of county commissioners. The Iredell act copies the Alexander pattern, but omits the provision (#3) for combining or dividing townships for tax purposes. The Cumberland act also

repeats the Alexander model, leaving out provisions #2 and #3. The Jackson, Transylvania, Swain, Polk, and Lincoln acts are the same as the one for Alexander, except that provisions #3 and #5 are omitted.

• *Real Property Listing.* Chapter 918 (H 1154) and Chapter 1010 (H 1214) added Cherokee, Clay, Graham, Harnett, Lenoir, Macon, and Scotland counties to the list of those authorized to appoint county building inspectors (with the passage of these two bills, every county in the state is authorized). The broad inspection and enforcement powers of this office may provide county tax authorities with information highly useful in real property listing.

• *Personal Property Listing.* The general law provides that, with certain exceptions, all tangible personal property shall be listed in the township in which *the owner resides* (G.S. 105-302). One of these exceptions directs that personal property must be listed in the township where it is *situated,* rather than at the owner's residence, if the owner or an agent "hires or occupies a store, mill, dockyard, piling ground, place for the sale of property, shop, office, mine, farm, place for storage, manufactory or warehouse [in that township] for use in connection with such property" [G.S. 105-302(d)]. A further provision of the section specifies that personalty "stored in public warehouses and merchandise in the possession of a consignee or broker" is to be covered by the exception. Chapter 940 (S 535) specifies that the exception also covers personalty located at a dockyard for the greater part of the year preceding the listing date.

H 631, a bill which would have required persons to list inventory, for ad valorem tax purposes, at the valuation shown for such inventory on their state income tax return, received an unfavorable committee report.

Assessing Procedures

• *Constitutional Revision of Art. II, Section 29.*

> Legislation minutely regulating the affairs of individual local governments is a long-established tradition in North Carolina. . . . From time to time reform of the local legislation tradition has been attempted. . . .
>
> The first of these movements to restriet local legislation culminated in 1917 in the adoption of Art. II, § 29. . . . [45 N.C. Law Rev. 340 (1967)].

This section (§ 29 of Art. II) limits the power of the General Assembly to pass any local, private, or special legislation in certain enumerated areas. Of interest to tax officials is the provision that the legislature shall not pass any such local act "extending the time for the assessment or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability."

From the language of the provision it is not clear whether "assessment" means the process of assigning a value to property for taxation purposes or the process of applying the selected tax rate to the property value so assigned and arriving at the amount of tax due. The first process is an assessment of *value,* not taxes, and is generally carried on as a part of the larger function of listing and assessing property, and as *distinct* from the function of property tax collection. This fact, plus the second clause of the above-quoted provision ("or otherwise relieving any *collector of taxes* from the due performance of his official duties"), seems to point to an interpretation of "assessment" as an actual application of a tax rate to previously assigned valuations, that is, as a *levy* of taxes.

It should be noted, however, that the North Carolina Supreme Court, in the 1964 case of *Spiers v. Davenport,* appeared to take a different view of the constitutional provision [263 N.C. 56, 138 S.E.2d 762 (1964)]. In that case, the General Assembly had authorized the Mecklenburg County board of equalization and review to "continue its sessions for the year 1963 to hear all appeals which may be brought before it upon the assessed valuations of property, and to make any adjustments, whensoever it shall hear the appeal, as of January 1, 1963" (Ch. 281, Session Laws of 1963). Under the authority of this local act, the board of equalization and review adjusted the *valuation* of Spiers' property upward, after the time the board would have had to complete its duties under the general law and after Spiers had received and paid his tax bill for that period. The court ruled that the local act did not authorize the county board to increase valuations beyond the normal time limit, saying:

> Everywhere in North Carolina, except in Mecklenburg County, the power of the Board of Equalization and Review to *increase the value assigned by the assessors to the taxpayer's property* terminated prior to the time the commissioners were required to levy taxes. [The board's] contention would authorize the Legislature to enact a special statute extending the time for the *assessment of taxes* in Mecklenburg County. The statute ought not to receive a construction which would bring it into direct conflict with the constitutional provisions. [263 N.C. at 61, 138 S.E.2d at 765. (Author's italics.)]

The court's language appears to interpret both an increase in assigned value of property and an increase in taxes resulting therefrom as an assessment of taxes.

This year the General Assembly enacted Chapter 1258 (H 231), submitting to the voters a revision and amendment of the North Carolina Constitution. One of the proposed revisions would renumber Article II, section 29, as new Article II, section 24, and would change the language of the provision of that section relating to extending the time for the assessment or

collection of taxes to read: "Extending the time for the *levy* or collection of taxes." (Author's italics.) This constitutional revision will be submitted to the electorate for a vote at the next general election (November of 1970), and if ratified will end the uncertainty as to the meaning of "assessment."

• *Condominiums.* Under G.S. 47A-2, "Unit ownership may be created by an owner or the co-owners of a building by an express declaration," and "[e]ach unit owner shall be entitled to an undivided interest in the common areas and facilities in the ratio expressed in the declaration" [G.S. 47A-6(a)]. Under G.S. 47A-21, "Each condominium unit and its percentage share of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be separately assessed and taxed," unit owners are liable only for their own parcels, and "[n]either the building, the property nor any of the common areas or facilities shall be deemed to be a parcel."

Chapter 848 (H 1099) amends the definitions subsection of the condominium law to extend the definition of "unit" in G.S. 47A-3(12) to include enclosed space occupying more than one story; and to add subsection (15) to G.S. 47A-3, defining "building" as "a building, or a group of buildings, each containing two or more units, and comprising a part of the property."

• *Railroad and Public Utility Property.* The 1966 Tax Study Commission prepared and recommended passage of legislation modernizing and bringing into line with administrative practice the procedures by which the State Board of Assessment values the operating property of railroads and utilities for local taxation, and insuring that such taxpayers have a right of review before the State Board prior to seeking judicial review of assessment. These commission proposals failed to gain the approval of the 1967 General Assembly. The 1968 Tax Study Commission supported the position of the 1966 Commission and prepared drafts virtually identical to the legislation proposed in 1967 [*Report of the Tax Study Commission* (1968), pp. 10-13 and 69-89]. The bill introduced in this year's session passed the House, but failed to be reported out of the Senate Public Utilities Committee by the close of the session (H 886).

• *Rolling Stock and Flight Equipment of Carriers.* One of the strong recommendations of the 1966 Tax Study Commission, which was reiterated by the 1968 Commission, had to do with the procedures by which certain properties of passenger and freight carriers are appraised for local taxation. The 1968 Commission recommended, in summary, "that the rolling stock of motor carriers and the flight equipment of air carriers be centrally assessed by the State Board of Assessment, and that the value of such property be apportioned to the various taxing jurisdictions in North Carolina in which the company has terminals" [*Report of the Tax Study Commission* (1968), p. 15]. However, this recommendation was not included in this year's bill regarding public service companies (H 886). (See preceding section.)

• *Municipal Assessment Ratios.* Each year, under the terms of G.S. 105-294, the board of county commissioners chooses "some uniform percentage of the amount at which property has been appraised as the value to be used in taxing property." Such percentage is known as the assessment ratio, and the ratio chosen by the county commissioners applies "to the appraised value of all real and personal property subject to assessment in the county," whether the tax is levied by the county itself or by a municipality or other local taxing unit within the county. This year, a bill to allow the governing body of any municipality to select its own assessment ratio (for municipal tax purposes only) failed to gain legislative approval (S 767).

EXEMPTION AND CLASSIFICATION

As mentioned earlier in this article, the General Assembly this year specially charged the Tax Study Commission "to make a thorough and comprehensive study of exemptions from property taxation" (Res. 73 [H 898]). Of particular interest to local tax officials is the fact that, to aid in this study, the commission is further directed to "determine the annual tax loss resulting from the various exemptions in selected counties representing different geographic and economic areas of the State."

The exemption and classification powers of the legislature are controlled by sections 3 and 5 of Article V of the North Carolina Constitution. This year the General Assembly enacted Chapter 1200 (H 331) to revise Article V with respect to state and local finance. The revision, however, if ratified, will not affect the substance of sections 3 and 5.

Exemption Proposals

• *Timberland Benefiting Educational Institutions.* Under G.S. 105-296.1, any state department or agency that owns timberland or leases, controls, or administers timberland owned by the state must pay to the county in which the land is situated 15 percent of the proceeds of gross sales of trees or other forest products. (This is an exception to the general exemption granted to property owned by the state [G.S. 105-296].) Chapter 1185 (S 801) added a new provision to this general statute, under which *any* organization (corporation, foundation, association, or other entity) owning timberland and organized to administer that property for the sole benefit of an educational institution must make a payment to the county, in lieu of ad valorem taxes, of 15 percent of the proceeds of gross sales or 10 cents per acre, whichever is higher. The effect of this act is to classify such timberland to be taxed at a constant rate regardless of the rate for ad valorem taxes imposed locally.

• *Personal Property Awaiting Out-of-State Shipment.* H 1118, identical to a bill tabled in the Senate in

1967 and similar to another unsuccessful proposal in 1965, failed to obtain legislative approval this year. The bill would have classified and excluded from the tax base all manufactured goods held by the manufacturer on January 1 for less than one year and awaiting out-of-state shipment to a customer already billed. Two years ago the identical bill passed the House; this year it failed even to receive a favorable committee report.

• *Real Property of the Elderly.* Since 1936, under Article V, section 5, of the North Carolina Constitution, the General Assembly has held the authority to "exempt from taxation not exceeding one thousand dollars ($1,000) in value of property held and used as the place of residence of the owner." That authority, however, has never been exercised. In 1967, three unsuccessful bills were introduced attempting to get the General Assembly to exercise that authority with respect to residences owned by persons over 65, or attempting to amend the constitutional provision so as to raise the exemption to either $5,000 or $10,000. Also in that session, a resolution was adopted directing the Governor's Coordinating Council on Aging to recommend action on tax exemption for the aged to this year's session.

This year that council, in a report entitled "A Proposal to Grant Tax Relief to Persons Age 65 and Over," recommended, in lieu of a property tax exemption, an income tax rebate of $50 to all persons over 65 with incomes of less than $3,000 per year. The report noted that North Carolina's 373,000 persons over 65 constitute "what is believed to be the largest pocket of poverty in the State and at the same time one of the poorest groups of old people in America." In spite of this, a toned-down bill to grant a $25 income tax rebate to elderly persons with incomes of $2,000 or less per year failed to receive a favorable report (H 565). And again this year, two bills to amend the State Constitution regarding residence exemptions for the elderly failed to obtain legislative approval. H 429 would have amended the Constitution to grant a *mandatory* $2,000 residence exemption for those 65 or older. S 774 would have continued the present discretionary exemption of $1,000 on any residence, but would have amended the Constitution to provide that, *in lieu of* the $1,000 exemption, the legislature might grant a $5,000 exemption on the residence of persons 65 or older.

Classification Proposals

• *Bakery Goods and Supplies.* Article 15 of Chapter 105 of the General Statutes (Classification, Valuation and Taxation of Property) lists four classes of property that must be taxed at reduced rates (agricultural products in storage at 60 percent of the normal tax rate; peanuts, following the year in which they are grown, at 20 percent of the normal rate; baled cotton for manufacture or processing in North Carolina at 50 percent; and family fallout shelters at the normal tax rate but only on value exceeding $2,000). This year, H 1402 was introduced to classify bakery goods and supplies for special ad valorem tax treatment. The bill would have granted a 20 percent per year reduction of the tax rate on "bakery supplies, goods, supplements and raw materials awaiting manufacture and in the process of manufacture owned by and in the possession of the bakery and on the premises where manufactured," and accomplishing elimination of ad valorem taxes on such property by the end of 1973. The bill was reported unfavorably by committee.

• *Agricultural Land.* Owners of land being used for agricultural, livestock, forestry, and comparable purposes in North Carolina, as well as elsewhere, find themselves at odds with standard property tax appraisal criteria illustrated by the following language in G.S. 105-295: "In determining the value of land the assessors shall consider as to each tract . . . at least its advantages as to location, quality of soil, quantity and quality of timber, . . . fertility, adaptability for agricultural, commercial or industrial uses, the past income therefrom, . . . and any other factors which may affect its value." "Location" near expanding residential, business, and industrial sections, and "probable future income" if its "adaptability for . . . commercial or industrial uses" is realized, can produce market value appraisals for such property considerably higher than would be the case if those factors were ignored.

S 269 was an attempt to have North Carolina deal with this issue in a manner roughly comparable to what has been done in several other states. It proposed to classify "land which is in use for the commercial production or growing of crops, plants, livestock or poultry." In dealing with such property, those responsible for fixing its tax value would be permitted to "consider only those indicia of value as such land has for agricultural use." Although the bill received a favorable report from the Senate Committee on Agriculture, upon re-referral to the Senate Finance Committee the bill died. A similar fate met a similar proposal in 1967.

