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The Hayes Plantation in Edenton is an example of a property benefiting from North Carolina's new tax treatment of historic properties. This photograph and the photographs in this issue's article on the special property tax treatment of historic properties were provided by the Division of Archives and History in Raleigh, N.C.

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THE MAYORALTY AND LEADERSHIP IN COUNCIL-MANAGER GOVERNMENT

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THE URBAN CRISIS in the past decade has brought increased pressure on mayors of American cities to provide leadership on many fronts. The mayor is expected to provide the agenda for policy-making, mobilize popular support, and activate public officials. This is the consensus of some political science writings that view the mayor as a political innovator (or entrepreneur) whose leadership is essential to effective governmental action.[1] According to these writings, the mayor sets the course for local government both by establishing priorities and by developing solutions to the perplexing problems of urban society. He also, more than any other elected official, reflects popular concerns, responds to citizen needs, and mobilizes popular support for implementing needed policies. The mayor also guides the deliberations of elected representatives and manages the complex and often fragmented machinery of government to get things done. In short, as political innovator, he is called upon to be a policy leader, a democratic leader, and an executive leader.

In terms of this prescription for mayoral leadership, the mayor in council-manager cities almost inevitably appears to be a pallid semblance of his counterpart in mayor-council cities. The council-manager mayor—often excluded from the organizational chart of this form of government in textbooks—may appear to be inconsequential to a governmental structure that theoretically places policy leadership in the collective hands of the council and vests administrative leadership in the office of the city manager. But this assessment is based more on casual observation than on careful research. Little attention has been given to the mayor in council-manager cities and the nature of the leadership he provides.[2] From our study of one council-manager city—Greensboro, North Carolina—we will try to fill this void. The activities of the mayor and the way these activities are carried out provide the basis for classifying types of leadership provided by council-manager mayors.

THE MEAGER BASES FOR MAYORAL LEADERSHIP IN COUNCIL-MANAGER CITIES

For the mayor to convert official position into policy leadership, he must have access to and make creative use of certain formal and informal resources. His performance and role will also be shaped by the setting in which he operates, by his relationships with other actors in city government, and by the orientation and scope of governmental activities. Depending on the effect of these factors, mayors may be differentiated into two broad categories of function—policy-making and non-policy-making. Since the policy-making leadership function includes both initiating public policy alternatives and implementing policy, the council-manager mayor falls into the non-policy-making category, unless extraordinary conditions are present.

The formal and informal resources that define function determine whether the mayor will (at least potentially) play an important part in policy formation or implemen-

1. *See* James V. Cunningham, *Urban Leadership in the Sixties* (Cambridge: Schenkman Publishing Co., 1970); Robert A. Dahl, *Who Governs?* (New Haven: Yale University Press, 1961); and Alexander L. George, "Political Leadership in American Cities," *Daedalus,* 97 (Fall, 1968), 1194-1217. For an evaluation of a weak mayor in terms of the innovator type, see Jeffrey L. Pressman, "Preconditions of Mayoral Leadership," *American Political Science Review,* 66 (June, 1972), 511-24.

2. Most previous research is based on data collected from city managers and examines the impact of the mayor on the manager's performance. See Gladys M. Kammerer, et al., *City Managers in Politics* (Gainesville: University of Florida Press, 1962), pp. 57 79-80; Gladys M. Kammerer, "Role Diversity of City Managers," *Administrative Science Quarterly,* 8 (March, 1964), 421-42; David A. Booth, "Are Elected Mayors a Threat to Managers?" *Administrative Science Quarterly,* 12 (March, 1968), 572-89; and Robert P. Boynton and Deil S. Wright, "Mayor-Manager Relationships in Large Council-Manager Cities: A Reinterpretation," *Public Administration Review,* 31 (January/February, 1971), 28-36. B. James Kweder, *The Roles of the Manager, Mayor and Councilmen in Policy-Making: A Study of North Carolina Cities* (Chapel Hill: Institute of Government, University of North Carolina at Chapel Hill, 1965) uses data from mayors and has examined their role. Pressman's study of a council-manager mayor is another exception.

tation.[3] The formal powers include control over budget, ex officio memberships on boards and commissions, control over semiautonomous units of government, and executive prerogatives such as presiding over the council, the veto, the right to issue executive orders, or the right to fill vacancies in elected offices. Mayors in council-manager cities have few formal powers. Furthermore, the nonpartisan nature of most council-manager cities denies them the most important of the informal resources—the backing of a political party.

The mayor is also affected by the setting in which he operates. The formal distribution of authority in the governmental structure is one contextual factor separate from the powers assigned to the mayor. Cities with authority concentrated in the mayor's office "structure in" the policy-making function of the mayor; he is a policy-maker by definition. Council-manager systems, on the other hand, formally concentrate power in the hands of the collective leadership of the city council, leaving the mayor in the ambiguous position of "first among equals."

Another contextual factor is the complex set of relationships between the mayor and other actors in and outside government. Of particular importance are the relationships with the council and with the administrative staff. The perception of the mayor's role held by those with whom he interacts most frequently represents an important constraint upon how a mayor fills the position.[4] In council-manager cities, the council through its votes has the power to support or totally isolate the mayor. The mayor's influence may also vary in terms of his relationship to leaders in the bureaucracy who may have authority vested in them, as the city manager does, or may have informally accumulated considerable autonomy.[5]

Beyond the structure and interpersonal dynamics of city government, the orientation of governmental activities and the scope of jurisdiction will also have a bearing on the nature of mayoral leadership. Whether city government places stress on service versus political functions will affect how much it deals with social problems or attempts to manage conflict.[6] The range of governmental activities the city undertakes may also be imposed (or reinforced) by the legal mandate of authority conferred by the state legislature. Whether by style or by legal restraints, some cities are superficially "nonpolitical." When government is essentially a bureaucratic enterprise run by professional staff, the scope for political leadership by the mayor is very narrow—especially if the professional staff operates under the direction of a city manager.[7]

In summary, the council-manager mayor has few formal powers, and the typical absence of party activity in council-manager cities removes party support as an important informal resource. Also, the context is normally not conducive to policy leadership. The council is jealous of its prerogatives as the formal policy-making body in the city. The manager controls the staff, monopolizes information, and is a policy leader in his own right.[8] The political style of council-manager governments is often "nonpolitical" and service oriented.[9]

The council-manager mayor therefore usually does not shape policy or control its implementation. Thus, the council-manager mayor should not be expected to behave in the same ways as the policy-making mayor or be evaluated in terms of the criteria for leadership associated with the "political innovator." Council-manager mayors are a *sui generis* group of public leaders, and the activities they engage in should be examined independently.

ACTIVITIES OF THE COUNCIL-MANAGER MAYOR

Considering the limitations on the mayor as a policy-making leader, it may reasonably be asked whether the council-manager mayor provides *any* leadership in city government. Our study indicates that in Greensboro he does, and theoretically in any council-manager city he does. Council-manager mayors may demonstrate varying amounts of leadership, just as mayor-council mayors do, although that leadership is different in function and must be measured along a different dimension.

The range of activities the council-manager mayor engages in is broad. Perhaps surprisingly, in view of the scant attention council-manager mayors have received, the potential contributions they can make to the operation of the system are large. The council-manager mayor—sometimes portrayed as a vestigial appendage on city government—can appreciably affect the operation, quality, and direction of the governing process. In Greensboro, the mayor's traditional roles of presiding officer, spokesman for the council, and ceremonial leader greatly understate the actual scope of his office.[10] He also may provide liaison with the manager, act as official representative of city government, and guide policy formulation. Inherent in all activities is the largely unrecognized potential for exercising leadership.

The range of mayoral activities reported here represents a composite of the behavior of several mayors rather than one. General conceptual roles have been developed based on interviews conducted in 1973 with the current mayor and his three predecessors, the current and past city

3. Dahl, *Who Governs?* pp. 226-28, and chaps. 20-23. A number of informal resources such as time, experience, and commitment are important to shaping performance within function but do not seem sufficient in themselves to define function.

4. Kweder, *The Roles of the Manager, Mayor, and Councilmen,* pp. 26-77, examines council members' perceptions of the mayor's role.

5. Theodore Lowi, "Machine Politics—Old and New," *The Public Interest,* 9 (Fall, 1967), 83-92, compares bureaucratic agencies with political machines.

6. Edward C. Banfield and James Q. Wilson, *City Politics* (New York: Vintage Books, 1963), pp. 18-22.

7. See Pressman's discussion of this contextual factor in "Preconditions of Mayoral Leadership," pp. 513-14.

8. Kweder, *Roles of the Manager, Mayor, and Councilmen,* p. 75; Ronald O. Loveridge, *City Managers in Legislative Politics* (Indianapolis: Bobbs-Merrill, 1971), pp. 155-59; and Deil S. Wright, "The City Manager as a Development Administrator," in Robert T. Daland, ed., *Comparative Urban Research* (Beverly Hills: Sage, 1969), 218-19.

9. Banfield and Wilson, *City Politics,* p. 172.

10. For a standard description of the mayor's responsibilities, see Charles R. Adrian and Charles Press, *Governing Urban America,* 4th ed. (New York: McGraw Hill, 1972), pp. 213-15.

manager, four other members of the current city council, and the "city hall" reporters for the two major local newspapers. In the following discussion of mayoral leadership roles, items in quotes are comments by respondents, unless otherwise specified.

Presiding Officer. Because of the collective nature of formal leadership in a council-manager city, the mayor's function as presiding officer is an essential activity that colors all others. A frequently mentioned element of the mayor's leadership is making the city council a cohesive team, an outcome that does not occur automatically even with councilmen of similar backgrounds. The mayor sets the tone for the council and by his style and manner can promote unity (or dissension) among council members. He must be sensitive to the feelings and preferences of individual members. Beyond quarterbacking activities, as an extension of the presiding officer role, the mayor should keep abreast of what is going on in the city (in part through information provided by staff) and keep the council informed. For collective leadership to work, the mayor should be well informed and maintain good lines of communication with each member of the council. Presiding over the conduct of meetings offers further opportunities for leadership, since the mayor may be able to guide the substance as well as the process of discussion. He can affect the course of debate, the introduction of motions, and the timing of resolution. He controls the rostrum and has more opportunities than other council members to question, positively or negatively, speakers from the floor and offer editorial comments. Although the mayor does not control council discussion, he can guide it in a preferred direction, especially if he has a sense of purpose—i.e., an outcome in mind—and council members do not. In short, the mayor may emerge as the real chairman of the council.

Spokesman. Serving as spokesman is another traditional activity of the council-manager mayor, but one that may go beyond announcing council decisions and speaking for the city. The mayor has more extensive dealings with the media than other members of the council, more public appearances, and more occasions to discuss city affairs on television. Summarizing the nature of emerging policy or discussing city problems may give the mayor subtle opportunities to shape policies and priorities. In addition, the mayor represents the council's views to the manager and should be able to give him a synthesis of the council's view on needs, priorities, or proposals being considered by the administration.

Liaison with manager. This liaison is the key relationship in the council-manager form of government, since the mayor provides linkage between the two major components of this system. Both as presiding officer and as spokesman, the mayor is an agent of communication between the council and the manager. The mayor sees the manager more often than the councilmen and interacts extensively with him. He channels specific concerns of councilmen to the manager and by so doing both keeps the manager informed and insulates him from extensive (and potentially excessive) interaction with each of seven council members. The mayor also keeps the council informed of projects under way in the administrative branch. This liaison provides the basis for a "collaborative" relationship[11] in which the mayor shapes the manager's thinking and the manager "tries out" ideas on the mayor. The relationship is characterized by interdependency: On the one hand, the mayor stands for the "one boss representing the council" to the manager; on the other hand, the mayor needs to be apprised of a wide range of developments by the manager to maintain his pre-eminence as chairman and spokesman. Ideally, the mayor's close interaction with the manager facilitates communication and understanding between elected and appointed officials, but the mayor must act cautiously to avoid council jealousy.

Ceremonial head. In this activity, the mayor not only dispenses keys to the city and greets visiting firemen, but also may promote communication between the public and government. Clearly the most sought-after representative from city government for many public appearances, the mayor may be able to use these occasions to project the image and programs of city government, mobilize popular support, and provide a source for citizen feedback.[12] In the process, he also increases his own political recognition, which may enhance his ability to perform a number of his other activities. Most respondents in our study felt that the mayor was better informed about citizen opinion as a result of his extensive dealings with the public, although several felt that ceremonial occasions had little value as sources of citizen information and brought the mayor in contact with an unrepresentative sample of citizens. The mayor is, however, more likely than councilmen to be aware of the feelings of major interests in the community and to maintain contact with them. In addition to the appearances by the mayor, the Greensboro city council has held neighborhood meetings in all parts of the city over the past three years. At least one council member has attended each meeting, but the mayor has attended all of them. If the mayor is inclined and able to respond to the public demands on his time, he can become a personal link between city government and the citizenry.