STATE BOARD OF ASSESSMENT

Until this year, taxpayers appealing from an order of a county board of equalization and review to the State Board of Assessment had to file separate and distinct appeals unless they were able to obtain the consent of the State Board to a joint appeal [G.S. 105-273(3) and G.S. 105-329]. Chapter 7 (S 23) liberalizes this appellate procedure by authorizing joint appeals in two circumstances. On the one hand, all owners of a single "tract or parcel of property" may join together in one appeal; on the other, any taxpayer may include in one appeal all objections "timely presented," whether or not involving a single tract or parcel.

Under G.S. 105-327(g)(2), any taxpayer may request the county board of equalization and review to hear objections not only with respect to his own property, but also with the respect to "the property of others" within the county. From the language of Chapter 7, it appears that the second provision for joint appeal (all objections of one taxpayer, whether or not involving a single tract) may apply to a situation in which a taxpayer makes objection to the valuation of *all property of a particular category* (e.g., all farm real estate or all commercial property) within a county.

REAL PROPERTY REVALUATION

Property Used for Conservation

G.S. 105-294, in setting forth standards for the valuation and taxation of real property in North Carolina in non-revaluation years, declares that it is the policy of the state to use its system of real estate taxation so as to "encourage the conservation of natural resources." The statute then states that assessors shall make no increase in tax valuation of property as a result of its owner's endeavors in five enumerated areas (e.g., reforestation, forest fire protection, etc.). This year Chapter 945 (S 683) adds a sixth use of real estate upon which assessors may not base a valuation increase, specifically: "The impoundment of water upon marshlands for the purpose of preserving or enhancing the natural habitat of wildlife indigenous to such marshlands, but only when such marshlands are used for non-commercial purposes." Chapter 1250 (S 884) makes this provision retroactive to December 31, 1968, in order to cover 1969 listings. Although not expressed as a "classification," the effect of this act is to define a class of property for special treatment.

DISCOUNTS FOR PREPAYMENT

Under the general law of the state, taxpayers are permitted to pay taxes before they are legally due (first Monday in October) and are granted discounts for such prepayment. G.S. 105-345 contains a discount schedule for statewide application, although over the years a number of counties have obtained special legislation providing for different schedules. (See, for example, *Property Tax Bulletins* #26 and #30.) This year, in keeping with the legislature's trend toward delegating more rule-making authority to lower levels of government, the General Assembly approved a bill (Ch. 921 [H 1191]) empowering local taxing units to adopt their own discount schedules. Specifically, the act authorizes the governing body of any "county, city, town, special district, or other political subdivision of the State levying taxes" to adopt a discount schedule of its own. Any local discount schedule must be adopted by May 1 in order to be effective for the collection of taxes falling due on the following first Monday in October. State review of any such schedule is retained, however, in the form of a required approval from the State Board of Assessment. The board may disapprove any schedule which, in its opinion, grants discounts that are "excessive or unreasonable."

The general property tax law is vague about the earliest date at which a taxpayer may force the county or city to accept his prepayment. Chapter 921 brings certainty to the law by providing: "No taxing unit shall be required to accept any tender of prepayment of taxes until the annual budget estimate has been filed as required by law." The budget estimate filing date for counties is no later than the date of the first meeting in July of the board of county commissioners (generally, the first Monday in July). For municipalities, the filing date is no later than July 7.

CERTIFICATE OF TAXES DUE

As discussed earlier, the general law provides that all property owners are charged with notice that their property is or should be listed for taxation, and that taxes are or may become a lien upon such property (G.S. 105-377). This is true whether the property owners have actual notice or not. This year a bill obligating any taxing unit to provide, upon request and the payment of $1, a *Certificate of Liens* to any interested party failed to gain legislative approval (S 106). The certificate was to cover all claims made by the taxing unit on the real property in question and would have had the effect of cutting off any of the unit's claims not included in the certificate.

GARNISHMENT AND ATTACHMENT

For Ambulance Service

Chapter 708 (H 672), as amended by Chapter 1197 (H 1401), gives 43 enumerated counties a general lien upon the property of any person furnished ambulance service by the county or upon the property of one legally responsible for the support of such person. The affected counties are Anson, Bladen, Brunswick, Buncombe, Caldwell, Caswell, Catawba, Columbus, Davidson, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Greene, Halifax, Hertford, Hoke, Johnston, Jones, Lee, Lenoir, Lincoln, Madison, Mitchell, Montgomery, Moore, Nash, Onslow, Pasquotank, Person, Pitt, Richmond, Robeson, Rockingham, Scotland, Vance, Warren, Watauga, Wilkes, Wilson, and Yancey. This act does *not* specify that the lien it creates may be collected or foreclosed as a property tax lien, but states merely that the lien must be filed with the clerk of superior court after 90 and before 180 days of the date of the ambulance service.

However, Chapter 708 provides that the ambulance service charges, in addition to creating a lien upon real estate, may be treated "as if [they] were a tax due to the county or municipality" and may be collected after 90 days "through the use of attachment and garnishment proceedings as set out in G.S. 105-385(d)." This act is silent with respect to how and

by whom certification of the claim is made to the tax collector.

Notice and Hearing in Attachment and Garnishment

Since 1966 the North Carolina judiciary has been undergoing a transition from a county to a state-based court system. Under the new system, the traditional justice of the peace, county, and other courts are abolished and in their place is established a district court system. Chapter 1029 (H 1000) brings those provisions of the Machinery Act which deal with attachment and garnishment up to date with these changes in the court system. The act merely substitutes "Division of the General Court of Justice" for the old "justice of the peace or . . . superior court" where appropriate in G.S. 105-385(d), and elsewhere in that statute provides: "Court costs shall be the same as in other proceedings in the appropriate division of the General Court of Justice" rather than as fixed by the board of county commissioners. The act becomes effective in a county only upon the establishment there of a district court; as of this year, only seventeen counties have yet to be brought under the new state court system.

POLL TAX

Under Article V, section 1, of the North Carolina Constitution, the General Assembly may levy a poll or capitation tax on every male between 21 and 50, not to exceed $2; municipalities may levy such a tax not to exceed $1. H 331 (Ch. 1200) submits to the voters at the next general election (in November of 1970) a constitutional revision of Article V which, if ratified, would prohibit the levy of a poll tax for any purpose.

SOCIAL SERVICES

By Mason P. Thomas, Jr.

Other articles in the legislative issues of Popular Government *(September and October)—e.g., those on the counties, juvenile corrections and family law, health legislation—will interest readers of this section.*

The 1969 General Assembly enacted major legislation affecting the public welfare program. The dominant themes of this legislation were simplification and clarification of the complex and confusing statutes that provide the legal structure for state supervision of county administration of the program. A secondary theme was change and improvement. The name of the program was changed from "public welfare" to "social services" to avoid the stigma of the word "welfare" and to emphasize the many service features of the program beyond providing categorical financial assistance.

The General Assembly also enacted legislation to meet new federal requirements aimed at correcting some public criticisms of the most controversial public assistance program—aid to families with dependent children (AFDC)—by authorizing implementation of the Work Incentive Program in North Carolina.

Advocates of this social legislation noted a change in attitude in the General Assembly toward the program—a more positive attitude, a desire to learn, and a willingness to act based upon better understanding. Much of the legislation necessary to implement federal changes was enacted without opposition. One evidence of this change might be the General Assembly's reaction to legislation recommended by the Jail Study Commission that would have moved the jail inspection and services program from the Department of Social Services to the Attorney General. The General Assembly declined to implement this change, thus showing some confidence in the Department's expanded program of jail services and training for jail personnel.

However, there were disappointments. The General Assembly failed to pass a mandatory licensing law applicable to day-care centers for children, even though its own Legislative Research Commission had carefully studied the problem, had documented the need for protection of children in day care, and had proposed a specific bill. Further, a key factor in evaluating the response of the General Assembly is in the level of appropriations. State appropriations set the level of financing for the statewide program, as federal and county funds must match the level of financing provided by the state. The state appropriations for public assistance and administration were disappointing. For example, the General Assembly failed to appropriate funds requested by the State Board to increase basic living allowances (food,

clothing, rent, utilities, home supplies, etc.) for public assistance recipients, unchanged since 1952, even though federal law requires that standards in AFDC reflect the actual cost of living effective July 1, 1969. It failed to appropriate increased funds for aid to county administration needed by counties in order to provide the additional personnel needed to meet current federal requirements that determination of eligibility for public assistance (done by personnel called "eligibility specialists") be separated from provision of rehabilitative and child welfare services.

BASIC LAWS REWRITTEN

Need for Recodification

The laws governing the public welfare program are codified in Chapter 108 of the General Statutes. Some date back to the General Assembly of 1868-69; others were enacted at various subsequent sessions to give various powers and duties to the State Board, to structure a program of county administration under state supervision, to establish specific categorical public assistance programs to qualify for federal financial participation under the Social Security Act in 1937, and for other purposes. When considered as a whole, Chapter 108 seemed wordy and contradictory at certain points, contained references to obsolete programs (such as Civilian Conservation Corps [CCC] or Works Progress Administration [WPA]), and was duplicatory and confusing.

The Legislative Research Commission proposed a recodification (S 339) of Chapter 108 which was enacted without substantive change by the General Assembly (Ch. 546) and included the name change from "public welfare" to "social services." Two other bills (S 778 and S 779) were enacted to assure that the name change is effected throughout the General Statutes (Ch. 981 and Ch. 982). In the main, the recodification merely clarifies and simplifies without making substantive changes. The changes are summarized below.

State-Level Changes

There is no longer a requirement that one of the seven members of the State Board be a woman. The new position of vice-chairman of the State Board is created; the vice-chairman is elected by the Board to serve as chairman in the absence of the chairman or if the chairman's position is vacant. The old requirement that State Board meet quarterly is continued, but the new law also authorizes four of the seven State Board members to call a meeting (formerly, extra meetings could only be called by the chairman). The new law clarifies the role of the State Board as a policy board, rather than an administrative board, with authority to make policy in specified areas (unchanged in substance from the old law). The Commissioner has specified legal duties as chief administrator, including development of policy for State Board approval, study of social problems with reports and recommendations to the State Board, preparation of the biennial report, keeping informed of new federal programs and reporting on same to the State Board, etc. The State Board of Allotments and Appeal (formerly a board within the State Board to allocate federal funds and handle appeals in public assistance cases from county boards) is eliminated as unnecessary, since federal financial participation is actually earned under matching formulas based upon county expenditures. The law provides a new administrative appeal procedure for a fair hearing in public assistance cases from county boards to the Commissioner, with specific provision for judicial review of administrative decisions in superior court. Two public assistance programs (old age assistance and aid to the permanently and totally disabled) are combined for administrative purposes into one program known as "aid to the aged and disabled" in line with the federal approach. The recodification rewrites the licensing authority of the State Board over charitable organizations that solicit funds from the public without significant substantive change. It contains broad language authorizing a medical assistance program for needy persons so that the State Board will have authority to implement Title XIX of the Social Security Act, called Medicaid.

County Boards

The authority of county boards is substantially unchanged. Formerly, the chairman of the county board was elected by the board for the "term of his appointment"; now each county board is required to elect at its July meeting each year a chairman from its three or five members who is to serve for one year or until a new chairman is elected. There is no limitation that would prevent a county board from re-electing its chairman to serve more than one year if it so desires.

Under the old law, the county boards had approval authority in two categorical public assistance programs—old-age assistance and aid to families with dependent children. Eligibility for aid to the permanently and totally disabled was established by the county director after the disability was established medically at the state level. The recodification gives the county board approval authority in aid to the aged and disabled and aid to families with dependent children (except that the disability factor of applications for aid to the disabled is determined by medical consultants in the State Department of Social Services). The new law also provides that the county board shall have such other duties and responsibilities as the General Assembly or the State Board or the board of county commissioners may assign to it.

Budgeting

The procedures for budgeting for public assistance and administration at the county level were rewritten

without significant substantive changes. The new law provides one budgeting procedure for all programs of public assistance (formerly, there were separate statutes on budgeting for each program, not entirely in conformity) and a similar procedure for administrative budgets at the county level (formerly, two statutes were applicable to administrative budgets for two of the public assistance programs, not entirely in conformity). The new dates for counties to submit their budgets to the state are more realistic in relation to the county budgeting for each fiscal year, and the statute now provides the same time limits for both public assistance and administrative budgets (formerly they were due at different times). The new law more clearly defines the role of county director as an administrator in the budgeting process. It defines more clearly the authority of the state and counties in budgeting decisions, without making any change in their respective authority.

The county director is now required to submit estimates of the cost of each public assistance program and estimates of administrative expenses to the county board of social services by March 15 of each year (formerly, the county board was legally responsible for providing estimates to the board of county commissioners by May 1). The county board is to "review, modify and approve" these estimates and transmit them to the board of county commissioners by April 1 for its "review, modification and approval." These estimates must then be forwarded to the Commissioner for state-level review as the agent of the State Board by April 15 (formerly, the board of commissioners was required to report to the State Board of Allotments and Appeal by May 1). The Commissioner is required to review the estimates submitted by the county and notify the board of commissioners by June 1 of the adequacy of its estimate and of the amount of county funds necessary to support the social service budgets for public assistance and administration in the next fiscal year. After receipt of this notice from the Commissioner, the board of commissioners is required to levy sufficient taxes to pay the county's share of the cost of public assistance and administration. If the commissioners dispute the public assistance budget or the administrative budget recommended by the Commissioner, "the State Board of Social Services shall make a final determination that shall be binding upon the county" (formerly, the determination of the State Board of Allotments and Appeal was binding upon the county).

LIEN LAW

Claim and Lien

Chapter 1165 (H 1115) amended the recodification (Ch. 546) in order to assure that the substantive law providing for a claim against the estate and a lien against the realty of a recipient of aid to the aged and disabled (AAD) to the extent of the amount of public assistance received would be unchanged. It also clarifies the procedures for filing the lien, establishes the priority of the claim and lien in relation to other obligations of the recipient, clarifies the statute of limitations on liens, and specifies the distribution of funds collected from the claim or the lien.

After approval of any payment of AAD, the county director must file a statement in the office of the clerk of superior court (in the county of residence and in any county where the recipient owns or subsequently owns property) showing the name of the applicant and the date of approval of the application. The statute establishes different priorities for the claim and the lien: (1) the claim against the estate of the recipient has equal priority in order of payment with the sixth class under G.S. 28-105; (2) the priority of the lien is to be determined according to the general laws governing priority of liens against real estate. When realty of a recipient is sold, the proceeds of the sale are to be treated as real property for the purposes of determining priority (except for funeral expenses as provided in G.S. 28-105).

The act contains a new limitation on liens—that they expire after ten years from the date of filing unless an additional statement of the lien is filed and properly indexed within the ten-year period. The former statute of limitations on enforcement of liens is unchanged—no action to enforce a lien may be brought more than ten years after the last day on which assistance was paid nor more than three years after the recipient's death.

Release of Realty from Lien

Chapter 1216 (S 755) authorizes a board of county commissioners to release a parcel of land from the lien imposed by receipt of AAD before or after termination of assistance. The commissioners' authority is broad—such release may be "based upon any circumstances from which the commissioners are satisfied that the release will result in the largest net recovery for the county, state and federal governments, or a net recovery as large as would be made in any other manner." The statute prescribes the procedure for release—by resolution of the commissioners citing the following: (1) reasons for the release; (2) the consideration received; (3) a description of the property; and (4) the nature of the lienee's (AAD recipient) interest. The release becomes effective upon being filed and indexed in the office of the clerk of superior court in the same manner as required for filing and indexing of liens. If the county commissioners fail to file and index the release, it would not be valid against another lien creditor or purchaser for valuable consideration who would be adversely affected.

PUBLIC ASSISTANCE ADMINISTRATION

Work Incentive Program (called "WIN")

The aid to families with dependent children program (AFDC) has long been controversial. It was initiated in 1935 as part of the original Social Security Act to provide minimum subsistence to children who had been deprived of parental support through death, desertion, or disability. The basic idea was to furnish the remaining parent (usually the mother) or specified relatives (acting as a substitute parent) with subsistence so that the parent or relative could remain in the home to care for the children. Public criticism has included charges that the program promotes illegitimacy, that the program promotes dependency because there is no incentive to become self-supporting, that many AFDC mothers do not provide good child care, that AFDC mothers should work, etc.

Congress amended the Social Security Act in 1967 in response to these pressures. These amendments change the 1935 philosophy that the AFDC mother should remain in the home; the new WIN program (which became mandatory upon the states on July 1, 1969) requires that selected AFDC mothers be referred to the Labor Department for jobs or job training; AFDC children will be provided day care with federal matching funds available to pay a portion of the cost of day care in facilities that meet federal standards. This new approach provides a financial incentive for the AFDC mother to work through the exemption of a certain portion of her earnings (the first $30, one-third of the remainder) from inclusion as a resource in computing the amount of her payment. Therefore, in the future, her AFDC payment will not be reduced one dollar for each dollar she earns.

Chapter 739 (S 725) authorizes implementation of WIN in North Carolina. It requires that the Governor appoint one or more "Special Work Projects Panels" to review, approve, or reject applications for special work projects that are to be established by the Secretary of Labor. Each panel may consist of three to five members; each must include one representative of employers and one representative of employees, with the remaining one or three panel members representing the general public. No special work project developed by the Secretary of Labor may be established or maintained in the state until it has been approved by a panel. The Governor is authorized to make agreements with the Department of Labor concerning creation and operation of the panels.

The panels are to serve at the pleasure of the Governor and must meet as often as required by the Governor, or the Governor may delegate authority to the panels or their chairmen to determine the frequency of meetings. Panel members are to be compensated as provided for other board members by G.S. 108-35.

If an AFDC recipient refuses to work or to participate in a job-training program, the bill provides for protective payments of AFDC to another payee so that the subsistence needs of the children can be met; the county department of social services is also authorized to make vendor payments for such items as rent, utilities, food, etc., to the provider of services. Protective payments or vendor payments under WIN are to be made under rules and regulations of the State Board, subject to the lawful requirements of the Secretary of Labor. The bill provides that written notice from the Department of Labor or the Employment Security Commission that a person has refused to accept employment or participate in a project without good cause is to be binding upon the state or the county.

Federal law allows gradual implementation of WIN in North Carolina. After considering available federal funds for implementation, the Labor Department has designated ten counties where the program is scheduled to begin July 1, 1969: Beaufort, Craven, Cumberland, Durham, Forsyth, Guilford, Jones, Mecklenburg, Orange, and Wake.

Appeal Rights of Public Assistance Recipients

Federal policy (effective October 1, 1969) requires that in certain types of cases when an application for public assistance is rejected, or when a payment is terminated or reduced, the applicant or recipient who desires an attorney to appeal for a fair hearing must be furnished with legal services. Such legal services may be provided through legal aid programs or other programs providing attorneys to indigents; if free legal services are not available, the state must furnish an attorney to the client. Further, when there is an appeal from termination or reduction of a public assistance payment in certain types of cases, the county department of social services must continue the assistance payments pending the outcome of the administrative appeal or judicial review.

Legislation was enacted to meet these requirements. Chapter 735 (S 727) amends G.S. 108-44 (a new section of the recodification providing for appeals in public assistance cases to the Commissioner) to require that the services of attorneys for applicants or recipients be provided as required by federal law under rules and regulations approved by the Governor, the Advisory Budget Commission, the State Board of Social Services, and the North Carolina Bar Council. The State Board is to pay for such legal services from funds transferred from the Contingency and Emergency Fund until funds are appropriated for this purpose.

Chapter 754 (S 728) provides that public assistance payments shall be continued pending appeals when required by federal law or policy as a condi-

tion of federal participation in the cost of public assistance.

Vendor and Protective Payments

Federal policy (under Title IV of the Social Security Act, relating to child welfare) provides for protective and vendor payments for children in AFDC cases where children are living with relatives who are not using the AFDC payment in the best interest of the children. The recodification (S 339, Ch. 546) provided for protective payments in new G.S. 108-50, but there was no legal authority for vendor payments. Chapter 747 (S 729) rewrites G.S. 108-50 to authorize public assistance payments directly to vendors of goods and services provided to recipients or to protective payees to receive and manage payments for the recipient when necessary to comply with federal law or policy in order to obtain federal participation in financing public assistance. Such payments are to be made according to rules and regulations of the State Board of Social Services, subject to applicable federal law and policy.

CHILD WELFARE

Day-Care Licensing Fails to Pass

There is no legal requirement that a day-care center meet any state standards in order to operate in North Carolina. The State Board of Social Services has administered a voluntary licensing program for day-care centers for forty-three years. Those centers that desire to be licensed invite the agency in to see whether the program meets the standards adopted by the State Board of Social Services. One advantage of being licensed is that a county department of social services may purchase day care in a licensed center for eligible children with the federal and state funds available for this purpose. Approximately one-third of the day-care programs (some 350) that provide full-time care for six or more children are licensed under this voluntary program.

In recent years, there has been increasing concern about protection of the growing number of children receiving care in unlicensed day-care centers in the state. In several previous General Assemblies, the State Board has requested a mandatory licensing law that would require that a day-care center be licensed in order to operate. These efforts have been unsuccessful. After efforts to secure such legislation had failed in 1967, the House of Representatives adopted a resolution directing the Legislative Research Commission to study the day-care problem, with a view to proposing a mandatory licensing law. The Committee on Licensing of Day-Care Facilities of the Legislative Research Commission took this assignment seriously; they visited thirty-four day-care centers and held nine public hearings throughout the state during 1968. Their study documented the existence of many inadequate day-care programs. Their report recommended a mandatory licensing law (S 7) administered by a new board—the Child Day-Care Licensing Board—composed of five designated state-level officials (or their representatives) and six citizens (including three day-care operators). This bill contained specific statutory standards (and authority for development of certain standards by specified agencies) relating to the health and safety of children in day care; it also authorized the Board to develop higher standards for quality day care which operators could voluntarily comply with and secure a grade or rating on their license—a strategy designed to promote higher-quality programs. S 7 also included a privilege license tax of $2.00 per year for each child for which a center was licensed which was to partially finance administration of the licensing program.

S 7 was rewritten in committee to substitute the State Board of Social Services for the Child Day-Care Licensing Board. Under this approach, the mandatory licensing program would have been administered by the State Department of Social Services under the same standards. The Senate passed this form of S 7. After having difficulty in several committees in the House, the bill was tabled in the House on the date the General Assembly adjourned (July 2).

Another bill (H 771) would have given licensing authority to the State Board of Social Services under standards developed by the Board itself in specified areas (including number and age range of children, space requirements, equipment, staff, records and reports, etc.). This bill died in committee in the House.

After all this momentum in favor of a mandatory licensing law, it is difficult to explain the failure of the General Assembly to enact any law. Some members of the General Assembly were opposed to any mandatory law. The most serious problem was that the political leadership in favor of a mandatory law could not agree on the proper agency to administer the licensing program. Some openly and strongly opposed giving this authority to the State Department of Social Services; they felt that coordination of the various agencies of state and local government who would be involved in a statewide licensing program should be done by another agency of state government, such as the proposed Child Day-Care Licensing Board or a Day-Care Coordinating and Licensing Committee (either as a separate board or functioning within the Department of Administration). There was opposition to creation of a new board or state agency.

The need for a mandatory licensing law is still on the minds of many citizens. The subject will doubtless come up again in the 1971 General Assembly.

Licensing of Child-Care Institutions

G.S. 110-49 forbids the organization of an institution "for the purpose of caring for and placing de-

pendent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents" without a permit from the State Board of Social Services; it requires such institutions to secure an annual license from the State Board in order to operate (except that institutions with a plant and assets of $60,000 or more owned by a religious denomination or fraternal order are excepted). The law as written suggests that an organization must *care for and place children* in order to be covered. Chapter 908 (S 726) as corrected by Chapter 1081 (S 897) rewrites a portion of G.S. 110-49 to clarify that any organization that gives full-time care to children *or* places children must secure the permit and be subject to annual licensing.

Juvenile Corrections

The juvenile court was established in North Carolina in 1919 by legislation that made the clerk of superior court the juvenile judge in each county; the county welfare director was given responsibility for services as chief probation officer of the juvenile court (codified under former law as G.S. 110-21 to -44). These laws now seem obsolete and inadequate in light of court-improvement legislation that puts juvenile jurisdiction in the district court and recent decisions of the U.S. Supreme Court (particularly the *Gault* case) which establish certain constitutional rights as applicable to juvenile hearings in delinquency cases.

Chapter 911 (H 627) rewrites the juvenile court laws; those sections dealing with jurisdiction and procedures are moved to Chapter 7A, which defines jurisdiction and procedures in the district court. Article 2 of G.S. Chapter 110 is rewritten under a new title, "Juvenile Services," dealing with juvenile probation services, conditions of probation, duties of juvenile probation officers and juvenile detention homes. In the main, the new law is a recodification without substantive change in the authority and responsibility of the county department of social services in providing juvenile probation services. The age at which children are entitled to special juvenile procedures in district court is unchanged—under sixteen.

The county director of social services continues as chief juvenile probation officer except in counties where family counselor services are available to the district court judges (districts containing a county with a population over 85,000); in such counties, the chief counselor is the chief juvenile probation officer. The chief juvenile probation officer is to "supervise the work of any persons who provide juvenile probation services."

In rural districts where family counselor services are not available, the district judges exercising juvenile jurisdiction and the directors of the county social services departments in the district "may agree in writing that all persons providing juvenile probation services in the district shall be regular employees of the county social services departments in the district who are administratively responsible to the county director of social services as chief juvenile probation officer in each county. Such written agreement shall provide for uniform practices and procedures in juvenile cases in the district."

When a child is placed on probation, the court order "shall specify the conditions of probation and the period of time the child shall remain on probation." At the end of a child's period on probation, the law requires him to appear in a hearing before the judge with the juvenile probation officer for evaluation of whether the probation should be terminated or continued. The duties and powers of juvenile probation officers are substantially the same.