Official representative. Beyond the traditional ceremonial roles, the mayor appears to act increasingly as the city's official representative in relations with outsiders. He handles some dealings with federal and state officials and represents the city on the regional planning agency (Pied-

11. See Boynton and Wright, "Mayor-Manager Relationships," pp. 32-35.

12. Allan R. Talbot, *The Mayor's Game* (New York: Harper & Row, 1967), chap. 7, describes how one mayor exploited seemingly trivial ceremonial activities to "retail" his redevelopment programs.

mont Triad Council of Governments). Individual mayors have negotiated real estate purchases for the city and worked to complete arrangements for redevelopment projects. In these areas, the mayor has not displaced the manager, but rather has made use of his own avenues of access. How much the mayor acts as the city's ambassador will depend in part on how wide his contacts are—business associates, political allies, or personal friends—although some of these positions (e.g., COG representative) are ex officio.

Policy guide. This activity is ultimately the most important because the council-manager form does not provide for policy leadership[13]; but it is also the most ambiguous. Although academic observers and the respondents in Greensboro seem agreed that typically the mayor is not a policy leader,[14] he still may contribute to policy-making in ways different from those of the manager and the councilmen. Policy guidance seems the most appropriate term because of the mayor's indirect and subtle approach to policy. The mayor "makes the council aware" of problems as he perceives them. All agree that among the members of the council his vantage point is best, and he is likely to be most informed.[15] Still, he will usually refrain from forcefully enunciating preferred courses of action. For example, mayors have organized meetings for councilmen in neighborhoods where they felt needs existed that the council should be aware of; or they have arranged a bus tour of blighted housing areas to bring this problem to the attention of council members. The mayor "causes the council to search for problems and solutions" guided by his own general (and often implicit) agenda of concerns. He uses persuasion in the inner circles of the council, where his is an influential though not dominant voice, to "confirm the support" of council members. One mayor created a three-person budget committee among council members so that, along with his own vote, a majority was assured. All the mayors interviewed, however, avoided other active efforts to line up support from councilmen before decisions were made or instigating lobbying by groups to sway councilmen's opinion. The direct election of the mayor (adopted in Greensboro in 1972) and his extensive dealings with the public gives the mayor a vague, implied mandate to lead.[16] Close interaction with the manager gives him superior information and enhances his position to influence formal decision-making in the council and the development of policy within the administration. This factor places the mayor in a position to guide the formulation of policy, but he is simultaneously constrained (in the absence of informal resources or contextual support) by his formal weakness and by the need to hold the council together as a team. Though he may guide policy, the mayor takes a chance in becoming an advocate.

In pursuing the activities outlined above, the non-policy-making mayor in the council-manager city is providing leadership. It is a distinct type of leadership that differs qualitatively from the policy-making mayor's leadership—its ingredients resemble the functions that have been assigned to leaders within organizations, i.e., formulation of goals, maintenance of the communication network, assignment of tasks, resolution of internal problems, and maintenance of working conditions favorable to production.[17] The council-manager mayor does not occupy a position of autonomous authority that permits him to set priorities, direct formulation of policy, and implement decisions, as his policy-making counterpart does.[18] Rather, he is immersed in an "organization" whose functioning he can affect and whose direction he can guide.[19] This mayor's influence, albeit constrained, is derived from the strategic position he occupies at the center of three interacting bodies—the council, the administration, and the public.

The council-manager mayor thus may potentially provide leadership with several facets, including a guiding role in formulating policy. The amount and nature of leadership will vary depending on the number of roles filled and how they are filled. In recent years, mayors in Greensboro, by engaging in the activities described here, have gradually transformed the office into a significant position in city government. This transformation occurred even before direct election of the mayor, although that institutional change appears to reinforce this trend.[20] In terms of the traditional dichotomy between strong and weak mayors, the Greensboro mayor is still "weak," i.e., non-policy-making. The office has been changed, however, from one peripheral to the policy-making process to a position of centrality. Recent mayors have used their strategic location not only to channel communication

13. Adrian and Press, *Governing Urban America*, p. 231; Banfield and Wilson, *City Politics*, pp. 185-86.

14. Kweder, *Roles of the Manager, Mayor, and Councilmen*, pp. 71-72, reports that, in his sample, 68% of the mayors, 57% of the managers, and 39% of the councilmen felt that the mayor exerts "important policy leadership," but he does not discuss the nature of that leadership.

15. Kweder presents similar findings, *ibid*, p. 72.

16. Boynton and Wright, "Mayor-Manager Relationships," p. 32.

17. Cunningham, *Urban Leadership*, p. 8. We are suggesting that the highest elected official provides functions for city government as a whole similar to those ascribed to administrative leaders. We contend that the mayor also has as his duty "to promote maximum effort toward the achievement of . . . organizational ends." See James S. Banovetz et al., "Leadership Styles and Strategies," in Banovetz, ed., *Managing the Modern City* (Washington: International City Management Association, 1971), p. 113.

18. The "autonomy" referred to does not imply that the policy-making mayor is not dependent on many other actors. Yet he can affect public policy by decisions he makes independently. The council-manager mayor does not have this autonomy.

19. We use the term "organization" somewhat differently from the way it is normally used in regard to a structured setting with specified goals and hierarchy. The mayor is potentially a leader of the organization consisting of the major elements in council-manager government—legislative body, administration, and public.

20. Opinion on the impact of direct election varies. Kammerer, *City Managers*, p. 426, argues that it greatly strengthens the mayor's influence over policy and produces conflict with the manager's role. Booth presents data indicating that it makes no difference. Finally, Kweder, *Role of the Manager, Mayor, and Councilmen*, p. 78, concludes that direct election weakens the mayor's leadership position vis-à-vis the council.

within the system—in itself an important contribution to the functioning of the council-manager form—but also to influence and shape the messages being transmitted. An elected leader has emerged.

TYPES OF MAYORAL LEADERSHIP

The way a mayor occupies his position and uses it may be summarized in terms of certain general patterns of behavior, or conceptual types of leadership. Several of these types have been developed in previous writings on mayors, but they are more appropriate for the policy-making mayors who have been the focus of most previous research. These types—the caretaker, the broker, the reformer, and the innovator—represent points along a continuum that measures executive leadership in policy-making. Our initial premise, however, was that council-manager mayors do not provide the policy-making function and, therefore, must be evaluated in terms of different criteria. Council-managers mayors will be arrayed along a distinct qualitative dimension: the degree to which they enhance organizational performance. Several leadership types correspond to this "organizational leadership" dimension—the caretaker, the coordinator, and the organizer. These will be developed after a brief summary of the policy-making types.

Placement on the first dimension depends on how much the mayor becomes involved in policy-making—specifically, in initiating and implementing policy. The caretaker, which occupies one pole on this dimension, fills the mayor's office in such a minimal way that the policy-making potential of the office is not realized; thus, this role is deficient in terms of our criteria.[21] Two incomplete roles are the broker, who concentrates on controlling the political and administrative process to the exclusion of policy content,[22] and the reformer, who stresses the initiation of policy proposals to the detriment of accomplishment and implementation.[23] The innovator is the policy-making ideal type who combines the activities of initiation, political management, and policy implementation.[24]

The organizational leadership dimension is appropriate for non-policy-making mayors whose potential for leadership is defined by their strategic location within the council-manager form of government rather than formal or informal resources. One of the three types—the caretaker—is common to the list of policy-making mayor roles. Two others are original—the coordinator and the organizer. These three types, though not logically confined to council-manager cities, are best understood in terms of this form.

The *caretaker's* role and behavior are similar to his counterpart in the policy-making mayor city, although the consequences differ. He performs the traditional activities of the mayor in a narrowly defined way. Although presiding officer, ceremonial head, and spokesman, he does not extend those activities to unifying the council members, keeping them informed, communicating with the public, intervening between manager and council, and so forth. As a consequence, the council is likely to be divided, confused, and disorganized, and the manager's influence is likely to expand, at least in dealings with the council. If the caretaker mayoral role is the one most consistent with council-manager plan, then it is understandable that critics of this form should point to a leadership void that the manager is likely to fill by default.

The *coordinator* is an incomplete type analogous to the broker in his focus on process rather than substance. He is a team leader, keeps the manager and council in touch, and interacts with the public and outside agencies. The incompleteness of this role derives from the coordinator's weakness in policy guidance. Although this has been identified as a separate activity, influence in policy formulation emerges from all other activities. Due to lack of experience, time, inclination, or goals, the coordinator does not use these activities to guide policy. Or he may be forced into this leadership type by the council's refusal to accept his guidance or the presence of a dominating manager. As an organizational leader he helps keep the system functioning, but as a political leader he contributes little to policy formulation (at least, no more than other members of the council). With this type also, the manager's policy influence is likely to expand, although he will be less involved in the legislative sphere and will interact with a more unified, cohesive council.

The *organizer* is a complete type within a council-manager systems.[25] He fills all the activities outlined above and is distinguished from the other types by his policy guidance. His performance not only makes the system function with a high level of information-sharing among the interacting parts but also provides a general sense of direction. Insofar as democratic leadership can be achieved within the formal bounds of the council-manager form of government, the organizer provides it. This type is probably the one filled by mayors in the "policy-initiating" and "policy-making team" collaborative types that are sometimes considered the norm for large council-manager cities.[26] The mayor neither supplants the manager nor interferes in the administrative regime (both of which would violate the norms of the system), but neither does the manager work with a council that has a policy

21. Henry W. Maier, *Challenge to the Cities* (New York: Random House, 1966), p. 37. Cunningham, *Urban Leadership*, p. 15, uses the term trustee-manager.

22. Edward C. Banfield, *Political Influence* (New York: The Free Press, 1965), pp. 312-13; Cunningham, *Urban Leadership*, pp. 44-46, 78.

23. Maier, *Challenges to the Cities*, p. 37.

24. See references in footnote 2.

25. Choosing a term for this type was hard. A new application is clouded by established usage. In using this term, we wish to stress the literal definitions of the word: *The American Heritage Dictionary of the English Language* defines organizer as one who "pulls. . .together into an orderly, functional, structured whole" and "arranges systematically for harmonious or united action."

26. Boynton and Wright, "Mayor-Manager Relationships," p. 33.

vacuum. The mayor stands out as a leader in the view of the council, the press, and the public, but he need not downgrade the council—in fact, their strength and support are an important element in his leadership position. The organizer—a type that has evolved in Greensboro along with increasing popular demands on government—far exceeds the traditional position assigned to the mayor in the council-manager system. Yet it is a leadership type consistent with basic features of that form and one that makes the system perform "best" in the sense of balancing the council and manager, providing policy guidance, and increasing the real influence of elected officials.

It is possible for mayors of the policy-making type to emerge in council-manager cities. The mayor may at his own discretion become a reformer by eschewing the ambiguous and somewhat invisible leadership roles appropriate to the mayor in the council-manager form and becoming a public advocate for policies independent of the council.[27] Isolation will probably follow, although the mayor may contribute to redefining the public policy agenda with impact over the long run. Emergence of the broker or innovator types depends on strong informal resources or supporting contextual factors. These types, which involve mayoral influence at least in implementing policy, violate the prescribed norms of the council-manager system. Because of his formal weakness, the mayor must be able to control a majority of the city council in order to preserve these "unorthodox" forms of leadership. The viability of policy-making types in a council-manager city will depend on the stability of political forces in the community that support the mayor's expanded role.[28]

In summary, mayors in council-manager cities may be categorized in terms of their activity in enhancing organizational performance, defining the organization as the city government as a whole interacting with the public that it serves. The caretaker on this dimension, though resembling the typical description of the council-manager mayor, weakens performance by his failure to link manager and council. The incomplete coordinator provides modest leadership in smoothing organization performance, but does not provide direction. The positive pole on this dimension is occupied by the organizer, who not only contributes to the organization's functioning, but also organizes for a purpose. That purpose is the guidance of city policies toward goals perceived and communicated by the elected executive.

Comparing mayors in mayor-council and council-manager forms is an example of the old problem of comparing apples and oranges. There are two distinct, "legitimate" leadership types that adequately match the requirements of the governmental structure in mayor-council and council-manager cities—the innovator and the organizer. In terms of the proper functioning of each form of government, these types are incommensurable. Innovators provide more dramatic, clear-cut, and effective leadership, yet the system in which they operate "requires" that the policy-making function be discharged by the mayor. The organizer is not a policy-making mayor, but that is no more a criticism than charging that oranges are not red. The council-manager form has unique leadership needs that the organizer fills.[29] Instead of expecting mayors in this system to fill unlikely leadership types, on the one hand, or considering all council-manager mayors to be inconsequential figureheads, on the other, we should start asking some more appropriate questions. Does the mayor tie together the components of the council-manager government and help each function more adequately? Does he promote communication within government and between government and citizens? Is the mayor guiding policy in city government toward goals that meet the needs of the community? Asking such questions will contribute to more suitable evaluation of council-manager mayors.

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27. Pressman, "Preconditions of Mayoral Leadership," p. 523, feels that mayoral leadership in the council-manager system will often be "hortatory" in nature.