It is unlawful for a child to be detained in a jail where he may come into contact with adult offenders; children alleged to be delinquent or undisciplined (a new category of jurisdiction) who require secure custody may be temporarily detained in a juvenile detention home. The law does permit a judge to detain a child in a local jail under specified conditions: (1) if the judge finds there is a pressing need for secure custody; (2) if no juvenile detention home is available; (3) if the local jail contains a section so arranged that the child will have no contact with the adult jail population. In such cases, the jailer is required to "provide close supervision of any child so detained for the protection of the child."

Termination of Parental Rights

In the process of revising laws applicable to juvenile cases in the district court, the North Carolina Courts Commission became interested in problems related to children in legal limbo—children in foster homes in the counties who probably will never return to their own homes but who are not legally free for adoption. This interest led to their proposing expanded grounds for termination of parental rights in H 627 which were enacted by the General Assembly without change in Chapter 911 (effective January 1, 1970).

The new section (codified as G.S. 7A-288) allows the district court to enter an order terminating parental rights in cases where the court has adjudicated a child to be neglected or dependent in two situations that merely confirm existing law—(1) six months' abandonment, and (2) cases involving a third illegitimate child to an unwed mother when the court finds the living conditions endanger the health or general welfare of the child—and in two new situations when the court finds that (1) "the parent has willfully failed to contribute adequate financial support to a child placed in the custody of an agency or child-care institution, or living in a foster home or with a relative, for a period of six (6) months" [under G.S. 48-2(3b), a child can be found abandoned in limited circumstances if a parent fails

to support for one year]; or (2) "the parent has so physically abused or seriously neglected the child that it would be in the best interest of the child that he not be returned to such parent."

Termination cases must be heard in a special hearing, after notice to the parents by personal service of a summons and the petition requesting termination, or by publication under the new Rules of Civil Procedure. The new law provides: "Before entering an order of termination of parental rights, the court shall consider all available facts and social information concerning the child to evaluate whether the parent may re-establish a suitable home for the child, for the policy of law is to preserve natural family ties where possible in the best interest of the child."

When the court enters a termination order, it must place the child in the custody of the county department of social services or a licensed child-placing agency, which as custodian may make placement plans for the child and is given statutory authority to give consent on his behalf in the following instances: to adoption, marriage, enlistment in the armed forces, or surgical or medical treatment.

OTHER RELATED LEGISLATION

Proposed Change in North Carolina Constitution

Article XI, section 7, of the North Carolina Constitution (adopted in 1868) provides that provision for the poor and orphan is one of the "first duties of a civilized and Christian state" and requires that the General Assembly appoint and define the duties of a "Board of Charities, to whom shall be entrusted the supervision of all charitable and penal institutions. . . ." In response to this constitutional mandate, the General Assembly of 1868-69 created the Board of Public Charities, renamed the State Board of Charities and Public Welfare by legislation enacted in 1917, renamed the State Board of Public Welfare in 1945, and given a new image in 1969 as the State Board of Social Services.

As a part of an over-all constitutional revision and reorganization, Article XI has been rewritten by Chapter 1258 (H 231) for submission to the voters for approval in the fall of 1970. If approved, new Article XI will require only that the General Assembly "shall provide for and define the duties of a board of public welfare," eliminating the requirement that the General Assembly assign specific duties to the board (such as supervision of charitable and penal institutions), thus leaving the legislature free to assign such duties to the Board as it feels appropriate.

Eugenics Board Secretary to Department of Social Services

G.S. 35-42 provided that the Eugenics Board shall appoint a secretary to conduct the business of the Board between regular meetings and prescribe her duties (receive petitions for sterilization, keep records, call meetings, act as executive of the Board if so delegated by the Board). Chapter 677 (H 437) rewrites G.S. 35-42 to require that the Commissioner of Social Services designate an employee of the Department of Social Services as Secretary of the Eugenics Board to perform all duties imposed by statute and by the Eugenics Board.

Annual Licensing of Certain Private Facilities

The Department of Mental Health and the State Board of Social Services share responsibility for licensing private hospitals, homes, and schools for the care and treatment of persons who are mentally ill, mentally retarded, or inebriates under G.S. 122-72. The State Board of Social Services is responsible for licensing of nonmedical facilities, including those operated by religious denominations. Chapter 954 (S 757) amends G.S. 122-72 to specify that such programs must secure a license annually in order to operate.

Board Members and Conflict of Interest

G.S. 14-234 prohibits appointed or elected public officials at the state, county, or municipal level from making contracts with the unit of government that they serve for personal gain. This statute was designed to remove from public officials the temptation to take advantage of their official position to "feather their own nests" [see *Lexington Insulation Co. v. Davidson County*, 243 N.C. 252 (1955)]. It has been interpreted to mean that a state or county social services board member who is a dentist or physician should not receive payment for dental or medical services provided to indigent persons through the state or county departments. Chapter 1027 (S 837) amends G.S. 14-234 to allow members of a governmental board, agency, or commission that administers a program of direct public assistance (which would include state or county social service board members) to receive payment for "services, facilities or supplies furnished directly to needy individuals" under specified circumstances: (1) the programs of public assistance must be open to the general participation of practitioners of any given profession on a nondiscriminatory basis; (2) the board or its employees have no control over who is selected by the needy person among licensed or qualified providers; (3) payment is the same amount as would be paid to other providers; (4) the board member takes no part in approving his own bill or claim, even though he may participate in making determinations of eligibility of needy persons to receive assistance.

APPROPRIATIONS

The General Assembly provided more adequate state funding for the program than it has in other

sessions. The State Board requested $65.8 million in state funds for the biennium; the General Assembly appropriated $51.3 million, which will serve as basis for federal and county matching funds to make the total investment of public funds in the program $308.8 million for the biennium. In addition, $8.05 million in state funds was appropriated to a reserve fund for implementation of the expanded program of medical care for needy persons required by Title XIX of the Social Security Act, known as Medicaid, to begin January 1, 1970. These funds will be matched by federal and county funds (and supplemented by state funds appropriated for the present medical care programs) to provide a Medicaid program costing some $100 million for the biennium.

The General Assembly funded several new federal requirements of interest to the counties: $830 thousand to implement the Work Incentive Program, which will require an equal investment of funds by the counties; $1.4 million to finance the cost of exempting a portion of the earned income of AFDC recipients, which will require $1.2 million in matching county funds; $419.8 thousand to provide day care in AFDC cases, requiring an equivalent investment from county funds.

In general, the cost of the program is increasing, particularly for public assistance and medical care, for several reasons: inflation, the mandatory requirements of the 1967 amendments to the Social Security Act ($14.9 million), and the cost of Medicaid. New legislation, new federal requirements, Medicaid, and the appropriations of the 1969 General Assembly will require a 41 percent increase in county funds to finance the program on a matching basis.

STATE COMMISSION FOR THE BLIND

Reorganization

Chapter 1255 (H 1121) rewrites G.S. 111-1 to -3 to terminate the terms of the present Commission for the Blind effective July 2, 1969, and to reorganize the Commission completely, so that it will be composed of nine members appointed for five-year terms (initial appointees to have staggered terms) by the Governor, who is to designate the chairman (the Commission formerly consisted of six appointed members and five designated state officials serving ex officio). The newly created Commission is to appoint a director subject to the State Personnel Act to serve as chief administrative officer at the pleasure of the Commission, with such duties and powers as authorized by the Commission.

The bill adds new G.S. 111-27.2, apparently in response to the current controversy over the separate retirement system operated for blind vending-stand operators. The Commission may continue to participate in the present retirement program, but it is directed to study the issues related to classification of blind vending-stand operators and their retirement program and make recommendations to the 1971 General Assembly.

The bill also creates two advisory committees: (1) a Blind Advisory Committee composed of six legally blind persons appointed by the Governor, and (2) a Professional Advisory Committee composed of three ophthalmologists and three optometists (appointed by the Governor from recommendations of the medical and optometric societies) to advise the Commission on the needs of the blind and the use of professional services of ophthalmologists and optometrists by blind clients of the Commission's program.

Information on Blind Persons

G.S. 111-4 requires the Commission to maintain a register of blind persons in the state, including specified information about each blind person. G.S. 111-28 makes it unlawful for any person to use any list of recipients of aid to the blind for any purpose except those connected with administration of the program under rules and regulations of the Commission. Chapter 871 (H 1254) amends G.S. 111-28 to authorize the Commission to release the name and medical record of any person listed in the register of the blind to two state departments—Motor Vehicles and Revenue—for uses directly connected with the administration of their respective programs. Otherwise, the information must be treated as confidential and may not be released for commercial or political purposes.

State Constitutional Revision

By JOHN L. SANDERS

While well-reported controversies over taxes and interest rates held the public eye, the General Assembly of 1969 took a long but scarcely noticed stride toward revision of the century-old Constitution of North Carolina.

Seven constitutional amendments—five of them products of a study commission—were approved for submission to the people in November of 1970. They include a general editorial revision of the entire Constitution, an extensive rewriting of the constitutional provisions governing state and local finance, a requirement of major reorganization of the executive branch of state government, removal from the Constitution of the literacy test for voting, redistribution of the benefits of escheats, elimination of the constitutionally fixed minimum state income tax exemptions, and a procedure by which the General Assembly may convene itself in special session. Each amendment that is approved by the voters will take effect on July 1, 1971, except the finance amendment, which will take effect on July 1, 1973.

This article will review briefly the course of this effort at state constitutional modernization from its beginning in the fall of 1967 until the final day of the 1969 session, when three of the seven amendments were ratified.

CONSTITUTIONAL DEVELOPMENT

1776 to 1868

North Carolina adopted its first Constitution and Declaration of Rights in December, 1776, shortly after its severance from the British Crown. That Constitution was a short, simple document. It placed virtually all governmental power in the General Assembly. It restricted the franchise and apportioned legislative membership so that the propertied interests of the eastern section of the state were assured control of the government for sixty years.

Pressure for changes in the legislative apportionment plan to give weight to population—and thus make the General Assembly more responsive to a widespread desire for more aggressive government—eventually led to the Convention of 1835. Amendments proposed by that Convention and approved by the voters reconstituted the General Assembly to apportion the Senate on the basis of property and the House on the basis of a combination of county units and population; made the Governor subject to popular election; and effected other changes sufficient to quiet most of the desire for constitutional reform for a generation.

1868 to 1969

One of the requirements exacted of ten former Confederate States by the Congressional Reconstruction Acts of 1867 as a condition of readmission to representation in the Congress of the United States was the adoption of new state constitutions providing, among other things, for universal manhood suffrage. The voters of North Carolina approved the holding of a convention to revise the Constitution and elected convention delegates. The Convention of 1868 met in Raleigh in the winter of that year and drafted a new Constitution, which received the approval of the voters of the state and the Congress.

The Constitution of 1868 was democratic and progressive for its time. It made virtually all state and county officers of any consequence popularly elective, most of them for the first time. It called for public support of schools and of charitable and penal institutions. It limited the penalties for crime and broadened the rights of the people secured by the Declaration of Rights.

In the century since its adoption, five major efforts have been made to achieve extensive revision of the Constitution.[1] The first came in 1875 in a convention that was largely promoted to restore the *status quo ante bellum*. The convention submitted and the voters approved numerous changes in the 1868 document; however, these changes fell far short of accomplishing the goal of the convention's promoters. Nearly forty years later, a study commission recommended and the Extra Session of the General Assembly of 1913 submitted to the voters a slate of ten amendments, all of which were defeated. In 1933, the General Assembly voted to submit to the people a revised Constitution that had been prepared by a legislatively established study commission. Because it was not submitted at the special election of 1933 (the time at which the State Supreme Court later concluded it should have been submitted), the Proposed Constitution of 1933 was never voted upon. A generation later, the General Assembly of 1957 established a study commission that produced the Proposed Constitution of 1959. That proposal passed the Senate of 1959 but died in the House of Representatives. The fifth revision effort is now under way. Despite their short-term failure, the ten amendments of 1913, the Proposed Constitution of 1933, and the Proposed Constitution of 1959 all served as sources of several separate amendments that were later submitted to the voters and approved.

The Constitution of 1868 remains basically the one in force today, for the wording of about half of the present sections has not been changed in a century. North Carolina's is the only Reconstruction constitution that has not been revised and readopted as a whole at least once. It has survived for several reasons: Compared with the constitutions of many states, it is relatively brief and lacking in detailed provisions as to important matters that are subject to rapid obsolescence. Also the General Assembly has been allowed—and has exercised—wide discretion in such matters as state and local governmental organization and powers, except for some aspects of finance. Moreover, while the Constitution retains many obsolete and invalid provisions, they are more often disfiguring than handicapping in their effect.

Finally, the Constitution has proved relatively easy to change through specific amendments. Since 1868, the people have voted 97 times on constitutional amendments and have adopted 69 amendments. The increasing frequency of amendments and the increasing readiness of the voters to approve amendments are indicated by the fact that half of the 97 amendment votes have occurred in the last 35 years, and six out of seven (or 42 of 49) of the amendments proposed during that period have been adopted. During the 1960s, ten amendments (including a revision of the entire judicial article) have been approved and only one has been rejected. Except for the judicial amendment of 1962, however, recent years have witnessed little widespread public enthusiasm for amendments and virtually none for general constitutional revision.

While a relatively easy and often-used amendment process has relieved many of the pressures that otherwise would have strengthened the case for general constitutional reform, it has not kept the Constitution current in all respects. Constitutional amendments arise in response to particular problems experienced or anticipated and generally are limited in scope so as to achieve the essential goal while arousing minimum unnecessary opposition. Thus amendments sometimes have not been as comprehensive as they should have been to avoid inconsistency in result. Obsolete and invalid provisions have been allowed to remain in the Constitution to mislead the unwary reader. Moreover, in the absence of a comprehensive reappraisal, there has been no recent occasion to reconsider constitutional provisions that may be obsolescent but may not yet have proved so frustrating or unpopular in their effect as to provoke curative amendments.

STUDY COMMISSION ESTABLISHED

It was in recognition of these facts that Governor Dan K. Moore urged in an address to the North Carolina State Bar on October 27, 1967, that the Bar sponsor a study "to review the State Constitution in the light of present and future demands upon State Government . . ." and "consider revising or even rewriting it. . . ." The State Bar responded favorably to this invitation, obtained the cooperation of the North Carolina Bar Association, and formed a joint Steering Committee to plan the study, select the members of the study commission, and obtain financing for the project.

1. The Constitution of North Carolina provides two methods for its amendment. A convention of the people may be called if two-thirds of all the members of each house of the General Assembly and a majority of the qualified voters who vote on the issue approve it. N.C. Const. art. XIII, § 1. While the Constitution does not require that amendments approved by a convention be submitted to the voters for ratification, it has been the uniform practice to do so since 1835, except for several amendments adopted during the Civil War. No proposal for calling a convention has reached the voters since 1875. The second procedure—and the only one used since 1875 to alter the present Constitution—is an amendment initiated by vote of three-fifths of the members of each house of the General Assembly and approved by a majority of the qualified voters who vote on the proposal in the next general election. N.C. Const. art. XIII, § 2. No limit is placed on the number or scope of amendments that may be submitted at one time.

The Steering Committee,[2] under the chairmanship of Colonel William T. Joyner of Raleigh, performed its task in the late winter of 1968. It established the North Carolina State Constitution Study Commission as a joint agency of the North Carolina State Bar and the North Carolina Bar Association, selected its members—fifteen attorneys and ten laymen—and adopted a plan for the study which provided that the

> . . . Commission will make a study of the Constitution of North Carolina and give consideration to the question whether there is a need for either rewriting or amending the Constitution. Such study should consider not only the question of editorial improvements, [and] the elimination of archaic provisions, but also any broad and substantial matters concerning the present and future demands upon our State government.

The Commission was directed to report to its parent organizations by December 16, 1968, if feasible, so that the report might be transmitted to the Governor and the General Assembly of 1969. It was at all times assumed that the General Assembly, not a constitutional convention, would be the body to act on this report.

The Steering Committee also obtained a grant of $25,000 from the Z. Smith Reynolds Foundation, Incorporated, to pay Commission expenses.

CONSTITUTIONAL REVISION NATIONWIDE

The current constitutional revision effort in this state is a part of a national phenomenon. It is probable that more extensive effort has been put forth in the cause of state constitutional revision throughout the country in the last ten years than in any comparable period since the decade immediately following the Civil War. Voters have approved general revisions of their state constitutions in Michigan, Hawaii, Connecticut, and Florida and turned them down in Kentucky, Rhode Island, New York, and Maryland. Extensive constitutional alterations have taken place in Pennsylvania and California in stages, and many other states have experienced movements for constitutional modernization. The recent reapportionment of both houses of all state legislatures on a population basis has improved the possibility of constitutional reform. The desire of the former legislative "haves" to protect their advantaged position had long been a serious obstacle to the calling of state constitutional conventions, historically the principal vehicle for general constitutional revision. Their legislative dominance gone, the rural interests no longer had either the motive or perhaps the means to block general constitutional revision.

COMMISSION ORGANIZATION AND PROCEDURE

Membership

On March 24, Governor Moore announced the names of the twenty-five members of the North Carolina State Constitution Study Commission. They were Charles B. Aycock, attorney and secretary of the 1931-33 Constitution Commission, Kinston; James M. Baley, Jr., attorney, Asheville; Millard Barbee, president of the State AFL-CIO, Raleigh; William Britt, attorney and state representative, Smithfield; Mrs. Harry B. Caldwell, master of the State Grange, Greensboro; Irving E. Carlyle, attorney and former state senator, Winston-Salem; Julius L. Chambers, attorney, Charlotte; Archie K. Davis, banker and former state senator, Winston-Salem; Emery B. Denny, former Chief Justice of the Supreme Court of North Carolina, Raleigh; Joseph C. Eagles, Jr., businessman and former state senator, Wilson; Albert J. Ellis, attorney and state senator, Jacksonville; Luther H. Hodges, former Governor of North Carolina (1954-61); Roberts H. Jernigan, Jr., businessman and state representative, Ahoskie; William A. Johnson, attorney, former State Commissioner of Revenue and former superior court judge, Lillington; Charles R. Jonas, attorney and member of Congress; Claude V. Jones, city attorney of the City of Durham; E. L. Loftin, attorney, Asheville; Hector McLean, banker and state senator, Lumberton; L. P. McLendon, Jr., attorney and state senator, Greensboro; Rudolph I. Mintz, superior court judge, Wilmington; Bert M. Montague, attorney and Director of the State Administrative Office of the Courts; Perry E. Morgan, editor, *The Charlotte News;* John T. Morrisey, Sr., general counsel of the North Carolina Association of County Commissioners, Raleigh; Charles W. Phillips, state representative and retired educator, Greensboro; and Asa T. Spaulding, retired insurance executive, Durham. Messrs. Eagles, Jonas, and Morgan were unable to serve, and their places on the Commission were taken by Robert Gavin, attorney and twice (1960 and 1964) Republican candidate for Governor, Sanford; Robin L. Hinson, attorney and law teacher, Rockingham; and William D. Snider, editor of the *Greensboro Daily News.*

The final membership included (the categories are not mutually exclusive) seventeen lawyers, twelve of whom are currently in private practice; two bankers, one of whom is a nonpracticing lawyer; three other businessmen; the heads of statewide farm and labor organizations; an educator; a journalist; a former Governor; a former Chief Justice; one present and one former superior court judge; three current

2. The members of the Steering Committee were Charles B. Aycock of Kinston, Davis C. Herring of Southport, Claude V. Jones of Durham, William D. Sabiston, Jr., of Carthage, and Robert G. Sanders of Charlotte, appointed by the President of the North Carolina State Bar; and William J. Adams, Jr., of Greensboro, Richard C. Erwin, Sr., of Winston-Salem, Francis J. Heazel of Asheville, William T. Joyner of Raleigh, and Lindsay C. Warren of Goldsboro, appointed by the President of the North Carolina Bar Association.

state senators and three current state representatives, plus several who had served in the legislature in earlier years; one woman; two Negroes; and two Republicans. Two-thirds of the members came from cities of more than 50,000 population, giving a somewhat heavier urban flavor to the Commission than is typical of such groups in North Carolina.

Officers and Staff

At its first meeting on April 5, the Commission chose Judge Denny as its Chairman, Judge Mintz and Mr. Davis as its Vice Chairmen, and Mr. Montague as its Secretary.

The Commission engaged the Institute of Government as its professional staff. Members of the Institute staff attended all meetings of the Commission and its committees, performed research at the Commission's request, and drafted revised constitutional texts, reports, and bills at the Commission's direction. They also provided liaison with other study commissions that were considering matters of interest to the Constitution Study Commission and which the Institute was serving in a staff capacity.

Initial Commission Proceedings

At the outset, the Commission decided to spend its first three meetings gaining a general orientation to its task. At its first meeting, it heard a brief review of the history of the State Constitution and received texts of the 1933 and 1959 Proposed Constitutions and the current document. The Commission's second meeting (April 26) was committed to an extensive report from its staff on the alternative approaches to revision open to the Commission, the considerations involved in drafting state constitutions, and the various subject-matter fields in which constitutional change might be considered. Four standing committees were agreed upon: Committee on Structure, Organization, and Powers of State Government; Committee on Structure, Organization, and Powers of Local Government and Government Finance; Committee on Education, Welfare, and Criminal Justice; and Committee on Declarations of Principles and Policies and Miscellaneous.

Six members were assigned to each of these committees at the third meeting on May 10. Professor John P. Wheeler of Hollins College, Virginia, the only out-of-state consultant engaged by the Commission, reviewed for the group the recent history of constitutional revision in other states with special emphasis on the Maryland experience.

At its fourth meeting, on May 31, the Commission held its only public hearing as a full Commission. Former Governor Terry Sanford appeared at its invitation. He generally favored strengthening the executive by permitting a Governor to be elected to two consecutive terms, granting him the veto power, and making appointive several of the state executive officers now popularly elected. The Superintendent of Public Instruction, Dr. Charles F. Carroll, also spoke to the Commission, as did two other witnesses.

It had by then become apparent to the Commission, as it had been to its predecessors in 1931-33 and 1957-59, that the only practical way to update the Constitution was to rewrite the whole document. Even if the intended effect was to be merely cosmetic, the needed changes were too numerous and interrelated to be made by a reasonable number of separate amendments, or by a single amendment that deleted, added, and altered language without restating the whole Constitution. Moreover, it would be easier to explain a general redraft, where it would not be expected that every minor change be justified, than the type of amendment or amendments that made numerous specific changes in language, punctuation, and spelling.

It was also assumed at that time that all of the changes in the Constitution that the Commission could agree upon would be incorporated into a single, revised Constitution that would ultimately be approved or disapproved by a single vote at the polls. This assumption was not made without reservations, however. The proposed Constitution of Maryland, the product of a years-long preparatory effort and a much-publicized convention, had been soundly defeated at the polls on May 14 despite almost universal predictions of its success. The backwash from the Maryland experience was evident in the advice of many witnesses later heard by the Commission and its committees that a few particular amendments should be offered, not a general revision. In this dilemma, the Commission avoided deciding the issue of whether to go "the revision route" or "the amendment route" until more evidence was in hand.

At its May 31 meeting, the Commission approved a set of committee procedures proposed by Chairman Denny. It was agreed that each of the four committees might organize, hold hearings and other meetings, and seek advice and assistance as it saw fit. Each committee was urged to examine those provisions of the Constitution within its jurisdiction and note for elimination provisions that were obsolete, unconstitutional, or more appropriate for statutory than constitutional coverage and to seek opportunities to abbreviate, simplify, and make uniform the language of the Constitution and reorganize its content in the interest of clarity of meaning, avoiding change made solely for the sake of change. Finally, the committees were instructed to examine each constitutional provision within their charge to "determine whether the policy that it embraces is still sound and if so, whether it is effective in achieving its purpose . . . ," and to recommend changes found desirable.

Committee Proceedings

With four meetings behind it, the work of the Commission devolved upon its committees. The work

assignment of each committee was carefully defined by subject matter and not by constitutional article, since the organization of the Constitution itself did not offer a clear, nonduplicative pattern for study purposes. Each committee held five or six meetings (for a total of 23) between May 31 and October 16. The State Government Committee heard 23 witnesses, and the other committees heard smaller numbers. Most of the witnesses came on invitation; others came on their own initiative. Nearly all of the work at this stage was done in full committee meetings; only the State Government Committee—which had the whole of the legislative, executive, and judicial branches to consider—employed subcommittees.

The Committee on Local Government and Government Finance had a special problem, due to the existence of the legislatively established Local Government Study Commission. That Commission was well into its work before the State Constitution Study Commission got under way and had concluded early that revision of the constitutional provisions with respect to local government and local government finance would be one of its main proposals. One member of the committee on Local Government and Government Finance (Representative Jernigan) was also a member of the Local Government Study Commission. The Committee and the Commission were aided by the same attorneys in a staff capacity. The officers and members of the two groups met several times and worked closely together. The result was near-identity of recommendations offered by the Committee and the Commission.

A simple, standard format was developed for transmitting the recommendations of the committees to the Commission. Each committee filed from one to three reports on the subjects assigned to it. Each report summarized briefly the committee's inquiry and procedures; set forth its recommendations in straightforward form with little argument or explanation; and embodied recommendations for change in new or revised constitutional language, parallelled by the comparable provisions of the present Constitution. In some instances, only a few sections were altered; in others, whole articles had to be revised in order to accommodate the changes proposed. The Committee on Education, Welfare and Criminal Justice and the Committee on Declarations of Principles and Policies and Miscellaneous also filed short narrative reports explaining their findings and recommendations.

No effort was made at this stage to determine the issue of revision versus amendment, although it was a frequent subject of discussion by witnesses and among the Commission members. As the committee reports with their numerous changes came in, however, the case for revision became increasingly clear.