28. Boynton and Wright, "Mayor-Manager Relationships," p. 32.

29. But this does not resolve the question whether there is a leadership void in the council-manager form, especially with respect to resolving community controversy or to providing democratic accountability. The constraints of policy leadership hamper even the organizer from mobilizing support to resolve conflict or assuring the translation of citizen preferences into public policy.

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THE DRUNK-DRIVING STATUTE: How Has It Worked?

Ben F. Loeb, Jr.

The author is an Institute faculty member specializing in alcoholic beverage control and motor vehicle law.

This paper was prepared for presentation to the Second Annual North Carolina Conference on Highway Safety, held on November 5, 1975, in Raleigh, North Carolina.

FOR DECADES THE NORTH CAROLINA GENERAL Assembly has attempted by law to remove the drunken driver from the streets and highways of this state. The Motor Vehicle Act of 1937, for example, made it unlawful "for any person. . .who is under the influence of intoxicating liquor to drive any vehicle on the highways within this state." In the 1930s no convenient and reliable way was available to determine the amount of alcohol in the blood; and a law enforcement officer had to prove his case by showing that the defendant was driving erratically, was staggering, had liquor on his breath, etc. But when convicted, the driver lost his license.

By the 1960s automated and reliable equipment had been developed that could, by testing the breath, determine the amount of alcohol in the blood. In response to these scientific developments and the increasing number of drinking drivers on the road, the 1963 General Assembly enacted a new G.S. 20-16.2 (implied-consent law), which provided that "any person who operates a motor vehicle upon the public highways of this state. . .shall be deemed to have given consent. . .to a chemical test of his breath for the purpose of determining the alcoholic content of his blood. . . ." Refusal to take the test resulted in a revocation of the driver's license. A companion statute, G.S. 20-139.1, provided that "if there was at the time 0.10 per cent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor."

Except for the enactment of a limited-driving-privilege statute and a few technical amendments, the 1937 act (as augmented by the 1963 implied-consent law) remained basically unchanged for a decade. But in 1973 the General Assembly was presented with statistics showing that a substantial percentage of those being arrested for driving under the influence were not being removed from the road. The General Assembly responded to this problem by entirely rewriting G.S. 20-16.2 and by making important and far-reaching revisions in the other DUI statutes. The most important of these revisions was the addition of a new subsection (b) to G.S. 20-138 to make it unlawful to operate a vehicle when the driver has 0.10 per cent or more of alcohol by weight in his blood. In effect the presumption of driving under the influence was made an additional offense. New G.S. 20-16.2 became effective on June 1, 1973, and new G.S. 20-138(b) became effective on January 1, 1975.

Now anyone who is charged with driving under the influence may be convicted of DUI or of the lesser included offense of driving with a blood-alcohol level of 0.10 per cent or more. Conviction of either offense supposedly results in the revocation of the driver's license and his removal from the road.

This article will examine the arrest and conviction data for the first six months of 1972 through 1975 to determine whether the new laws are having the desired effect. The figures used are from the Quarterly Disposition Reports of the North Carolina Highway Patrol.[1]

1972

As indicated above, 1972 was the last calendar year before the North Carolina drunken driving laws were tightened. In the first half of that year, 21,557 persons who had been arrested by the Highway Patrol for DUI were tried in the courts of North Carolina (or had their case otherwise disposed of). Of these, only 13,535, or 62.8 per cent, were found guilty as charged. The remaining 37.2 per cent were found not guilty or guilty of a lesser offense or had their case disposed of in such a manner that they did not lose their license.

1973 and 1974

In June of 1973 North Carolina's new implied-consent law became effective. Among other things the new act eliminated a loophole that allowed someone who had

1. The computerized records of the Driver License Section, which show convictions obtained by all law enforcement agencies (local as well as State) within North Carolina, do not record an arrest unless a conviction is obtained. Therefore these records are not usable for this type of study.

declined to take a chemical test to have his driver's license reinstated if he was acquitted of the DUI charge. Also, the license-revocation period for refusal to take a chemical test was increased from 60 days to six months. It was anticipated that as a result of the new law, more arrested drivers would take a breathalyzer test and a larger percentage of convictions based on the test would result. But this did not happen. In the first two quarters of 1973, 19,907 DUI cases were disposed of and 12,573 drivers were convicted (63.2%), while in the same months of 1974 there were 18,300 DUI cases and 11,639 convictions (63.6%).

1975

January 1, 1975, was the effective date of new G.S. 20-138(b), which made it unlawful to operate a vehicle on a highway or public vehicular area with a blood-alcohol level of 0.10 per cent or more. The problem with the old DUI offense was that a 0.10 per cent blood-alcohol level created only a presumption of "under the influence," which could be, and often was, rebutted. Not infrequently a person with a breathalyzer reading of .15 per cent or above could convince a judge or jury that he was nevertheless "not under the influence."

To be guilty of the offense created by new G.S. 20-138(b), one need not be under the influence. Guilt supposedly depends on the amount of alcohol in the blood, and that can be determined with about as much certainty as the speed of a car. Just as driving 55 mph in a 45 mph zone is illegal, so is driving with a blood-alcohol level of .10 per cent. Thus it was anticipated that new G.S. 20-138(b) would result in a higher percentage of convictions of those arrested for DUI; but again the expected result did not follow. In the first half of 1975, 20,804 DUI cases were disposed of and 13,191 (63.4%) drivers were convicted of that offense or of the lesser included 0.10 per cent offense. Clearly the rewrite of the implied-consent and DUI laws has had little effect on the number of convictions.

THE LIMITED DRIVING PRIVILEGE

Another complicating factor was the enactment in 1969 of a limited-driving-privilege statute. G.S. 20-179(b) authorizes a trial judge to issue a restricted driving license to anyone whose license has been revoked for a first conviction of G.S. 20-138 (DUI or .10% blood-alcohol level). This driving privilege is supposed to be for the purposes of the health, education, or welfare of the driver or his family; and the court can impose restrictions as to days and hours, types of vehicles, routes to be traveled and geographical boundaries. In actual fact, a busy trial judge has little time to conduct an in-depth interview to determine just when and where a driver really needs to be able to operate his car. Therefore, sometimes driving restrictions are limited only to North Carolina, the United States, or North America. In some cases the sole restriction has been not to drive with a blood-alcohol level exceeding .05 per cent (or some other percentage). In the first half of 1975, 24,902 persons were convicted of DUI (or .10%); and 7,410 (29.8%) of those received some type of limited driving privilege from the court. These figures, which include all convictions secured by the Highway Patrol and local enforcement agencies, are fairly consistent with previous years since enactment of the limited-driving-privilege law.

WHAT WENT WRONG?

The 1973 session of the North Carolina General Assembly enacted excellent DUI and implied-consent laws, but the statistics thus far do not indicate that these new laws are having the desired effect. Why? The problem may be the lenient attitude the public has in regard to DUI and traffic offenses in general.[2] District attorneys and trial court judges are popularly elected officials and are of necessity sensitive to the prevailing mores and attitudes of their constituents. In addition, anyone who is convicted in a district court can appeal to superior court, where he will be entitled to have his case decided by a jury of his peers — many of whom feel that "there but for the grace of God go I." It might be that all that can be done by law has been done, and removing the drinking driver from the road will have to wait for a change in public attitudes.

2. The DUI conviction rate varies considerably from county to county. According to the Highway Patrol records those counties with the highest percentage of convictions in 1974 were Polk (83.7%), Rutherford (82.2%), Transylvania (81.3%), Scotland (81.2%), and Hoke (80.7%). Those with the lowest were Lincoln (38.1%), Gaston (46.5%), Alexander (46.7%), Yancey (51.1%), and Rockingham (52.0%).

STATE AND LOCAL TAX POLICIES AND INDUSTRIAL LOCATION DECISIONS

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THOSE WHO HAVE RESPONSIBILITY in planning for an area's economic development need to have as much information that bears on that subject as possible. This article reports on part of a tax policy study undertaken for the North Carolina Office of State Planning.[1] Specifically it deals with the impact of state and local tax differentials on the location decisions of manufacturing firms, a matter that will have importance to local governing boards and state-level tax policy-makers.

THE GENERAL APPROACH used in the study represents a hybrid of the "tax bill comparison" and "industrial location" methods of analysis. The former relies primarily on the comparative assessment of tax bills for selected industries that locate in designated geographic areas. The purpose of the assessment is to determine whether differences in tax bills exist and whether these differences are significant enough to influence the location expansion decisions of top management. The industrial-location approach looks at taxes as merely one of several items that affect the location expansion decision. And differences in tax bills are not usually significant when compared with labor availability, wage rates, and degree of unionization; access to primary resource inputs and markets; availability of needed services such as power, an industrial water supply, and sewage treatment facilities; "amenities" such as good schools, recreational opportunities, accessibility to the arts, and so forth.[2]

The study examined seven manufacturing industries (textiles and apparel; printing and publishing; stone, clay, and glass; paper; chemicals; fabricated metals; machinery) in nine city county combinations in North Carolina. The industries were selected for one or more of these reasons: present importance to the state's economy; likelihood, judging from historical trends, of locating in nonmetropolitan areas; and identification as an industry in which significant growth must occur if the state's per capita income rank is to improve.[3] The city-county pairs were chosen to achieve the widest possible spread in geography and in effective county property tax rates. The latter part of this article reports on a comparison between the property tax differential of two of these jurisdictions.

The study also made an interstate comparison of the total taxes of each of three North Carolina locations and one South Carolina location. The purpose of this comparison *between* states was to test the hypothesis that the absence of a tax on inventories and intangible personal property would not lead to a significant difference in total tax bills for an industry of selected characteristics.

FIRST THE INTERSTATE COMPARISON. We examined in depth the differences in tax bills (federal, state, and local) that would be paid by an apparel manufacturer if he had located in these four places:

- Mecklenburg County, N.C. (unincorporated area)
- Charlotte, N.C. (incorporated area within Mecklenburg County)
- Gaston County, N.C. (unincorporated area)
- York County, S.C. (unincorporated area)

Thus, three parameters were considered: (1) interstate differences in tax policy; (2) differences between tax bills paid by a company locating within city limits as opposed to outside municipal limits within a specific county in North Carolina; (3) differences in effective county tax rates for two adjacent counties within North Carolina. This range of alternatives illustrates the need to consider rather specific locations when conducting this type of analysis. When all corporate capital and operating costs as well as community impact are added to the analysis, locations should ultimately be identified to the level of specific industrial sites.

The apparel industry *on the average* is considered labor intensive; and its inventories are valued at about 2 1/2 times the book value of plant, equipment, and land. In

1. Ernst & Ernst, *North Carolina Growth Policy Plan Tax Component*, June 1975. The views presented in this paper are those of the author and do not necessarily reflect the views of the North Carolina Office of State Planning.

2. For a thorough review of this literature, see C. Donald Liner, "The Effects of Taxes on Industrial Location," *Popular Government*, supplement to Vol. 39 March 1974 pp. 33-39

3. See *Economic Development Strategy North Carolina Economic Growth Management Study, Phase I*, Research Triangle Institute, September 1974 (particularly Chapter 3).

Table 1

Differences in Tax Bills for a Producer of Apparel, Four Locations, 1973, Annual Sales of $10 Million

Tax Item	North Carolina			South Carolina
	Charlotte (incorporated area inside Mecklenburg County)	Mecklenburg County (outside municipality)	Gaston County unincorporated area	York County unincorporated area
Local property tax				
Real and personal	$ 15,071	$ 7,228	$ 5,229	$ 10,658
Inventory	11,049	5,298	3,833	—
Total	$ 26,120	$ 12,526	$ 9,062	$ 10,658
State				
Intangibles	$ 3,828	$ 3,828	$ 3,828	—
Franchise tax or license fee	6,220	6,220	6,220	$ 2,579
Income	59,492	60,309	60,517	60,869
Miscellaneous[a]	957	957	957	957
Total	$ 70,497	$ 71,313	$ 71,522	$ 64,405
Federal income tax	$431,595	$437,728	$439,291	$441,941
Payroll Tax	$166,501	$166,501	$166,501	$166,501
Total	$694,713	$688,068	$686,376	$683,505
Total tax bill as percentage of Charlotte city tax bill	100.0%	99.0%	98.8%	98.4%
Absolute dollar savings over Charlotte tax bill		$ 6,645	$ 8,337	$ 11,208
Savings as percentage of net income if located in Charlotte		1.3%	1.7%	2.2%

[a] Primarily sales and use.

Source: Ernst & Ernst

our example, total payroll comprises about 25 per cent of total sales compared with the state's industry-wide figure of 26 per cent reported in the *1972 Census of Manufactures*. However, plant equipment and land account for 58 per cent of total appraised value of property with inventories accounting for the remaining 42 per cent. This is in sharp contrast to the national average of 29 per cent and 71 per cent, respectively, for nondurable manufacturers reported by the Federal Trade Commission.[4]

Keeping these differences in mind, the basic tax information for the hypothetical apparel establishment for each of the locations is summarized in Table 1. Table 2 provides data on the percentage distribution of taxes by type of tax for each of the four locations. The following facts are pertinent to understanding the basic differences in tax bills for the four locations.