Later Commission Proceedings

On September 20, the State Constitution Study Commission resumed its meetings. It received and discussed the reports of the Committee on State Government and the Committee on Education, Welfare, and Criminal Justice, deferring final action on those reports until its next meeting. On October 11, the Commission reviewed, revised, and adopted the recommendations of those two committees and received the report of the Committee on Declarations of Principles and Policies and Miscellaneous. (The action of the Commission at this stage was confined to the proposed constitutional texts themselves and did not deal with explanatory materials.) A week later, the Commission reviewed, revised, and adopted the report of the Committee on Declarations, etc., and received the report of the Committee on Local Government and Government Finance.

At the September 20 meeting, Chairman Denny had broached the idea that was to develop into the basic strategy of the Commission: that there should be one amendment embodying all of the editorial, noncontroversial amendments found to be needed, and a series of independent amendments, each dealing with one of the "controversial" topics on which the Commission found change to be necessary. At the October 11 meeting, the Chairman elaborated his earlier idea into a proposal for (1) one amendment setting forth a revised Constitution that would reflect all of the editorial and "noncontroversial," substantive changes the Commission intended to recommend, and (2) a series of perhaps six or eight other amendments, each embodying a "controversial" recommendation of sufficient importance that the General Assembly and the voters should be able to act upon it without prejudice to or from other proposed changes. He further recommended the creation of an Editorial Committee to review all of the constitutional language approved by the Commission, effect this separation, and report back to the Commission. The members of the Commission approved his proposal.

The Editorial Committee rapidly developed the text of the Proposed Constitution from the materials already approved by the Commission and reported it to the Commission on November 8, when it was reviewed, revised, and given tentative approval. At that same meeting, the Commission approved in principle the amendment revising Article V—Finance—prepared by the Local Government Study Commission, but left its advocacy to that Commission.

Thereupon the Editorial Committee took the several "controversial" recommendations that had been endorsed tentatively by the Commission but had been left out of the Proposed Constitution, grouped them into nine separate amendments, and reported them to the Commission. Each of the nine separate amendments was so drawn that if approved by the

voters, it would take effect as an amendment to either the Proposed Constitution or the present Constitution, depending on the fate of the Proposed Constitution. The effect was to maximize the choices open to the General Assembly and the voters, while avoiding the peril of cumulating the opposition vote by lumping together numerous changes some of which would be opposed by one group of voters or another.

At its last meeting on November 27, the Commission gave final, unanimous approval to the Proposed Constitution after making a few last-minute editorial adjustments and approved the other nine separate amendments proposed by the Editorial Committee. The Commission declined to assign a priority order to the separate amendments, leaving that judgment to the General Assembly. It was not assumed that all of the amendments would gain legislative approval. Nor is it likely that the Commission would have favored the submission to the people of the entire ten-amendment package, plus the finance amendment developed by the Local Government Study Commission, lest the length and complexity of the resulting ballot baffle the voters and result in the defeat for the whole program.

The Proposed Constitution and the separate amendments were then incorporated into the *Report* of the Commission, which included extensive commentaries on the recommendations and other supporting materials. This *Report* was presented to officers of the parent bar organizations and by them in turn to Governor Dan K. Moore in a formal ceremony on December 23, and the Commission's work was done.

COMMISSION OBJECTIVE

In its report, the Commission stated its objective in these terms:

> Our ultimate objective throughout our study has been to help obtain for North Carolina a constitution that deals in a realistic, direct, and understandable way with the current and foreseeable problems of the State that are appropriate to be dealt with in the constitution . . . . In order to achieve this general objective of an up-to-date constitution, we consider it necessary to eliminate from the constitution obsolete and unconstitutional provisions, to simplify and make more consistent and uniform the language of the document, to reorganize its content in some instances for the sake of greater clarity, and especially to make several changes in the structure of the executive branch of state government and in the allocation of powers among the branches and levels of government that will enable our state and local governments to meet effectively the needs of the people for efficient and responsive governmental service and protection.

In pursuit of this objective, the Commission recommended ten amendments (consisting of the Proposed Constitution and nine independent amendments) and endorsed in principle an eleventh amendment that originated with the Local Government Study Commission. Each of these amendments, as proposed by the Commission, will now be described briefly. Legislative action approving, disapproving, or modifying the amendments will be noted later in this article.

PROPOSED CONSTITUTION

> The first amendment [The Commission stated in its report] effects a general editorial revision of the constitution . . . . The deletions, reorganizations, and improvements in the clarity and consistency of language will be found in the proposed constitution. Some of the changes are substantive, but none is calculated to impair any present right of the individual citizen or to bring about any fundamental change in the power of state and local government or the distribution of that power.

Editorial Rules

Several of the editorial rules followed by the Commission in preparing the Proposed Constitution deserve to be noted here. The existing fourteen-article organization of the Constitution was retained, but the contents of several articles—notably Articles I, II, III, V, IX, and X—were rearranged in more logical sequence. Sections were shifted from one article to another to make a more logical subject-matter arrangement. Clearly obsolete and constitutionally invalid matter was omitted, as were provisions essentially legislative in character. Uniformity of expression was sought where uniformity of meaning was important. Directness and currency of language were also sought, together with standardization in spelling, punctuation, capitalization, and other essentially editorial matters. Greater brevity of the Constitution as a whole was a welcome by-product of the revision, though not itself a primary objective.

Article I. Declaration of Rights

The Declaration of Rights, which dates from 1776 with some 1868 additions, was retained with a few contemporary embellishments. The sections were generally rearranged to improve the organization of the article, and the frequently used subjunctive mood was replaced by the imperative in order to make clear that the provisions of that article are commands and not mere admonitions. (For example, "All elections ought to be free" became "All elections shall be free.") To the article were added a guarantee of freedom of speech, a guarantee of equal protection of the laws, and a prohibition against exclusion from jury service or other discrimination by the state on the basis of race or religion. Since all of the rights

newly expressed in the Proposed Constitution are already guaranteed by the United States Constitution, their inclusion simply constitutes an explicit recognition by the state of their importance.

Article II. Legislative

While extensively rearranged in the interest of clarity, Article II (which deals with the organization and powers of the General Assembly) was little changed in substance. The provisions governing apportionment of the two houses, having been brought up to date by an amendment approved in November, 1968, were left substantially intact. The various prohibitions against legislation of various types were editorially consolidated but not substantively altered.

Article III. Executive

In the course of reorganizing and abbreviating Article III, the Commission brought into clear focus the Governor's role as chief executive. In him was vested "the executive power of the State," rather than merely "the supreme executive power of the State," as at present. The old concept of "the executive department," comprising all ten of the elected state executive officers, was abandoned. The scattered statements of the Governor's duties were collected in one section, to which was added a brief statement of his budget powers, now merely statutory in origin. No change was made in the Governor's eligibility or term, or in the list of state executives now elected by the people. To the Council of State (now seven elected executives with the Governor as presiding officer) were added the Governor, Lieutenant Governor, and Attorney General as ex officio members. The more extensive changes in the executive article were left to separate amendments, discussed below.

Article IV. Judicial

Having been entirely rewritten in 1962, the judicial article was the subject of little editorial alteration and of no substantive change of current importance.

Article V. Finance

The editorial amendments to Article V, dealing with finance and taxation, were more extensive than for any other article. Provisions concerning finance was transferred to it from four other articles. Contrary to the practice followed in most parts of the revision, the present finance provisions were expanded in some instances to make clearer the meaning of excessively condensed provisions. The only substantive change of note gave a wife who is the primary wage-earner in her family the same constitutionally guaranteed income tax exemption now granted a husband who is the chief wage-earner; she already has that benefit under statute.

Article VI. Suffrage and Eligibility to Office

The revision of Article VI adds out-of-state and federal felonies to felonies committed against the State of North Carolina as grounds for denial of voting and office-holding rights in this state. In an effort to achieve greater uniformity in the laws governing registration and the conduct of elections, the General Assembly was directed to enact laws uniform throughout the state governing registration and elections for federal, state, district, and county offices. General laws (permitting some differentiation among appropriate classes) were required to be enacted with respect to registration and voting in municipal elections.

The provision that is interpreted to mean that only voters can hold office was modified to limit its application to *popularly elective* offices only; thus it was left to the legislature to determine whether one must be a voter in order to hold an *appointive* office. This change was made to provide relief from the stringency of the present rule which, if strictly applied, bars from any position that is technically an office a person who is not already a qualified voter within the jurisdiction he seeks to serve.

The final change in this article was an attempt to deal with that perpetual breeder of troubles for local governments, the dual office-holding prohibition. The present ban on the concurrent holding by one person of two state offices, or of a state and a federal office, coupled with a very inclusive view on the part of the courts and the Attorney General of what constitutes an "office" for this purpose, has resulted in frequent litigation and rulings by the Attorney General finding persons to be inadvertent violators of this provision.

The Proposed Constitution prohibits the concurrent holding of two more elective state offices, or of a federal office and an elective state office. There was some disposition within the Commission to allow the simultaneous holding of other offices except as prohibited by the General Assembly. The Commission instead adopted the more restrictive course of expressly prohibiting the concurrent holding of any two or more appointive offices or places of trust or profit, or of any combination of elective and appointive places of trust or profit, except as the General Assembly may provide by general law. Thus the burden was shifted to the General Assembly to declare specifically and affirmatively what offices or categories of offices may be held at the same time by one person. For example, if it wishes to continue to allow legislators to serve as trustees of public universities, a general law to that effect must be enacted.

Article VII. Local Government

Most of the provisions of present Article VII, which deals essentially with county and township government, date from 1868. Since 1875, most of those provisions have had the peculiar status of being subject to amendment by statute, a provision to that effect having been added to the article by the Convention of 1875 in order to restore to the General Assembly substantial authority over the forms and

powers of local government. The passage of time and amendatory laws has left most of these provisions meaningless.

The Commission was not inclined to try to write into the Proposed Constitution either the present scheme of local government or a new one. Instead, it left the power to provide for local government in the legislature, confining the constitutional provisions on the subject to a general description of the General Assembly's plenary authority over local government, a declaration that any unit formed by the merger of a city and a county should be deemed both a city and a county for constitutional purposes, and a section retaining the sheriff as an elective county officer. (The provisions respecting the financial affairs of local government are all found in Article V.)

Article VIII. Corporations

Present Article VIII deals essentially with business corporations and other nonmunicipal corporations and dates largely from 1868. It underwent only minor editorial change at the hands of the Commission.

Article IX. Education

This article was rearranged to improve upon the present hodge-podge treatment of public schools and higher education, obsolete provisions (especially those pertaining to racial matters) were eliminated, and other changes were made to reflect current practice in the administration and financing of schools.

The constitutionally mandated school term was extended from six months (set in 1918) to a minimum of nine months (where it was fixed by statute many years ago). The possibly restrictive age limits on tuition-free public schooling were removed. Units of local government to which the General Assembly assigns a share of the responsibility for financing public education were authorized to finance from local revenues education programs, including both public schools and technical institutes and community colleges, without a popular vote of approval. It was made mandatory (it is now permissive) that the General Assembly require school attendance.

The Superintendent of Public Instruction was eliminated as a voting member of the State Board of Education but retained as the Board's secretary. He was replaced with an additional at-large appointee. A potential conflict of authority between the Superintendent and the Board (both of which are now given constitutional authority to administer the public schools) was eliminated by making the Superintendent the chief administrative officer of the Board, which is to supervise and administer the schools.

The provisions with respect to the state and county school funds were retained with only minor editorial modifications. Fines, penalties, and forfeitures continue to be earmarked for the county school fund.

The present provisions dealing with The University of North Carolina were broadened into a statement of the General Assembly's duty to maintain a system of higher education.

Article X. Homesteads and Exemptions

The General Assembly is authorized by the changes made in this article to set the amounts of the personal property exemption and the homestead exemption (constitutionally fixed at $500 and $1,000 respectively since 1868) at what it considers to be reasonable levels, with the present constitutional figures being treated as minimums. The provision protecting the rights of married women to deal with their own property was left untouched. The protection given life insurance taken out for the benefit of the wife and children of the insured was broadened.

Article XI. Punishments, Corrections, and Charities

Mainly of 1868 vintage, this article was substantially abbreviated by the elimination of numerous obsolete and excessively detailed provisions and the substitution of a broadly phrased mandate to the General Assembly to provide appropriate institutions and agencies to minister to the charitable and correctional needs of the state.

The provisions prescribing the permissible punishments for crime and limiting the crimes punishable by death were left essentially intact.

Article XII. Military Forces

A severe editorial pruning of obsolete matter with respect to the militia reduced this article to a simple statement of the Governor's function as Commander-in-Chief.

Article XIII. Conventions; Constitutional Amendment and Revision

Dating in its present form from 1875, this article now provides in a very abbreviated way for state conventions and for constitutional amendments to be initiated by the General Assembly. The article was entirely rewritten and lengthened to incorporate in some detail established North Carolina theory and practice with respect to these matters, especially conventions.

Article XIV. Miscellaneous

Editorial omissions and transfers leave this article to deal with state boundaries, the location of the capital, the continuity of laws, and the definition of the various types of general laws contemplated by the Proposed Constitution. It also protects office holders from premature unemployment by reason of the adoption of the Proposed Constitution.

Time of Election; Effective Date

The bill to submit the Proposed Constitution to the people calls for it to be voted on "at the next general election," as required by the amending pro-

cedure of the present Constitution, Article XIII, section 2. As prepared by the Commission and introduced, the bill provided that the Proposed Constitution, if approved, should take effect on January 1, 1971.

SEPARATE AMENDMENTS

It has been noted earlier that the Commission omitted from its Proposed Constitution changes that it thought likely to arouse substantial opposition in the General Assembly or among the voters. The changes of that type that it deemed essential were set out in nine separate amendments (the finance amendment made a tenth), each so drafted that it could be voted upon on its own merits in the General Assembly and at the polls and become a part either of the present Constitution or of the Proposed Constitution, depending on the fate of the latter. These amendments also were so drafted that no matter what number or combination of them might be approved, the resulting document would be internally consistent. A brief analysis of each of these separate amendments follows.

No. 2. Judicial Amendment

This amendment grouped into a single ballot proposition three changes affecting the officers of the judiciary. First, it required for the first time that all judges and solicitors be licensed to practice law in North Carolina. Now they need only be registered voters, and in thirty-nine counties, that means they need not even be literate. Second, it directed the General Assembly to provide for the mandatory retirement for age of justices and judges. There is not such a direct requirement now. Third, it required the General Assembly to provide by general law procedures for the disciplining and removal of judicial officers, in lieu of the present hodge-podge of inadequate removal procedures, constitutional and statutory.

No. 3. Veto

Perhaps the most newsworthy item in the Commission's amendment list was the proposal to grant the Governor the power to veto legislation, thus supplying a lack that is unique among American governors. The Commission's plan required only a three-fifths vote of both houses to override a veto, thus making it a weaker veto than is found in thirty-six states and at the national level, where a two-thirds vote is required to override. The post-session pocket veto was avoided by providing for the calling of an extra session to reconsider bills vetoed after legislative adjournment.

One object of the veto proposal was to make the Governor, with his statewide view and constituency, a regular and responsible participant in the legislative process. Another object was to enable future Governors who might be seriously at odds with the legislative majority to protect the office against legislative impairment—a real risk, since the authority of the Governor derives chiefly from statutes.

No. 4. Governor's Term

Ever since North Carolina began electing her own Governors, first by the General Assembly (1776-1835) and since then by the people, strict limitations have been placed on the allowable period of consecutive service in the office. The term is four years. One elected to the office is not eligible to seek re-election to the next term. (He can serve longer than four years in the event he comes into office by succession and then is elected to a full term of his own.) Concurring in the view of former Governors Hodges, Sanford, and Moore and current Governor Scott, the Commission recommended an amendment making the Governor eligible for election to a second successive term. Similar treatment was proposed for the Lieutenant Governor. It saw this as an essential means of giving the Governor adequate time (if the people wish him to have it) to plan and carry out his program.

No. 5. Short Ballot

The long ballot—ten state executive officers are elected by the people every four years—is one of the Jacksonian legacies of the Constitution of 1868. Except for the governorship and the lieutenant governorship, normally these positions are attained through appointment by the Governor to fill a vacancy and the appointee runs for election and re-election with only nominal opposition. In the interest of giving the Governor more effective supervision over the affairs of state government and to enable the voters to exercise a more intelligent choice of state officers, the Commission recommended the reduction of the list of elected executives from ten to five. The Governor, Lieutenant Governor, Auditor, Treasurer, and Attorney General were left on the ballot. The Secretary of State and the Commissioners of Agriculture, Labor, and Insurance were dropped from the Constitution and thus made appointees of the Governor. The Superintendent of Public Instruction was made subject to election by the State Board of Education. The ex officio Council of State was restricted in membership to the five elected officers. The Governor's appointive power was strengthened.

No. 6. Voting Residence

The period of residence in the state required as a condition for voting in state and local elections, now twelve months, was reduced to six months.

No. 7. Trial on Information/Waiver of Jury Trial

The Commission recommended that trial upon information be allowed in noncapital criminal cases where the accused is represented by counsel. Waiver of jury trial in noncapital cases, where made in writing and with the consent of counsel and the trial judge, was recommended.

No. 8. Administrative Reorganization

North Carolina has over 200 state administrative agencies. The Commission concluded on the advice of witnesses who had tried it that no Governor can effectively oversee an administrative apparatus of such size and complexity. Their solution, patterned after the Model State Constitution and the constitutions of a few states, was twofold: require the General Assembly to reduce the number of administrative departments to not more than 25 by 1975, and give the Governor authority to effect agency reorganizations and consolidations, subject to disapproval by joint action of both houses of the legislature if the changes affect existing statutes.

No. 9. Income Tax Exemptions

The income tax provision of the present Constitution specifies certain minimum exemptions from the tax. This has the effect of preventing the filing of joint returns by husband and wife and barring the adoption of a "piggy-back" state income tax that would be computed as a percentage of the federal income tax, thus relieving the taxpayer of two sets of computations. The amendment offered by the Commission struck out the specified exemptions, leaving them to be fixed by the General Assembly. It retained the maximum tax rate at 10 percent.

No. 10. Escheats

Since 1789, property escheating to the state for want of lawful claimants has been earmarked for The University of North Carolina, where it goes into the principal of a scholarship fund. The Commission's amendment made the benefits of future escheats available to North Carolina students attending any public institution of higher education in the state. The principal of the existing escheats fund was left with The University.

Finance Amendment

The Local Government Commission's constitutional amendment revising the finance article of the Constitution, which the State Constitution Study Commission endorsed in principle, makes several significant changes with respect to taxing and borrowing, especially at the local level.

All forms of capitation or poll tax are prohibited.

The General Assembly is authorized to enact laws empowering counties, cities, and towns to establish special taxing districts less extensive in area than the entire unit in order to finance the provision within those districts of a higher level of governmental service than is available in the unit at large, either by supplementing existing services or providing services not otherwise available. It would be possible, for example, for a county governing body to establish a fire protection district less extensive than the entire county and levy taxes on the property within that district in order to finance the provision of fire protection, eliminating the present necessity of creating a new, independent governmental unit to accomplish the same result.

For a century, the Constitution has required that the levying of taxes and the borrowing of money by local governments be approved by vote of the people of the unit, unless the money is to be used for a "necessary expense." The court, not the General Assembly, is the final arbiter of what is a "necessary expense," and the State Supreme Court has taken a rather restrictive view of the embrace of that concept. The determination of what types of public expenditure should require voter approval and what types should be made by the governing board on its own authority is essentially a legislative and not a judicial matter. In this conviction, the amendment provides that the General Assembly, acting on a uniform, statewide basis, will make the final determination of whether voter approval must be had for the levy of property taxes or the borrowing of money to finance particular activities of local government.

To facilitate governmental and private cooperative endeavors, the state and local governmental units are authorized by the amendment to enter into contracts with and appropriate money to private entities "for the accomplishment of public purposes only."

The various forms of public financial obligations are more precisely defined than in the present Constitution, with the general effect of requiring voter approval only for the issuance of general obligation bonds and notes or for governmental guarantees of the debts of private persons or organizations. The General Assembly is directed to regulate by general law (permitting classified but not local acts) the contracting of debt by local governments.

The amendment retains the present limitation that the state and local governments may not, without voter approval, borrow more than the equivalent of two-thirds of the amount by which the unit's indebtedness was reduced during the last fiscal period, except for purposes listed in the Constitution. This list was lengthened to include "emergencies immediately threatening the public health or safety."

No change was made in the present provisions with respect to the classification and exemption of property for purposes of the property tax. The limitation of 20 cents on the $100 valuation now imposed on the general county property tax was omitted.

LEGISLATIVE ACTION

Committee Proceedings

While it was anticipated that constitutional revision would be an important issue in the regular biennial session of the General Assembly that convened on January 15, 1969, no special arrangements were made to process the expected amendment bills.

In the Senate, the twelve-member standing Committee on Constitution, chaired by seven-term Senator Julian R. Allsbrook, handled all of the constitutional amendment bills received by that chamber. In the House of Representatives, the nineteen-member standing Committee on Constitutional Amendments, under the chairmanship of Representative Ike F. Andrews, processed all but one of the amendment bills received in the House. Neither of the two current senators who had served on the State Constitution Study Commission was on the Senate Committee on Constitution. Only one of the three representatives who had served on the Commission was a member of the House Committee on Constitutional Amendments. The Institute of Government staff members who had aided the Commission also worked in a staff capacity for the two legislative committees considering the constitutional amendment bills.

The House and Senate committees met at least weekly (and often more frequently) from their formation until near the end of the session, save for periods when the five or six subcommittees that each established were most active. The House Committee on Constitutional Amendments held at least a dozen sessions, the Senate Committee on Constitution twice as many. Due to conflicting schedules of members, only two joint meetings of the two committees were held. Most of the witnesses were heard in subcommittee, where detailed review was given each bill, amendments to bills were formulated, and recommendations to the parent committees were developed.

Governor Robert W. Scott, in a March 27 speech to the General Assembly that largely focused on local government problems, endorsed generally the amendment with respect to local government finance. The administration made no other conspicuous effort on behalf of any of the constitutional amendment bills, concentrating its attention instead on other, more urgent legislative proposals.

The number of bills introduced calling for constitutional amendments—36 altogether—was a record, at least for recent legislative sessions. Deducting eight duplicate bills introduced in both houses, there were 28 distinct proposals for amendments, 11 of which originated with the State Constitution Study Commission, one of which came from the Local Government Study Commission with endorsement by the State Constitution Study Commission, and 16 of which were the work of individual members of the General Assembly.

Of the 12 proposals bearing the stamp of the State Constitution Study Commission, five reached ratification: the Proposed Constitution (H 231, Ch. 1258), the finance amendment (H 331, Ch. 1200), the executive reorganization amendment (H 568, Ch. 932), the income tax amendment (H 465, Ch. 872), and the escheats amendment (H 562, Ch. 827). Two of the 16 proposals originating with individual legislators were ratified: an amendment eliminating the literacy test for voting (H 327, Ch. 1004) and an amendment authorizing the convening of extra sessions of the General Assembly on petition of three-fifths of the members of each house (S 362, Ch. 1270).

Most of the bills defeated were disposed of in committee. Only two bills were killed on the Senate floor—the proposal for four-year Senate terms in lieu of the present two-year terms (S 294) and the proposal for annual legislative sessions (H 171). The House killed the proposal for a six-month residence period for voters (H 490); the judicial qualification, retirement, and removal amendment (H 567); and the amendment prohibiting the appropriation of public funds to private educational institutions (H 926).

The Senate Committee on Constitution acquired an unmerited reputation as a "killer" committee. In fact, it gave favorable reports to seven House bills and two Senate bills and gave an unfavorable report to only one bill that had passed the House. That Committee killed no other bill that still had vitality. The House Committee on Constitutional Amendments, on the other hand, partly because it moved more rapidly than its Senate counterpart, reported unfavorably ten bills, including all of those designed to strengthen the Governor's office (the two-term, veto, and short ballot amendments).

Proposed Constitution

Although it was examined in great detail in both Senate and House Committees and was under consideration from February 27 until July 2, the bill for the Proposed Constitution (H 231, ratified as Ch. 1258) underwent remarkably few changes in the process. In neither house was there extensive discussion of the bill on the floor, and committee amendments were adopted without difficulty.

The effective date was changed from January 1, 1971, to July 1, 1971, to coincide with the fiscal year. Several editorial changes were made in the interest of greater precision of language. At the insistence of teachers' and state employees' representatives, the provision protecting the funds of the Teachers and State Employees Retirement System from diversion was made more specific. The requirement of uniform statewide laws governing voter registration and the conduct of elections for federal, state, district, and county offices was reduced to a simple requirement of general laws governing voter registration. The direction that the General Assembly enact general laws with respect to municipal elections was dropped.

The Commission's draft had directed the General Assembly to enact mandatory school attendance laws, but allowed the State Board of Education to make exceptions to this requirement and to approve alternative means of education acceptable in lieu of public school attendance. At the insistence of the Senate

Committee, this direct grant of authority to the State Board of Education was eliminated, thus in effect leaving these matters for legislative disposition. Another amendment to the education article requires the state and county school funds to be used "exclusively" for maintaining free public schools.

Even more remarkable than the few changes made is the fact that in seven roll-call votes (four in the House and three in the Senate) on the bill for the Proposed Constitution, only one vote was recorded against it.

Other Amendments Approved

The finance amendment (H 331, ratified as Ch. 1200), underwent several modifications, none of them fundamental in character, in the course of passage. The effective date was deferred from July 1, 1971, to July 1, 1973, in order to allow adequate time for drafting the considerable body of implementing legislation that it will require if approved by the voters.