(1) *Local Property Tax.* South Carolina counties do not tax inventories; the tax on inventories amounts to $11,049 in Charlotte, $5,298 in Mecklenburg County, and $3,833 in Gaston County.

South Carolina counties assess real property at 9.5 per cent of appraised value, while North Carolina uses a uniform 100 per cent appraisal method. In the example given, the *effective tax rates* (rates per $100 of appraised or true value of property) for the four locations are:

(a) *Charlotte City:* $1.96 per $100 appraised value
(b) *Mecklenburg County:* $0.94 per $100 appraised value
(c) *Gaston County:* $0.68 per $100 appraised value
(d) *York County, S.C.:* $1.387 per $100 appraised value—

This is derived by multiplying the nominal tax rate of $14.60 per $100 assessed value by the assessment rate of .095, taken on a slightly lower book value because of more liberal depreciation rules.

Note that York County's effective tax rate on real property is higher than that of Gaston and Mecklenburg counties. In fact, it is higher than any county's in North

4. In general, we found that appraised values (for the purpose of property tax assessment) differed widely from figures reported on company financial statements. These differences can be attributed both to the different points in time between the date of appraisal and the close of a company's fiscal year and to possible differences in valuation techniques.

Table 2

Percentage Distribution of Tax Bill by Tax Item and Location, 1973, Apparel Company with Annual Sales of $10 Million

Tax Item	North Carolina			South Carolina
	Charlotte (incorporated area inside Mecklenburg County)	Mecklenburg County (Outside Municipality)	Gaston Co. Unincorporated Area	York Co. Unincorporated Area
Local prop. tax				
Real and personal	2.2%	1.1%	0.8%	1.6%
Inventory	1.6	0.8	0.5	—
	3.8%	1.9%	1.3%	1.6%
State				
Intangibles	0.5%	0.5%	0.6%	—
Franchise tax or license fee	0.9	0.9	0.9	0.4%
Income	8.6	8.8	8.8	8.9
Miscellaneous[a]	0.1	0.1	0.1	0.1
Total	10.1%	10.3%	10.4%	9.4%
Fed. income tax	62.1%	63.6%	64.0%	64.7%
Payroll tax	24.0%	24.2%	24.3%	24.3%
Total	100.0%	100.0%	100.0%	100.0%

[a] Primarily sales and use.

Source: Ernst & Ernst

Carolina (the highest in North Carolina is Tyrrell's, at $1.183 per $100 true value).

The keys to the differences in total property tax bills between North Carolina and South Carolina locations are both the differences in effective property tax rates and the ratio of real property to inventories in a particular company's total property value appraisal. The greater the difference in effective tax rates between York County and a selected North Carolina county (unincorporated portion), the more likely that the total property tax bill for York County will exceed that of the North Carolina county (unincorporated portion). Table 1 illustrates this situation, in which the property tax bill for the apparel manufacturer is higher in York County, S.C., than in Gaston County, N.C., even though Gaston County imposes property taxes on inventories.[5]

(2) *State Taxes.* North Carolina imposes a franchise tax based on the largest of three items: (a) the value of capital stock, surplus, and undivided profits; (b) investment in tangible property in North Carolina; or (c) appraised valuation of all property (tangible and intangible) in North Carolina. In the sample case, item (a) serves as the basis for the franchise tax of $1.50 per $1,000 value, for a total tax of $6,220. South Carolina imposes a license fee that equals $1.00 per $1,000 total capital stock and paid-in surplus, excluding undivided profits, which is the bulk of retained earnings. The fee amounts to $2,579.

North Carolina also imposes a tax on intangible personal property, which includes money on deposit in banks and accounts receivable. The rate imposed is $1.00 per $1,000 on money on deposit in banks, and $2.50 per $1,000 on accounts receivable. The tax bill for the sample company was $3,828 in 1973. There is no comparable tax in South Carolina.

The state income tax rate of 6 per cent is the same in both states. However, the state income tax bill is conditioned by the total deductions allowed. These include all local property taxes as well as state franchise taxes (or license fees) and taxes on intangible personal property. Thus, when comparing income tax bills for a company choosing between two communities with different effective tax rates, a difference of $1 in local property taxes really amounts to only $0.94 because the dollar is deducted from income before the 6 per cent state income tax is computed. To illustrate, using Charlotte and Mecklenburg counties as examples, the sample company would pay $13,594 more in local property taxes when locating in the former than in the latter. However, it would save $816 of this (6 per cent of $13,594) in the form of lower state income taxes by locating in Charlotte. Differences in franchise taxes and taxes on intangible personal property between states yield similar results. In our illustration, the sample company pays $10,048 for these two items in North Carolina and only $2,579 in South Carolina. But the company saves 6 per cent of the difference ($7,469), or $488, in state corporate income taxes if it locates in North Carolina.

(3) *Federal Income Taxes.* Deductions allowed against gross income for purposes of computing federal income taxes narrow the effective differences in state and local taxes even further. All state, local, and payroll taxes are deductible from income for purposes of computing the federal tax. Continuing with the Charlotte-Mecklenburg County case, the sample company would pay total state, local, and payroll taxes of $263,118 if it located in Charlotte but $250,340 if it located in Mecklenburg County. The difference is $12,778, which becomes an additional deduction if the company were located within the Charlotte city limits. Applying the 48 per cent marginal federal tax rate[6] yields a federal tax savings of $6,133.

5. Given the ratio of the appraised value of real property to inventories in this example, the "break-even" tax rate for a North Carolina county would be $0.80 per $100 true value of property. That is, an effective property tax rate of $0.80 in North Carolina applied to both real property and inventories would yield the same total property tax bill as York County's effective tax rate of $1.38 applied only to real property.

6. Federal income tax rates on corporations are now as follows: 22 per cent of total taxable income, plue 26 per cent of taxable income less a $25,000 surtax exemption. Thus, the pass-through effect of federal taxes on small corporations would be less significant because their tax rate is closer to 22 per cent than it is to the full 48 per cent.

(4) *Payroll Taxes.* These include the employer's contribution to social security (5.85 per cent of the first $13,200 of earnings, or a maximum of $772 per worker, in 1974), and the employer's contribution to the state and/or federal unemployment compensation fund (a sliding percentage of each employee's first $4,200 of earnings, with the specific rate depending upon the company's historical growth and cyclical stability; the maximum amount per worker is 4.7 per cent of $4,200, or $197). These taxes are uniform throughout both North Carolina and South Carolina and are not really subject to policy changes for economic development purposes.

To summarize, the wide difference in local property tax bills is reduced significantly when state and federal taxes are considered. For example, the sample company, if it located in Charlotte, would pay slightly more than double the local property taxes it would pay if it located in unincorporated Mecklenburg County. However, if total corporate tax bills are compared, the percentage would be only about 1 per cent higher on a base of slightly under $700,000 in taxes. The comparisons between North Carolina and South Carolina are also interesting for the reason just cited and for the added reason that the absence of property taxes on inventories in South Carolina does not always lead to a lower total property tax bill because of a relatively high effective property tax rate applied to real property.

AN INTRASTATE COMPARISON YIELDS the same conclusion made in the interstate comparison regarding the diluting effect of state and federal tax savings on property tax differentials. The best way to illustrate this phenomenon is to cite a simple comparison, as illustrated in Tables 3 and 4. Two jurisdictions in North Carolina with widely different effective property tax rates are used for illustrative purposes in this analysis—Davidson County ($0.35 per $100 true value of property) and Wilmington City ($2.04 per $100, almost six times as high as Davidson County's). Two principal factors account for these results: (1) property taxes comprise a small percentage of total taxes (in our illustration, the highest percentage is 22.5 for a stone, clay, glass company in Wilmington); and (2) property taxes are counted as expenses on state and federal corporate income tax returns, saving the taxpayer 6 per cent of the property tax bill on the state return and 48 per cent of the remaining 94 per cent of the property tax bill (or 45.1 per cent of the total property tax bill) on the federal return.

Another significant finding from this illustration is that there is virtually no correlation between property taxes paid by different industries located in the same political jurisdiction and their total tax bills.[7] For example, the representative stone, clay, glass company would pay the second highest property tax bill but have the lowest total tax bill, and so forth. Thus, for this reason alone, we would not necessarily expect existing property tax differences among industries to affect the mix of industries that locate within a specific geographic area.

Table 3

Summary of Local Property Taxes and Total Taxes[a] Paid by Selected Manufacturing Industries in Two Locations Assuming $10 Million in Annual Sales (1973 Dollars)

	Davidson County		Wilmington City	
Industry	Property Tax	Total Tax	Property Tax	Total Tax
Apparel	$ 4,664	$ 684,226	$ 27,186	$ 695,234
Paper	3,487	532,838	20,318	541,064
Printing and publishing	18,532	1,022,207	108,015	1,065,946
Chemicals	6,066	1,079,512	35,360	1,093,832
Stone, clay, glass	11,295	265,514	65,834	292,173
Fabricated metals	9,978	769,214	58,160	792,766
Nonelectrical machinery	10,083	461,957	58,753	485,745

[a]Includes state franchise, intangibles, and income tax and federal corporate income tax. Some miscellaneous items such as sales and use tax and gross revenue taxes on motor vehicle operations are included; others are not segregated from cost of goods sold on tax returns.

Source: Ernst & Ernst

IN SUMMARY, this study of state and local tax differentials as a factor in location decisions of industries indicates the following points:

1. While property tax differentials for selected industries vary significantly from county to county in North Carolina, these differences are all but eliminated when total tax bills (federal, state, local) are considered.

The two principal factors that account for this result were discussed above: (a) property taxes comprise a small percentage of total taxes, and (b) property taxes are counted as expenses on state and federal corporate income tax returns. The combined result of these two effects is that the total tax differential an industry faces in choosing among locations amounts to less than 0.5 per cent of its annual sales (see Table 4).

2. While differences in total tax bills for selected industries located within a given jurisdiction are significant, the differences in property taxes paid by these industries are not a factor in explaining the significance.

For any given location, there is no correlation between industry ranking in total tax payments and its ranking in property tax payments. The key variables explaining the differences in total taxes are: (a) net income subject to corporate income taxes, and (b) total payroll taxes in the form of social security (FICA) contributions and contributions to the state unemployment compensation fund, an indication of labor intensity. Thus, for this reason

7. The rank correlation coefficient between property taxes paid and total tax bills for the seven industries is -0.07 in both Davidson County and Wilmington City, virtually insignificant.

Table 4

Differences in Property and Total Tax[a] Bills Paid by Selected Manufacturing Industries in Two Locations Assuming $10 Million in Annual Sales (1973 Dollars)

Industry	Difference in Tax Bills: (Wilmington Tax Bill Minus Davidson Co. Tax Bill)		Difference in Total Taxes as Percentage of Sales ($10 Million)
	Property Tax	Total Tax	
Apparel	$22,522	$11,008	0.1%
Paper	16,831	8,226	0.08
Printing and publishing	89,483	43,739	0.4
Chemicals	29,294	14,312	0.1
Stone, clay, glass	54,539	26,659	0.3
Fabricated metals	48,182	23,552	0.2
Nonelectrical machinery	48,670	23,788	0.2

[a]See Table 3, footnote a

Source Ernst & Ernst

alone, we would not expect existing property tax differences among industries to affect the mix of industries locating within a specific geographic area.

3. In terms of comparisons between North Carolina and South Carolina, the absence of taxes on business inventories in South Carolina does not necessarily lead to a lower property tax bill for a corporation in that state.

The difference in total tax bills for a company locating in North Carolina as opposed to South Carolina is conditioned by (a) the difference in effective tax rates between the two specific political jurisdictions in question, and (b) the percentage mix of the total appraised value of property between real property and inventories. Referring to the example used above, the property tax bill for the apparel manufacturer was lower in Gaston County, North Carolina, than in York County, South Carolina. The absence of a tax on intangible personal property and a lower filing fee (franchise tax) in South Carolina, however, resulted in a lower *total* tax bill in this particular case, though the difference was negligible.

4. Industry is often concentrated where property tax rates are the highest (e.g., within city limits or metropolitan counties); to put the matter differently, there is no statistical relationship between county property tax rates and selected measures of population and employment concentration.

This finding is based upon the use of regression analysis applied to cross-section data for all 100 North Carolina counties in 1972-73 and data from the Census of Manufactures. The regression equation was found to be statistically insignificant using any reasonable significance level (e.g., 5 per cent or 10 per cent). Population density was found to be significant at the 10 per cent level and positively related to the property tax rate. This suggests that there may be some adverse effect of continued growth in a confined geographical area on tax rates and the cost of locally provided government services. However, the ratio of employment to population was not significantly related to the property tax rate. When the level of services is considered, businesses are often attracted by the presence of police and fire protection, street lighting, and arterial roads, all of which have to be paid for one way or another.

5. Economic development officials of local business organizations generally feel that local tax differentials are not a significant factor in business location decisions and that it is not desirable to use tax incentives to encourage economic growth and development in designated geographic areas.