The amendment (H 568, ratified as Ch. 932) directing the General Assembly to consolidate the state departments and agencies into not more than twenty-five principal departments and authorizing the Governor to initiate reorganization plans, subject to legislative disapproval if they involve statutory change, gained the strong support of former Governors Luther H. Hodges and Dan K. Moore, who appeared at subcommittee meetings to speak for it, and from former Governor Terry Sanford, who wrote a letter of endorsement. Their advice doubtless contributed to the fact that not a single vote was recorded in opposition to this amendment in either house. Before passage, the amendment underwent one significant change. As introduced, disapproval of a reorganization plan initiated by the Governor would have required joint action by *both* houses of the General Assembly; as enacted, disapproval by *either* house would suffice to kill a Governor's reorganization proposal. Acting jointly, the two houses could modify and approve such a proposal.

The bill embodying the amendment repealing the minimum state income tax exemptions now specified in the Constitution and leaving the fixing of such exemptions to legislative discretion (H 465, ratified as Ch. 872) passed both houses with little debate or opposition.

The bill for an amendment transferring the benefit of future escheats from The University of North Carolina to students attending all public institutions of higher education in the state passed with equal ease (H 562, ratified as Ch. 827).

Representative Henry Frye of Guilford County sponsored the bill for an amendment repealing the state's 69-year-old literacy test for voters (H 327, ratified as Ch. 1004). Initially given little chance of passage, the bill was greatly helped by a decision of the United States Supreme Court, handed down a few days before the critical House vote. Thirty-nine counties in North Carolina (containing 42 percent of the state's 1960 population) are now prohibited, under the provisions of the Voting Rights Act of 1965, from using the literacy test, due to the lack of the requisite level of voter participation. The Court's decision in *Gaston County v. United States*, —U.S. —, 37 U.S. Law Week 4478, effectively cut off any prospect of their release from that ban. Thus for a substantial part of the population of the state, the repeal of the literacy test became a matter of practical indifference. The bill passed the House by a comfortable margin and drew only a single opposing vote in the Senate.

Senator Herman A. Moore of Mecklenburg County, who has been active in many efforts to strengthen the General Assembly as an institution, was the introducer of the bill to allow the convening of extra legislative sessions on the initiative of legislators (S 362, ratified as Ch. 1270). This procedure supplements the present authority of the Governor to call extra sessions with the advice of the Council of State. It provides that on written request of three-fifths of all the members of each house, the President of the Senate and the Speaker of the House of Representatives shall convene an extra session of the General Assembly. Thus the legislative branch would be able to convene, notwithstanding the contrary wishes of the Governor. Legislative support for this measure was strong.

Amendments Rejected

Twenty-eight amendment proposals (after discounting duplicate bills) were introduced in the 1969 session; seven passed. The twenty-one discards merit at least brief mention. Some of them will no doubt be heard from again.

The State Constitution Study Commission's recommendations included three aimed at strengthening the Governor's office: H 545 and S 410 would have allowed the voters to elect the Governor and Lieutenant Governor to two successive four-year terms of the same office. H 509 and S 272 would have empowered the Governor to veto legislation, subject to being overridden by a three-fifths vote of the membership of each house. H 880 would have reduced the number of elected state executives from ten to five. All three of these bills were given unfavorable reports by the House Committee on Constitutional Amendments, followed by like action on the part of the Senate Committee. The legislators showed little fondness for measures that would have greatly strengthened the hand of the Governor in his dealings with the General Assembly.

A separate bill (H 937) to have the Superintendent of Public Instruction elected by the State Board

of Education rather than the voters passed the House after a preliminary rejection but was given an unfavorable report by the Senate Committee on Constitution.

A final measure (H 885) affecting the executive branch called for moving the quadrennial election for Governor and Lieutenant Governor to the year midway between presidential election years. It was reported unfavorably by the House Committee on Constitutional Amendments.

Two bills to effect material changes in the legislative branch were turned down. In 1967, a bill for annual legislative sessions passed the Senate handily (due largely to the presence in that chamber of a warm advocate of the measure), only to be killed in the House. This year the procedure was reversed. H 171, proposing annual sessions without limit as to length or subject matter, was championed chiefly by Representative Allen Barbee. He rallied 83 Represenatives to the annual session cause, only to see his bill buried by a 28 to 13 negative vote in the Senate. (The passage of S 362, providing for extra legislative sessions to be called on legislative initiative, may have reduced the attractiveness of the annual-session proposal.)

S 294, which proposed that senators be elected for four-year terms rather than the present two years, drew the support of only 23 senators (25 opposed it).

Both of the State Constitution Study Commission's proposed amendments affecting the courts were rejected. H 567 would have required all state judges and solicitors to be licensed to practice law in North Carolina and have directed the General Assembly to establish mandatory retirement ages for all justices and judges and procedures for disciplining and removing judicial personnel for misconduct, incompetence, or mental or physical incapacity. Although the bill as introduced would have allowed incumbent nonlawyer district court judges (of whom there are eight) to complete their current terms, and although the House extended that exemption to enable that group to be re-elected without limit, the bill fell far short of the required 72 favorable House votes. The voiced opposition was focused entirely on the requirement that judges be lawyers; the retirement and removal features of the bill were not criticized in floor debate. The opponents insisted that the people should have the privilege of electing an untrained person to the bench if they wish to do so. (The people cannot, however, do business with an unlicensed hearing aid fitter [H 965, ratified as Ch. 999] or landscape architect [H 521, ratified as Ch. 672], as a result of actions taken by the 1969 General Assembly to establish licensing boards for those occupations.)

The Commission's other proposal affecting the Courts was H 571 and S 491, allowing trial upon information in noncapital cases in which the accused has counsel, and allowing waiver of jury trial in noncapital criminal cases in which the waiver is made in writing and is approved by counsel for the accused and the trial judge. Opposition to the latter feature resulted in rejection of this bill by the House of Representatives on its second reading.

The only other bill affecting the courts (H 225) sought to enable the plaintiff to waive jury trial in a civil case in which service has been obtained by publication on a defendant who fails to respond. The House Committee on Constitutional Amendments reported it unfavorably.

The elderly would have benefited from two unsuccessful bills. H 429 would have exempted from taxation the first $2,000 of the appraised value of the principal residence of a taxpayer 65 years of age or older; it was reported unfavorably by the House Committee on Constitutional Amendments. S 774, which was not reported by the Senate Committee on Constitution, sought to authorize the General Assembly to exempt up to $5,000 in value of the principal residence of a taxpayer 65 or older.

H 168, which proposed to increase the exemption of a homestead from execution in satisfaction of debt from the present $1,000 to $2,000, was reported unfavorably by the House Committee on Constitutional Amendments.

Five bills seeking freer access to the ballot box were unsuccessful. H 490 (a State Constitution Study Commission bill) proposed to reduce the in-state residence period for voting from one year to six months; it was tabled in the House of Representatives. Another bill to the same effect, H 45, was reported unfavorably in the House.

The principal measure to allow persons under 21 to vote was H 67, reducing the voting age from 21 to 18. It received an unfavorable report from the House Committee on Constitutional Amendments. Unfavorable reports from the Senate Committee on Constitution also disposed of both S 50, which would have enabled persons 18 years old or older to vote and made persons 18 to 21 liable on their contracts as are adults, and S 22, which would have allowed members of the armed forces on foreign duty to vote irrespective of age.

Finally, the House tabled H 926, proposing a prohibition against the expenditure of public funds for the benefit of any sectarian or private educational institution; the House Committee on Local Government reported unfavorably H 209, to prohibit the incorporation of any city or town within one mile of an existing incorporated municipality; and the House Calendar Committee reported unfavorably S 523, modifying the procedures for calling state constitutional conventions.

CONCLUSION

At this stage, with the work of the State Constitution Study Commission and the General Assembly

done and the vote of the people ahead on November 3, 1970, what conclusions can be drawn about the current constitutional revision effort in North Carolina.

First, if all seven of the pending amendments are approved by the voters—especially if the Proposed Constitution, the finance amendment, and the executive reorganization amendment are ratified—the state will have a thoroughly renovated Constitution and, insofar as the realities of current legislative politics will allow, a modern Constitution. The Proposed Constitution will provide an orderly and relatively uncluttered basic charter that can be read and understood. Future amendments will be simpler to draw and explain, although the processes for their adoption will be the same as at present.

Second, the Proposed Constitution and the three other successful bills that originated with the State Constitution Study Commission (executive reorganization, income tax, and escheats) largely won their way on their own merits. There was no one zealously pleading their cause within the General Assembly or seeking to make his legislative reputation for the session on the passage of these measures. The Governor did not make general constitutional revision one of his primary causes for the session. While the bar sponsorship of the revision effort lent respectability to the enterprise, there was little indication that the organized bar sought to sway many legislative votes on the amendments. The poor showing of the bill in which the bar was most interested—the one requiring judges and solicitors to be licensed lawyers—is ample evidence that the efforts of the bar, if any, were ineffectual.

The finance amendment had more active support within the General Assembly, especially from Representative Sam Johnson and Senator Jack White, the co-chairmen of the Local Government Study Commission, which drafted the bill. The representatives of the League of Municipalities and the Association of County Commissioners also worked hard for this measure, which promises to mean much to their membership.

It should be said that in the case of the five successful commission-originated bills, however, they had remarkably little legislative opposition. The executive reorganization amendment, which if approved by the voters will call for radical revision of the state administrative structure, drew not a single opposing vote. The Proposed Constitution received only one negative vote in its entire career. The escheats and income tax amendments fared about as well. The finance amendment drew only scattered opposition votes and almost no negative argument.

Third, the strategy of the State Constitution Study Commission in separating its Proposed Constitution and the several significant political issues on which it wished to make recommendations so that each might be considered and acted upon without reference to the others was the key to the success of the measures approved. Had all of the Commission's proposals been incorporated in one redrafted Constitution, it is doubtful that the General Assembly would have taken the trouble to extract from the proposal the several features that it was unwilling to accept and to adopt the remainder. It is likelier that the whole package would have foundered. Furthermore, it is unlikely that any appreciable number of the "controversial" separate amendment propositions could have ridden through on the momentum of the Proposed Constitution if they had been incorporated in it from the beginning.

Fourth, the most significant defeats for State Constitution Study Commission proposals came on the three amendments to strengthen the Governor's office—two-term eligibility, veto, and short ballot. The first two items would materially strengthen the Governor's hand in dealing with the General Assembly; the third would upset a tradition of popular election for which legislators feel much reverence, notwithstanding the fact that the five positions involved have rarely been gained initially by election and are seldom the object of serious contention at the polls. Unless a strong and popular Governor is willing to make one or more of these measures a major feature of his legislative program, they seem most unlikely to reach success by the legislative route. And with a two-thirds vote of the General Assembly required to call a convention and with the authority of the General Assembly to propose limitations on the matters to be considered by any convention that may be called, the prospects for convention-originated amendments of this character are dim.

Fifth, anyone familiar with the struggles and hoopla that have accompanied constitutional revision in some states in recent years would be impressed with the quiet, unspectacular way in which the reform of the North Carolina Constitution has proceeded thus far. The State Constitution Study Commission and the legislative committees took their responsibilities seriously and performed them conscientiously. There was no attempt to use the revision effort as an occasion to enhance the political reputation of anyone. Except for the single issue of the mode of nominating and electing superior court judges, no issue took on partisan coloration within the Commission or in the General Assembly. Perhaps it is not surprising that in the absence of deeply felt popular grievances seeking relief through constitutional change, and in the absence of individuals or groups seeking to gain fame as the friends or foes of constitutional reform, the quiet, plodding way proved to be the most effective way toward modernization of the Constitution of North Carolina.

The Institute Calendar

October

City and County Planners	3
Driver License Examiners School No. 3	6- 9
Juvenile Court Conference	10-11
Bench-Bar-Press Seminar	11
New Tax Supervisors	13-17
IAPES	16-17
Municipal and County Administration	17-18
Southeastern Region of Council of State Governments	19-22
Driver License Examiners School No. 4	20-23
Superior Court Judges Conference	24-25
New Probation Officers	27-31
North Carolina Association of Assessing Officers Training Course No. 2	27-31
Police Administration	28-30

November

D.C.P. Short Course	3- 5 10 12 17-19
New Probation Officers	3- 6
Municipal and County Administration (already in session)	6- 8 20-22
City and County Planners	7
School Attendance Counselors	10-12
N.C. Association of Assessing Officers	12-14
Court Reporting Seminar	14-15
Superior Court Conference	14-15
Data Processing	17-18
Police Administration (already in session)	18-20
Wildlife Testing	24-26
State Management Development Training	Nov. 30-Dec. 5

WATCH FOR *these new Institute publications*

CONSULTATION IN DAY CARE

By Dorothy J. Kiester

A useful guide for both prolessionals and lay people interested in improving the quality of day care

NORTH CAROLINA'S GENERAL COURT OF JUSTICE

By C. E. Hinsdale

A comprehensible description of North Carolina's newly revised court system

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