The consensus of nine local development leaders interviewed in the study was that local taxes are not an important factor in most business location decisions. This view was corroborated by a small sample of Ernst & Ernst clients in North Carolina who either were in the process of or had recently made expansion decisions involving new locations. However, the disparity between municipal and county tax rates, combined with the high price of central-city land, has made it extremely difficult for manufacturing establishments either to remain in or to locate within city limits. The key elements in location decisions appear to be labor availability and degree of unionization; transportation; general infrastructure (including utilities) and amenities; special resource requirements for selected industries (e.g., a port facility, industrial water supply, mineral deposits); and the "chemistry" between community leaders and executives of a particular company. While leaders in nonmetropolitan areas were more favorable to revenue bond financing and differential tax treatment than their counterparts in major metropolitan areas, all agreed that eligible companies should have to pass a test regarding job quality, fiscal and environmental impact, and community commitment. The general feeling was that commitment to basic infrastructure (e.g., water-sewer systems, transportation, health care facilities, education) and land-use planning on the part of the state would be more cost-effective in meeting economic development objectives than the use of tax incentive or subsidy mechanisms.

HISTORIC PRESERVATION THROUGH SPECIAL PROPERTY TAX TREATMENT

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SOMEWHAT TO THE SURPRISE of those promoting it, and very much to the delight of preservationists throughout the state, the North Carolina General Assembly, on June 12, 1975, adopted House Bill 540, "An Act To Classify Certain Historic Properties for Ad Valorem Taxation." The bill, which upon its adoption became Chapter 578 of the 1975 Session Laws, took effect January 1, 1976, and is codified as part of Chapter 105 of the North Carolina General Statutes, known to lawyers and local and state tax officials as the "Machinery Act."

The bill was introduced by the Forsyth County delegation and received strong backing from the Mecklenburg, New Hanover, and Wake contingents, among others. It was drafted by the Forsyth County attorney, with help from the Institute of Government. The bill remained in committee for most of the session and passed in the closing days without fanfare—indeed, without much discussion or debate in either chamber.

Since considerable misunderstanding exists about the new law in North Carolina and elsewhere, this article will highlight its major features and try to put it into broader perspective.

PROVISIONS OF THE ACT

In general, the new law is modeled after a similar piece of legislation that passed the General Assembly in 1974, providing for a deferral for five years of local property taxes on land used for agricultural, horticultural, or forestry use. The new law, like all property tax laws, applies with equal force to all cities, counties, and other taxing units within the state.

The text of the law is as follows:

Section 1. Section 105-277 of the North Carolina General Statutes as it appears in the 1974 Cumulative Supplement to Volume 2D of the General Statutes is amended by adding a new subsection (f) to read as follows:

(f) *Historic Properties.*— (1) Real property designated as historic property by a local ordinance adopted pursuant to G.S. 160A-399.4 is hereby designated a special class of property under authority of Article V, Section 2(2), of the North Carolina Constitution. Historic property so classified shall be taxed upon annual application of the property owner uniformly as a class in each local taxing unit at fifty percent (50%) of the rate levied for all purposes upon real and tangible personal property by the taxing unit or units in which historic property is listed for taxation.

(2) The difference between the taxes due on the basis of fifty percent (50%) of the full tax rate and the taxes that would have been payable in the absence of the classification provided for in the subdivision (1) of this subsection (f) shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a) and shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable until the property loses its eligibility for the benefit of this classification because a change in a local historic properties ordinance or any other reason. The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding five fiscal years that have been deferred as provided herein shall be payable immediately, together with interest thereon as provided in G.S. 105-360 for unpaid taxes, which shall accrue on the deferred taxes as if they had been payable on the dates on which they originally came due. If only a part of the historic property loses its eligibility for the classification, a determination shall be made of the amount of deferred taxes applicable to that part, and the amount shall be payable with interest as provided above.

Sec. 2. This act shall become effective January 1, 1976.

Relatively short and straightforward as this law is on its face, it nevertheless has a few surprises in store for the property owner seeking to take advantage of the law. Also, a number of requirements must be met before he receives the benefit of it.

First, it should be noted that the law does not provide "relief" from property taxes of the city or county in the sense that most people think of such relief—as a blanket exemption. The act merely provides that 50 per cent

of the tax due in any year will be deferred for five years for future payment, so long as the property is maintained and retains its status as an official "historic property" of the city or county. If the property is "de-listed" by an ordinance passed after the one that listed it originally according to G.S. 160A-399.4, the 50 per cent of taxes deferred for later payment become due and payable immediately. If the property is destroyed by fire or neglect, or if it is remodeled or altered in such a way as to eliminate the special status it had as a building of architectural or historical distinction, thus falling within the meaning of the phrase "any other reason" in Section 1, the back taxes immediately become due. Loss of the deferral privilege can result only from some change or diminution in the special character of the building itself. A mere change of ownership, or even a change of use (so long as it did not affect the integrity of the building) would not be sufficient to lose the privilege.

It is of the utmost importance to understand that a severe financial penalty is in store for the owner of a listed property if it ever loses its special character. The Machinery Act provides elsewhere that in such event not only to do the back taxes become due immediately but also the formula provided in G.S. 105-360 for calculating the interest on those taxes is to be followed. For example, suppose that an historic property is classified and qualified for the deferral during the January 1976 listing period, and qualifies each year thereafter through January 1984. Suppose further that in June 1984, after the historic property has been listed and classified for 1984, the house is torn down by its owner or some other event transpires to cause it to lose its special status as a historic building. In such a case, heavy interest charges are added on to the deferred taxes due, as indicated in the following table:

Deferred taxes for fiscal year	Would bear interest in Jan. 1985 at the rate of
1979-80	47%
1980-81	38
1981-82	29
1982-83	20
1983-84	11
1984-85	2

Thus, the owner who wishes to take advantage of the deferred tax bears a heavy and continuing responsibility to continue to maintain and safeguard the integrity of the property. Quite conceivably, even the enthusiastic preservationist-owner of a building who over-restores it to the point of seriously impairing or compromising its architectural features is as much at risk as the owner who allows the structure to deteriorate or pulls it down.

Considering the potentially heavy tax liability, the question arises: Does the tax deferral system work automatically? Must even the owner of a listed property who is unwilling to assume the burden of continued maintenance take it on? The answer is no. The property owner must make a new application each year during the month of January to take advantage of the deferral—and even so only an owner (not a tenant or a lessee) may make the application. When he applies, it is the owner's responsibility to satisfy the county tax supervisor that the property is in fact an officially listed historic property. To do this, he will use forms that will undoubtedly be supplied by the State Department of Revenue. However, in view of the requirement in G.S. 160A-399.5 that each local historic properties commission give notice to the tax supervisor that an ordinance has been passed listing or de-listing any property (a requirement imposed for the purpose of directing that official's attention to any preservation restrictions on the property that may affect its valuation), the matter of proof is largely academic. Owners of listed historic properties located within the corporate limits of a city who wish to obtain a deferral of city as well as county property taxes need apply only to the county tax supervisor. If the county approves the application, the tax supervisor will forward a notice to that effect to the appropriate city official. It should be borne in mind that while most cities accept the county's decision on exemption and classification applications without question, they are not bound to do so. If the city refuses to accept a county's decision to approve the application, the owner must be notified and given an opportunity to appeal. If, for whatever reason, the county tax supervisor denies the owner's application for deferral in the first instance, he must send a copy of the application and the notice of denial to the appropriate city official, who in turn notifies the owner of the city's decision. However, since the deferral privilege in G.S. 105-277(f)(1) is couched in mandatory terms, denial of the application by the city or county would be most unusual in the absence of substantive or procedural defects in the listing or application process.

It should be noted, of course, that the owners of listed historic properties who do *not* wish to take advantage of the 50 per cent deferral need do nothing.

Single Brothers House in Old Salem in Forsyth County. Photo by JoAnn Sieburg

Moratock Iron Furnace in Stokes County. Photo by Randall Page.

Finally, several incidental points should be considered. First, the act applies only to taxable real property, such as buildings and structures, and, when appropriate, land. Personal property, such as a collection of furnishings or antique silver, does not come within the scope of the act. Only the listed structures of historical importance on any one tract would qualify. Modern structures that are not listed would not qualify, even though located on the same parcel.

Second, liability for the deferred portion of the tax extends only five years into the past. Thus, property listed in 1976 that is destroyed in 1990 would be taxed on the deferred portion only back to 1985. When a sale takes place, the question of liability for deferred taxes on a listed property that had been maintained by the grantor would be a matter of agreement between the seller and the buyer to the extent that such taxes have a bearing on the purchase price. Clearly, however, the new owner of the historic property may pick up the deferral advantage if he wishes to do so, provided that the property is maintained and annual application for the deferral is made. However, uncollected taxes are always a lien on the property itself for which the current owner at the time of collection is responsible. Foreclosure of the deferred taxes is handled no differently for these properties than for any other property subject to the Machinery Act.

LISTED PROPERTIES IN HISTORIC DISTRICTS

The effect of the new law on real property located within an historic zoning district is already the subject of considerable misunderstanding. It is clear that no benefit is conferred on the owners of a property within a local historic zoning district established by virtue of G.S. Chapter 160A, Article 19, Part 3A, unless the property within the district *is also listed individually* as a historic property pursuant to Part 3B. While there is no reason why a property within a historic zoning district may not be individually listed, few if any properties in historic zoning districts in North Carolina have yet been so treated. The wisdom of this policy will be apparent when it is recognized that historic zoning districts invariably include within their boundaries a number of properties that, although subject to the special historic zoning provisions of the local ordinance, are not individually of historical or architectural distinction. That the benefits of the deferred tax scheme under the new law rain equally upon the affluent and the needy may speak to the question of "fairness" in many people's minds, but it is not a distinction of any particular legal consequence.

It *is* a matter of consequence, however, that the individual property may be classified as having architectural or historical significance so far as the deferred tax benefit is concerned. The new act classifies only property designated pursuant to G.S. 160A-399.4. To insure that *only* worthy properties are so designated, G.S. 160A-399.3 establishes specific criteria that must be applied to each property being considered for designation by the local governing board. These criteria include:

. . .historical and cultural significance; suitability for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs. In order for any building, structure, site, area or object to be designated in the ordinance as a historic property, it must in addition meet the criteria established for inclusion of the property of the National Register of Historic Places established by the National Historic Preservation Act of 1966, Public Law 89-665, 16 U.S. C.A. section 470a, as amended, as evidenced by appropriate findings in resolutions of the city or county historic properties commission."

To help insure that only meritorious properties are designated by the governing board, the property under

Archibald Taylor House in Franklin County. Photo by Catherine W. Cockshutt

consideration is carefully scrutinized by the local historic properties commission. A full report regarding each property proposed for listing is then sent to the Division of Archives and History, North Carolina Department of Cultural Resources, for review and comment. The ordinance officially designating a given property as "historic" is adopted by the local governing board only after public notice and hearings.

It is also perhaps worth emphasizing that the final judgment as to whether a property measures up to these criteria, including the National Register criteria, is a matter for determination *by the local historic properties commission*. (Nomination of a property to the National Register of Historic Places for purposes of the National Historic Preservation Act of 1966 is something else. In other words, to be eligible for the deferral the property to be listed by the city or county need not be *on* the National Register; it needs only to *qualify* therefor in the judgment of the historic properties commission, and, of course, in the opinion of the city or county governing board that actually adopts the ordinance or amendment officially listing the property.

Finally, it will be observed that the local governing body has considerable flexibility under G.S. 160A-399.2 in appointing a local agency to carry out the program of identifying, authenticating, and listing historic properties. Depending on local circumstances, the board may establish a separate historic properties commission; or it may designate an existing city or county planning board or historic district commission to undertake the investigations necessary to establish the owner's eligibility for deferred taxes. The governing board may also, if it desires, undertake to carry out the program itself.

IN CONTEXT

The origins of Chapter 578 are based on economic necessity. Experienced preservationists recognize that when all is said and done, most historic buildings in the private sector are lost—one way or another—as a result of the workings of the private real estate market. When that market is "bearish" and there is no viable adaptive use that will bring the current owner what he considers to be a reasonable return on his investment, properties fall into disuse and are lost through decay, vandalism, fires, and other causes attributable to lack of occupancy and regular maintenance. At the other extreme, in a "bull" market, as soon as the value of the site tends to outweigh the capitalized value of the structure located on it, there are inexorable pressures on the owner to tear it down and put the property to some other, more profitable purpose. The result, more often than not, is one more parking lot, shopping center, or like version of whatever the owner regards as the "highest and best use."

Dodd Hinsdale House in Raleigh. Photo by Madlin Futriel.

In economic terms, then, the question of saving most old buildings, reduced to its simplest terms, is one of finding just the right subsidy or combination of subsidies to make the historic building profitable to its owner. Typically, these come in the form of loans and grants from the federal or state governments or the National Trust for Historic Preservation, from community development revenue-sharing, gifts from private individuals or preservation interests, foundations, and a variety of other sources.

No single subsidy—whether direct in the form of a low-interest rate loan or grant or indirect in the form of tax reduction, abatement, or deferral—is apt to do the trick for all historic properties worthy of preservation. Only recently and in a very few states has it become politically acceptable to provide a portion of this subsidy through the use of the property tax system, and even in these the traditional challenge that the primary purpose of the taxing system is to raise revenues for the operation of the government has been raised. Individuals and tax theorists may always reasonably disagree whether given tax breaks are "loopholes" or merely a legitimate means of expressing a conscious public policy—in this case, a policy that says that certain historic buildings are worthy of subsidy by all local taxpayers.

North Carolina's new law clearly does not go as far as one proposed but never introduced during the 1971 session of the General Assembly. That proposal provided for the flat reduction by 50 per cent of all property taxes on all historic properties of singular importance. Similarly, a second piece of legislation proposed in that year providing for a deduction of preservation and restoration expenses from adjusted gross income for state income tax purposes has not been seen since. These proposals went too far, even for some preservationists. The new law may well be a case of something's being better than nothing. Nevertheless, the 1975 General Assembly has contributed significantly to a better economic climate for preservation, and, notwithstanding the risks involved to the individual owner, it remains now only for dedicated preservation groups and owners of historic properties to insure that this latest preservation tool is put to effective use.

THE LOCAL GOVERNMENT COMMISSION: Helping the State's Local Units Stay Solvent

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WHEN NORTH CAROLINA LOCAL governmental officials look at the economically troubled City of New York, they realize that such a situation would be extremely unlikely in this state. Much of the credit for helping prevent such financial embarrassment to local units in North Carolina should go to the Local Government Commission, a state agency operating within the Department of State Treasurer. Since 1931, the Commission has so closely supervised the borrowing practices of the state's local units that they have been prevented from borrowing money for any purposes other than financing nonrecurring expenses.

In a recent newspaper interview, Harlan Boyles, Secretary of the Local Government Commission, stated that New York City's inability to meet its maturing debt "developed. . .because money was borrowed to pay operating expenses, and [a similar inability] developed in North Carolina in 1930-31 for the same reason." Boyles added that the years after the first World War were "a time of optimism and no state control" and it is "not surprising that some of the bonds were issued for unwise and uneconomical purposes without proper consideration of the unit's ability to make repayment."

When the Great Depression hit, many local units in North Carolina, totally unable to meet their debt obligations, defaulted on either interest or principal. Recognizing the need to bring some order to the chaos of local finance, the General Assembly began a series of steps that led to the creation of the Local Government Commission in 1931. The Commission was given several duties; chief among them at the time was to extricate local units from their burden of debt and see that such a financial disaster did not occur again within North Carolina.

The Commission has been extremely successful during its more than forty years of existence. Through three of its four sections (Bond Authorizations, Bond Sales and Delivery, and Accounting Advisory), it has done much to help North Carolina local units improve their financial practices. With two minor exceptions, no North Carolina local unit has defaulted on a debt obligation in recent times; one situation involved an issue of bonds held entirely by a federal agency, and the other involved a unit whose original debt had been so great that the Commission had to work several times with the unit over a forty-year period before the debt could be successfully restructured.

As a result of the Commission's work, North Carolina borrowing units, whose credit ratings vary according to the assessments of national and regional rating services of their abilities to repay debt obligations, are consequently able to borrow at relatively low interest rates, at considerable savings to their taxpayers in interest payments. Similarly rated units in other southern states frequently must pay slightly higher interest rates than North Carolina issuing units. The entire national financial community watches the Commission carefully, and as a testament to the regard in which the Commission is held, its Secretary was recently appointed by the Securities and Exchange Commission as one of five public members of the Municipal Securities Rulemaking Board.

The Commission has nine members. The State Treasurer, the State Auditor, the Secretary of State, and the Secretary of Revenue serve ex officio and constitute an executive committee. The Governor appoints three members, and the Speaker of the House and the Lieutenant Governor each appoint one. The Commission also has a professional staff trained in accounting and finance that works with the local units and makes recommendations to the Commission. The staff is headed by the Secretary of the Local Government Commission.

AUTHORIZING THE BONDS

Of the Commission's four sections, the one that has the greatest influence in maintaining the good credit of North Carolina local units is the Bond Authorizations Section. This section is responsible for helping a local unit develop a project that it can afford to finance and then helping it design a debt obligation issue that will be both adequate to finance the project and economically feasible for the unit.

When local units incur debt, they most often do so with general obligation bonds. The material that follows will

describe the relationship between a local unit and the Local Government Commission when the unit undertakes to issue such bonds.

The bond-issuing process begins with the unit's recognition of a need for a particular project. This is a local matter, a decision to be made by responsible citizens and officials of the community. Having recognized the need, the unit must then define the project. It may consult with other units of a similar size to see how they have designed and acquired projects that meet their needs, and the unit may begin to consult with engineers to find out tentatively what the project being considered might cost. The Commission is not much involved in this definition process—perhaps only to suggest other units that might be consulted. It can, however, often advise on the availability of state or federal grant moneys for the project and perhaps suggest how to structure a project to make it potentially eligible for an agency grant.

Next, if the unit cannot finance the project with local funds now *currently* in hand, with a grant, or on a cooperative basis with another unit, it must approach the Commission to consider the advisability and possibility of a bond issue.

Very early in the process, the unit seeks the guidance of a nationally recognized firm of bond attorneys. Any issue of municipal bonds to be traded on the municipal bond market must bear the approving legal opinion of such a firm. This opinion signifies that all legally required procedural steps have been followed and states the opinion of recognized bond attorneys that the bonds are valid obligations of the issuing unit. In order to grant such an approving legal opinion, bond attorneys for a particular debt issue will frequently become involved with the planning for the issue even before the unit asks the Local Government Commission for a preliminary conference. As soon as a unit contacts a firm of bond attorneys, the attorneys begin to superintend every action taken by the unit under the Local Government Finance Act. Many of the documents that a local unit must file with the Commission are prepared by its bond attorneys. The Commission usually receives copies of correspondence exchanged between a local unit and its attorneys. With both the Commission and these lawyers watching over any issue of general obligation bonds, the chances of procedural errors in the complex process of bond authorization and issuance are minimized.

The Preliminary Conference. Before the Commission even accepts the unit's application for permission to issue general obligation bonds, it may ask members of the unit's governing board and other local officials to attend a preliminary conference. It has made this conference an extremely flexible diagnostic tool.

The Commission holds a preliminary conference only after the unit has made its preliminary local political decisions related to a proposed project (the most important local political decision—the vote of the unit's citizens—is a later event). The meeting is attended by representatives of both the Commission and the applicant unit. Typically, the Commission is represented by both the Secretary of the Local Government Commission and the head of the Bond Authorizations Section. The unit is usually represented by its mayor or other head, one or more members of its governing board, its chief financial officer, and possibly one or more interested local citizens. Frequently a member of the engineering firm that has helped the unit design the proposed project also attends the preliminary conference. Representatives of state and federal agencies that have authorized or may be contemplating grants to the unit for the proposed project may also attend.

The Commission uses the preliminary conference in part as a precautionary measure. Its staff explores the scope and details of the proposed project and encourages the unit's representatives to estimate probable costs and possible sources of funds realistically. The staff discourages a unit from anticipating funding from either state or federal agencies until the funds are actually committed. The Commission investigates with the unit the certainty of grant commitments and the adequacy of proposed contingency amounts included in the estimated cost of the project. The unit is also encouraged to anticipate that construction bids may be higher than preliminary estimates. Thus the likely true total cost of the proposed project can be figured more readily. In analyzing the sources of funding other than bond or note funds, the Commission seeks to determine whether anticipated sources may be "soft" and advises the unit to consider whether the proposed package of financing is one that local voters will approve if a bond referendum must be held. It will urge the unit to compute the necessary average-user charges to be instituted when any new utility system is complete. Unusually high average-user charges may indicate either that the unit's voters might well not approve a bond referendum if such future high rates were publicized or that some specific cost of the proposed project is too high and should be re-examined.

The Commission must frequently remind units to consider more than the capital cost of a project when considering a bond issue. Units sometimes overlook the ongoing operating cost of a desired project or the additional revenues that will flow into the unit because of the new facility. The ongoing operating cost of a facility can be computed only by an expert familiar with the type of facility being considered. The Commission may encourage a unit to consider a slightly larger debt issue than that orginally contemplated in case a proposed project was viewed too optimistically and its likely ongoing operating cost thus underestimated. Other expenses that a unit may overlook are the administrative costs of issuing and selling bonds or notes, the cost of a bond rating by a national bond rating service, the costs of the legal notices that must be inserted into newspapers, the cost of interest during the construction of a project, and the cost of acquiring the land for the project.

Representatives of state and federal agencies often can

suggest informally the likelihood of a grant and the terms on which it might be available. They may also anticipate problems that the unit might encounter in submitting a successful application. Factors that the unit may see as either of minimal importance or of insurmountable difficulty will be placed in a truer perspective when such agency representatives participate in the preliminary conference.

At the preliminary conference the Commission staff may also help appropriate officers of the unit fill out the application forms that must be filed with the Commission. Officers of smaller units that seldom approach the Commission for permission to issue bonds or notes will find this service especially helpful.

Larger cities and counties may not need to attend a preliminary conference, but may instead consult with the Commission by telephone. Whether this will be possible will depend on the adequacy of the engineering reports secured by the unit and the probable impact of the project on the unit. Also, a preliminary conference may be unnecessary for a very simple project.

Publication of Intent to Apply. After attending a preliminary conference, a unit that still intends to issue bonds must follow a formal procedure in obtaining Commission approval for the issuance of general obligation bonds. First, it must publish a notice that it intends to apply for Commission approval of a bond issue. This notice must describe the proposed bond issue and inform the unit's citizens that they may file an objection with the Local Government Commission.

Next, the unit applies to the Secretary for approval of the proposed issue.

Commission Approval. In deciding whether to approve an application from a local unit for permission to issue general obligation bonds, the Commission may consider the following twelve criteria:

1. Whether the project to be financed from the proceeds of the bond issue is necessary or expedient.
2. The nature and amount of the outstanding debt of the issuing unit.
3. The unit's debt management procedures and policies.
4. The unit's tax and special assessments collection records.
5. The unit's compliance with the Local Government Budget and Fiscal Control Act.
6. Whether the unit is in default in any of its debt service obligations.
7. The unit's present tax rates and the increase in tax rate, if any, necessary to service the proposed debt.
8. The unit's appraised and assessed value of property subject to taxation.
9. The unit's ability to sustain the additional taxes necessary to service the debt.
10. The Commission's ability to market the proposed bonds at reasonable interest rates.
11. If the proposed issue is for a utility or public service enterprise, the probable net revenues of the project to be financed and the extent to which the revenues of the utility or enterprise, after addition of the revenues of the project to be financed, will be sufficient to service the proposed debt.
12. Whether the amount of the proposed debt will be adequate to accomplish the purpose for which it is to be incurred.

In addition to these criteria, the Commission "may inquire into and give consideration to any other matters which it may believe to have a bearing on whether the issue should be approved" when considering an application from a local unit for permission to issue general obligation bonds.

In practice, the Commission considers these criteria informally when the unit's preliminary conference is held; only if the Commission's staff feels that a unit can meet the necessary criteria will the unit be encouraged to begin the formal process of applying for Commission approval.

After receiving an application and considering it in light of both the specific and the general criteria listed above, the Commission must approve the application if it finds:

1. That the proposed issue is necessary or expedient.
2. That the amount proposed is adequate and not excessive for the proposed purpose of the issue.
3. That the unit's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
4. That the increase in taxes, if any, necessary to service the proposed debt will not be excessive.
5. That the proposed bonds can be marketed at reasonable rates of interest.

The Commission may tentatively deny an application if it determines "that any one or more of these conclusions cannot be supported from the information presented to it." In such a case, it must notify the local unit that it believes a necessary conclusion cannot be supported from the information supplied by the unit.

If the Commission tentatively disapproves an application, it must hold a public hearing on the application if the unit requests one.

After considering a unit's application, and after conducting a public hearing if needed, the Commission must enter an order either approving or denying the application. If the Commission disapproves its application, the unit may not issue the bonds.

Passage of a Bond Order. As the next step in the issuance of general obligation bonds, the prospective issuing unit must pass certain procedural hurdles at the local level, including the passage of a bond order. Before passage, the bond order must be published and a public hearing must be held on it. After passage, it must be published again to give local citizens one final chance to challenge the proposed project.

The bond order step also includes publication of a sworn statement of the unit's debt, since the amount of outstanding debt determines whether (except for certain purposes) the unit may incur further debt.

Bond Referenda. Generally the unit's voters must approve the issuance of general obligation bonds in a bond referendum. Bonds may, however, be issued for many permitted purposes without a vote if the amount of bonds for any particular project or package of projects does not exceed "two-thirds of the amount by which the outstanding indebtedness of the issuing county or city has been reduced during the next preceding fiscal year." Bonds under this exception to the requirement of voter approval are generally not possible unless the amount proposed is relatively small; otherwise a project will not fit under the ceiling imposed by G.S. 159-49(2) and by Article V, Section 4(1), of the North Carolina Constitution. Even for such bonds, however, the unit's citizens may secure a bond referendum by means of a petition that bears the signatures of at least 10 per cent of the unit's registered voters. Ordinarily a bond order takes effect when approved by the local unit's voters in a referendum.

SELLING THE BONDS

When the unit has secured the Commission's approval for issuing the bonds and has completed the other procedural steps, the bonds must be sold. This function is the responsibility of the Local Government Commission.

Credit Ratings. A critical factor in how easily the Commission can sell the bonds and the interest rates at which they will sell is the credit rating of the issuing unit. Generally, the higher the credit rating, the lower the interest rate. Bonds of a local unit can hardly be sold on the municipal bond market unless the unit has a credit rating from a nationally recognized rating service; the Commission therefore encourages local units to obtain such ratings from Moody's Investors Service, Inc., and from Standard and Poor's Corporation. (In addition to these national rating services, North Carolina has two state-level independent and investor-sponsored rating services - the North Carolina Municipal Council, Inc., and the North Carolina Securities Advisory Committee.)

The Commission closely monitors changes in North Carolina local units' credit ratings. Each month, a secretary in the Bond Sales and Delivery Section prepares a one-page listing of the credit ratings given to North Carolina units by Moody's and a similar listing of Standard and Poor's ratings. Units that are rated for the first time, units no longer rated, and units whose ratings have changed since the last monthly listing are highlighted. As soon as the Commission learns that a local unit has been delisted by one of the national rating services, it contacts the rating service to learn why and notifies the local unit of the reason for the delisting given by the rating service. The Commission then strongly urges the local unit to apply for a new credit rating.

Sale and Delivery. The Commission's Bond Sales and Delivery Section prepares a prospectus or circular for each issue of bonds or notes approved by the Commission and by a local unit's voters, or, if voter approval was not necessary, by its governing board. The circulars are sent to lists of potential bidders, who submit sealed bids for those issues in which they are interested. The Commission awards a particular issue to the bidder that proposes to purchase an issue at the lowest net interest cost to an issuing unit. After an issue has been awarded, the Commission arranges for the bonds or notes comprising the issue to be printed, signed, and delivered to the purchaser. It frequently sends a member of its staff to either New York or Charlotte to sign and deliver bonds or notes. Once an issue has been delivered, the Commission transmits the funds received for the bonds or notes to the issuing unit. Thereafter, it regularly monitors debt service payments by the issuing unit.

SUPERVISING ACCOUNTING PROCEDURES

Another function of the Local Government Commission is to help local units maintain complete and proper accounting records. This function serves as a corollary to the Commission's responsibility for the local units' borrowing practices in safe-guarding the fiscal position of North Carolina local governments. The Commission's Accounting Advisory Section carries out this activity.

Management Services. The Management Services subsection is responsible for advising local units on financial management, the acquisition of accounting machines, and the implementation of accounting systems. It instructs officers in local units in budgeting and cash management techniques and assists local units in risk management. It gives advice on a number of topics that have been covered by the *Uniform Local Government Accounting System Procedures Manual,* prepared and first distributed by the Commission and the Accounting Advisory Section in 1972. Some of these topics are asset and liability accounting, long-term debt accounting, the preferred procedures for disbursements and receipts, and the maintenance of fixed-asset inventories. Officers in local units are given continuing advice on generally accepted accounting principles.

The Management Services subsection responds to requests for help from local units by sending one or more of its field men to a local unit to consult with its officials. Requests typically come by letter or telephone call. The head of this subsection will assess the unit's needs as they appear from the request, and a field man will be assigned to correspond with the unit and learn more about its problem. Before contacting the unit, the field man reviews its previous audit reports to learn what he can from them. Once a field man has learned what the local unit needs advice on, he visits the unit and consults with its officials. Field men are often able to spot developing problems and suggest early solutions that head the prob-

lems off. The field men file reports on the local units they have visited or consulted with to indicate what they have done or advised. The Commission sends an explanatory letter to most local units visited, explaining what the field men did and advising on what the unit should do.

On request, the Accounting Advisory Section's field men help a local unit with its accounting system. They may set up particular accounts and help to design charts of accounts by assigning account numbers to these and other accounts. They may help units maintain an inventory of fixed assets, assist in the design of accounting forms, advise units on how to use particular accounting forms, and advise units on managing their cash programs by helping them decide how many funds to maintain and which investments to make. Finally, they will explain legal requirements pertaining to accounting systems.

Field men may also help write job descriptions of the jobs performed by particular members of the unit's finance department. In so doing, they may advise that certain responsibilities be reassigned in order to achieve an even flow of work and adequate internal controls. Field men may advise on what accounting equipment a local unit should acquire. If members of a field team see an impropriety, they are often able to offer on the spot an alternate method that does away with it.

The Accounting Advisory Section now makes no organized follow-up of the memoranda that it sends to local units. Rather than requiring local units to file compliance reports, the Commission stays in contact with them through letters and telephone calls. It is reluctant to institute any formal follow-up program, because it feels that local units would see such a program as a needless complication or as an intrusion. It does, however, follow up on compliance with the regulations that it promulgates, since these are mandatory rather than advisory.

Independent Audit Report. Potentially, one of the most significant regulatory devices now available to the Commission is the annual independent audit report that each public authority or unit of local government must prepare and file with the Local Government Commission. The statute requires that the unit or authority arrange for an independent audit of its accounts by a certified public accountant as soon as possible after the close of a fiscal year. An audit contract must be in writing, must include all terms and conditions that affect it, and must be submitted to the Secretary of the Local Government Commission for his approval. The Secretary examines the audit contract's form, terms, and conditions to determine that they will ensure an effective audit report.

After the audit is completed and the audit report prepared, the local unit's finance officer files a copy of the report with the Local Government Commission and submits the auditor's bill to the Commission for its approval. The unit expressly may not pay the auditor's bill before receiving notice of the Commission's approval of the bill. This is to ensure that the scope of the audit and the report's form are acceptable to the Commission.

The Review Letter: A Response to the Annual Audit Report. An increasingly important internal procedure in the Audit Review subsection of the Accounting Advisory Section is the nonstatutory review letter. This is sent to the manager or mayor of any unit whose annual audit reports show that the unit has not complied with the Local Government Budget and Fiscal Control Act or indicate areas in which the unit is not complying with generally accepted accounting principles. Every audit report is now reviewed by at least one person in the Accounting Advisory Section, which has prepared a checklist of specific accounting procedures regulated by the Budget and Fiscal Control Act and procedures relative to generally accepted accounting principles. When the checklist and the first review of the audit report reveal substantial divergence from the procedures now required by the Budget and Fiscal Control Act, the audit report is likely to be circulated among several members of the Accounting Advisory Section staff. Their comments and reactions are channeled to a designated staff member, who drafts a letter to the offending unit. The tone of a review letter may range from advisory suggestion to peremptory warning. The Commission hopes that the review letter technique will over several years make the annual inspection of audit reports much easier, and that the gradual improvement in any given unit's accounting will be clearly evident from the tone of the successive review letters that it receives.

The two matters most frequently discussed in review letters are (1) the illegality of deficit financing by governmental units, and (2) the possible personal liabilities of either the finance officer or the governing board's members (and the chief executive officer of a governmental unit) under the new Budget and Fiscal Control Act.

Miscellaneous Duties. The Accounting Advisory Section carries on a number of other services for local governments. For example it provides educational programs in governmental budgeting, financial administration, risk management, and the use of the Uniform Accounting System. It advises local governments on the implications of the Revenue-Sharing Act and how to comply with its requirements, and it has prepared a number of manuals and other publications for local governmental officials to guide them in their responsibility for administering public moneys.

THE NEW PROGRAM DEVELOPMENT SECTION

In August 1975 the Commission shifted certain responsibilities from the Accounting Advisory Section to a new Program Development Section. This new section will be responsible for developing new accounting procedures, testing new programs, and suggesting improvements for the Commission's present programs. The Program Development Section will be the Commission's educational arm and will prepare various manuals for distribution by the Commission.

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES: Perspectives and Prospects

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FEDERAL LEGISLATION that guarantees public employees the right to organize and engage in collective bargaining is now before Congress. Estimates of the likelihood that some form of public employee collective bargaining bill will pass vary, depending on which "informed source" one consults. However, because a federal law governing labor relations in the public sector might have a very significant impact on public personnel practices in North Carolina, the possibility of such legislation suggests the need to look at the current status of the law concerning employer-employee relations and to assess the changes that a comprehensive collective bargaining law would make.

THE LAW TODAY

North Carolina law relating to labor relations in the public sector covers three separable areas: (1) what public employers *must* do; (2) what they *may* do; and (3) what they *cannot* do.

Simply stated, what public employers *must* do is recognize the constitutional rights of their employees. In 1968, a federal appeals court held that membership in a union is protected by the First Amendment as applied to the states through the Fourteenth Amendment.[1] The next year, on the basis of this principle, a North Carolina federal district court, in *Atkins v. City of Charlotte,*[2] struck down G.S. 95-97, which prohibits police and firemen from joining unions affiliated with national or international unions advocating collective bargaining. Since membership in a union is a constitutionally protected right, a public employee cannot be discriminated against or interfered with in the exercise of that right.

While the right to *join* a union is constitutionally protected, courts have on several occasions rejected the contention that the Constitution imposes any obligation on public employers to engage in collective bargaining with employee organizations. Most recently, in *Winston-Salem /Forsyth County Unit, N.C. Association of Educators v. Phillips,*[3] the court reaffirmed the holding in the *Atkins* case that G.S. 95-98, which proscribes contracts between unions and public employers, does not violate the employees' rights to freedom of association, equal protection, or due process.[4]

Finally, a recent case arising out of the City of Charlotte[5] indicates that, when a public employer withholds money from individual paychecks at the request of the affected employees, it is a denial of equal protection to provide this service for some purposes (e.g., charities) but not for union dues. The court left the door open to the future denial of dues check-off rights in accordance with "reasonable regulations dealing with withholding to be applied to all persons seeking such administrative assistance," but cautioned that a "[d]esire to discourage municipal labor organizations including Local 660 would of course be an impermissible reason for refusing to withhold moneys from the paychecks of the individual plaintiffs."[6]

What public employers *may* do with respect to labor unions is best summarized by an opinion of the State Attorney General that deals specifically with school boards but is applicable to other public employers as well. The opinion stated that nothing in North Carolina law "prohibit[s] representatives of professional organizations from meeting with and talking with school boards as to matters related to teachers just as anyone could talk with such boards about educational matters."[7]

What public employers *may not* do is suggested by G.S. 95-98:

> Any agreement, or contract, between the governing authority of any city, town, county, or other municipality,

1. McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).
2. 295 F. Supp. 1068 (W.D.N.C. 1969).
3. 381 F. Supp. 644 (M.D.N.C. 1974).
4. A related question, which has not to my knowledge been litigated, is whether the constitutional right to petition the government for a redress of grievances includes the right to petition through a designated representative—e.g., a union. Consequently, it is not clear whether the public employer is under a constitutional duty to meet with and *listen to* designated representatives of groups of employees.
5. Local 660, International Association of Firefighters v. City of Charlotte, 381 F. Supp. 500 (W.D.N.C. 1974), *aff'd* 518 F.2d 83 (4th Cir. 1975), *cert. granted,* ___ U.S. ___ (1975).
6. *Id* at 503.
7. 40 N.C.A.G. 274 (1969).

or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect.

And so, public employers may not enter into a contract with the bargaining agent of a group of employers. This provision was specifically upheld in the *Atkins* case, and this holding was reaffirmed in the *Phillips* case. The Attorney General has also interpreted this section to mean that public employers may not "negotiate with professional or union organizations with a view to establishing a group or collective contract for public [employees]."[8] However, as indicated above (at note 4), it may be argued that employees at least have a constitutional right to petition their employers for a redress of grievances through their chosen representatives (i.e., the public employer must *listen* to them), and the Attorney General has stated that the public employer may sit down and talk with the employee representatives, just as he may with representatives of other groups. As a result of this listening and discussion process, the public employer may decide to modify its personnel policies in some way. If this is the result, then the line between "negotiations" and "discussions" becomes almost imperceptibly fine. In sum, while the law prohibits the signing of collective bargaining agreements, informal negotiations or discussions between public employers and employee representatives are lawful and do in fact regularly take place in North Carolina.

PRINCIPAL IMPACT OF A COMPREHENSIVE COLLECTIVE BARGAINING LAW

Two bills establishing the framework for a comprehensive collective bargaining system in the public sector are before Congress as of this writing. The first—H.R. 77—amends the National Labor Relations Act (NLRA) by striking out the language that excepts "any State or political subdivision thereof" from the definition of the term "employer." The effect of this amendment would be to bring state and local governments under the same law that governs labor relations in the private sector. The second bill, H.R. 1488, is patterned in many respects after the NLRA but sets up a National Public Employee Relations Commission to administer the collective bargaining system for public employees, just as the National Labor Relations Board (NLRB) governs private-sector labor relations. While there are some significant differences (discussed below) between these two bills, the principal and essential change that they would make in North Carolina law is the same—public employers would for the first time be under an enforceable obligation to sit down with the chosen representatives of employees and attempt in good faith to reach agreement on matters relating to wages, hours, and other terms and conditions of employment.

Perhaps the most striking aspect of this new obligation is that it is legally enforceable. Both bills provide that, if the employer fails to bargain in good faith over matters that are subject to negotiations, the union may file an unfair labor practice (ULP) charge with the enforcement authority (the Board or Commission, respectively). If found guilty of an unfair labor practice, the employer is subject to a cease-and-desist order by the Board or Commission, enforceable in the U.S. Court of Appeals.[9]

The duty to bargain in good faith has two parts: first, the parties must actually bargain; second, they must do so in good faith. If an employer or employee organization refuses to bargain at all about a subject that falls within the ambit of the phrase "wages, hours, and other terms and conditions of employment," or if an employer unilaterally adopts or changes a policy with respect to such a matter, then that constitutes a *per se* violation of the act, regardless of motive or intent. ULPs of this sort usually occur when one of the parties mistakenly concludes that the law does not require bargaining about a particular matter. The question of whether the parties are bargaining in *good faith* frequently is more troublesome, because the finder of fact in a ULP hearing must reach a conclusion as to the subjective intent of the accused party. It is clear that under a collective bargaining system, the parties must actively participate in the deliberations with a sincere desire to reach agreement. But both the NLRA and H.R. 1488 specifically state that neither party is required to make a concession or agree to a proposal of the other party. Attempting to recognize bad-faith bargaining in a context in which the parties are required to make a sincere effort to agree but are not legally bound to reach agreement is obviously a most difficult task. Reported decisions indicate that the trier of fact will look at the totality of circumstances involved, but the following generally constitute some evidence of a failure to bargain in good faith:

(1) A "take it or leave it" approach. A party presents its initial package and announces that, after careful consideration, this is the best it can do and the other party can take it or leave it.

(2) A failure to make any counterproposals.

(3) A failure to make any concessions whatever. (While concessions are not legally required, a complete absence of concessions of any kind may be used as evidence, along with other matters, of bad faith).

(4) Dilatory tactics—such as long delays in responding to proposals of the other side.

8. *Id.*

9. Unfair labor practice charges may be filed by individuals and employers as well as unions, and the ULP mechanism is designed to protect all rights guaranteed under the act, not just the right to bargain. And so ULP charges may be filed, for example, alleging that an employer or a union has interfered with an employee's right to join or not to join a union. In cases such as these, back pay may be awarded in addition to injunctive relief.

(5) Refusal to furnish relevant information to the other side.

As suggested above, the matters that employers and employee representatives must bargain about are "wages, hours, and other terms and conditions of employment." Under decisions interpreting the NLRA, whatever is covered by this phrase is considered a "mandatory subject of bargaining" and must be discussed by both the union and the employer at the request of one of the parties. The law also recognizes a small number of topics that cannot be bargained about and cannot be included in a collective bargaining agreement, such as clauses requiring the employer to hire only union members or to discriminate in employment on the basis of race or sex. These are called illegal subjects. All other possible subjects of bargaining — those that are neither mandatory nor illegal — are called "permissive subjects." The parties may discuss them if they choose, but neither party can force the other to negotiate about a permissive subject.

While the categorization of a particular matter as a mandatory or permissive subject of bargaining may have great practical significance,[10] it is not always easy to draw the line between the two categories. Some matters clearly fall within the mandatory scope of bargaining. For example, the term "wages" has been interpreted to encompass such matters as basic rates of pay, incentive plans, overtime, shift differentials, paid vacations, bonuses, severance pay, pension plans, and merit increases. Similarly, there is no doubt that work schedules and the length of the work day are embraced by the term "hours." But the phrase "other terms and conditions of employment" is so open-ended that it has caused much controversy. There is little disagreement that such matters as grievance procedures (including binding arbitration), vacations, holidays, sick leave, and procedures and standards for handling promotions, transfers, layoffs, and discharges are mandatory subjects of bargaining. But beyond the area where decided precedent offers some guidance, the line between mandatory and permissive subjects in the private sector remains to be drawn on a case-by-case basis using the general standard of whether a particular matter falls "within the core of entrepreneurial control."[11]

For three reasons, distinguishing between mandatory and permissive subjects of bargaining is sometimes more difficult in the public sector than in the private sector. First, since the public sector primarily produces services rather than goods, the connection between the working conditions of employees and matters of "public policy" is much closer. For example, as one state court judge explained it, a judgment concerning the number of hours worked by teachers also determines the number of hours of education received by the students. Similarly, the number of fire-fighters available to man a particular vehicle, or the number of police officers on duty at various times of the day, is a matter that bears upon the working conditions of employees as well as important questions of public policy. Second, because many public unions originated as professional associations concerned about the over-all improvement of a particular profession rather than employee benefits only, many public-sector employees tend to be more concerned than private-sector employees about the kinds of things that would be regarded in the private sector as matters under the exclusive control of management. Finally, some would argue that, to the degree that public employees are prohibited from striking, the scope of bargaining should be broader for them than for the private sector.[12] In any event, it appears that, should federal legislation pass, the scope of bargaining in the public sector will have to be determined on a case-by-case basis (in ULP proceedings) by balancing the legitimate rights of public employees to bargain about conditions of employment directly affecting them against the public's right to maintain exclusive control over matters of public policy through its elected and appointed officials.

As indicated above, the most dramatic change in North Carolina law that would result from the passage of either H.R. 77 or H.R. 1488 would be the obligation imposed on public employers to bargain (when requested to do so) in good faith with employee representatives over wages, hours, and terms and conditions of employment. Still, both bills contain several other important elements that ought to be briefly discussed.

First, under both bills public employees would enjoy the right to form, join, or assist employee organizations, free from interference, restraint, or coercion on the part of their employers. As already mentioned, the federal Constitution has been interpreted as protecting these rights for public employees, but passage of collective bargaining legislation would provide statutory protection as well (violation could be redressed through ULP proceedings, with back-pay awards available as a remedy if necessary). Protection against union interference with the right to join or to refuse to join a union would also be protected.

Second, both bills as written would protect the right of employees to engage in "other concerted activity," including strikes. The right to strike in the private sector means that striking employees generally[13] cannot be fired, unless they are striking for an unlawful purpose or in an unlawful manner. An employer may hire replacements for striking employees, but at the end of the strike, a striking

10 Not only may an employer or union be required to bargain about mandatory subjects, but also strikes in the private sector are not protected if designed to force agreement on permissive subjects.

11 Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964).

12 According to this line of reasoning, since strikes are permissible in the private sector over mandatory subjects of bargaining, the list of mandatory subjects should be limited to minimize the number of strikes. But since strikes are generally illegal in the public sector, the list of mandatory subjects can be expanded without increasing the number of strikes. See *Westwood Community Schools*, 1972 MERC Lab. Op. 313. One criticism of this reasoning is that, while public sector strikes are illegal, they do in fact take place with some regularity.

13 If a strike is prompted not by an impasse over bargaining items — a so-called "economic strike" — but by an employer's unfair labor practices, such as a refusal to bargain, then strikers cannot be permanently replaced.

employee must be given his job back if it has not been filled during the strike. Clearly, protection of the right to strike for public employees would be a very significant departure from the law of North Carolina and most other states as well. For that reason, it seems unlikely that either bill will emerge with the existing provisions extending the right to strike to all public employees fully intact.

Third, under both bills a mechanism would be established to determine the appropriate unit for bargaining and to test a union's claim that it represents the majority of employees in that unit.[14] Under both H.R. 77 and H.R. 1488, it would be possible for the employer and the union to agree mutually upon the existence of union representation in an appropriate unit. However, either the employer or the union would have the right to petition the federal agency (the National Labor Relations Board or the National Public Employee Relations Commission, according to which bill passed) to determine whether the bargaining unit proposed by the union was an appropriate one, and if so, whether a representation election should be held. If the union demonstrated to the agency that it had the support of 30 per cent of the employees in that unit, an agency-supervised election would be held.

Fourth, under either bill, enforcement of the collective bargaining contract could be obtained in federal court or in state court (in either case, federal law would prevail). Suit could be brought by the employer, by the union, or by any individual employee who believed that a right or benefit guaranteed by the contract was denied him. However, despite the possibility of enforcement by court suit, the more likely possibility is that enforcement would be achieved through a negotiated grievance mechanism – a mandatory subject of bargaining under either bill. State employees covered by the State Personnel Act and many local employees covered by local personnel ordinances now have access to grievance procedures. The essential difference between these procedures and those likely to be negotiated is that the latter usually provide (as a final step in the process) for submitting the grievance to an impartial arbitrator, who would be authorized to make a binding decision.

Finally, both bills would make available the facilities of the Federal Mediation and Conciliation Service (FMCS) to help unions and employers overcome bargaining impasses through the process of mediation. The FMCS mediators would be authorized to come in at the request of either party or at their own initiative. The mediators' job would be to propose solutions that they believe would be acceptable to both sides – not what they believe would be the most equitable solution, just what would be most acceptable. H.R. 1488 goes a step further in authorizing the FMCS representative to engage in "fact-finding" at the request of either party or at the initiative of FMCS. The fact-finder would conduct a formal hearing to obtain all relevant information concerning the dispute and then make written recommendations as to how the dispute *should* be settled. (If the parties did not accept the recommendations of the fact-finder, his report would be made public.) H.R. 1488 provides that, during the 60-day period after fact-finding begins, the public employer could not unilaterally change any terms or conditions of employment and the employees could not strike.

OTHER DIFFERENCES

The major general difference between H.R. 77 and H.R. 1488 is that H.R. 77, as an amendment to the NLRA, would bring public employees under the coverage of an act that is more extensive than H.R. 1488 and has four decades of case law interpreting it. In addition, the administrative agency charged with enforcing H.R. 77 already exists, whereas a National Public Employee Relations Commission would have to be created and staffed.

There are a number of specific differences between the two bills as well, but only a few of the most significant can be mentioned here. First, under the NLRA, an individual files a ULP *charge* with the NLRB. A formal *complaint* is issued by the Board only after investigation of the charge by an NLRB field staff member discloses that it has merit. If the complaint cannot be settled before a hearing, a government attorney prosecutes the case before an administrative law judge. Under H.R. 1488, however, it appears that a formal complaint would be filed directly by the aggrieved party and that party would be responsible for prosecuting the case before the National Public Employee Relations Commission (although a Commission general counsel may intervene in the proceeding). Second, H.R. 1488, unlike H.R. 77, provides that states or local governments that establish systems for governing employer-employee relations "substantially equivalent" to the one established by the act may apply to the Commission for an exemption from its provisions. Third, H.R. 1488 alone deals to some degree with the important question of the degree to which state and local laws that deal with mandatory subjects of bargaining may be pre-empted by collective bargaining agreements. It states:

> The duty to bargain includes the duty to negotiate about matters which are or may be the subjects of a regulation promulgated by any employer's agency or other organ of a State or subdivision thereof or a statute, ordinance, or other public law enacted by any State or subdivision thereof, and to submit any agreement reached on these matters to the appropriate legislature. [Sec. 5 (c).]

This provision at least makes it clear, for example, that if a state agency or local government attempted to include in a collective bargaining agreement provisions dealing

(*continued on page 31*)

14. The determination of whether a proposed unit is appropriate for bargaining purposes may be extremely important – in fact, the choice of bargaining units may be the most important factor in deciding the outcome of a representation election. In addition, dealing with the multiplicity of smaller units may pose other problems for the employer. See, *e.g.*, Lelchook and Lahne, "Unit Determination," *Collective Bargaining in Public Employment and the Merit System* (U.S. Dept. of Labor, 1972), pp. 81-92.

SCHOOL DISCIPLINE BASED ON THE MARITAL OR PARENTAL STATUS OF STUDENTS

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THE QUESTION WHETHER SCHOOL authorities have the power to discipline students because of their marital or parental status is a question that has long caused confusion and disagreement in the schools and the courts. As one commentator so aptly phrased it:

When teenagers combine wedding bells with school bells, the resulting commotion may sound like fire alarm bells to superintendents and boards of education.

The chaos and confusion increase in intensity for both pupils and educators when wedding rings, engagement rings, and teething rings are exchanged at the same time.[1]

This article will discuss the case law and the federal legislation that has grown out of this chaos and confusion.

MARITAL STATUS

Compulsory Attendance. It is generally recognized that the state has plenary power to compel school attendance. In several cases, however, courts have been asked to consider whether married students are covered by compulsory attendance statutes. The consensus of the reported cases is that married students are emancipated and no longer amenable to compulsory attendance laws.[2] The courts require a clear legislative mandate before they will require married students to attend school against their will.[3] State legislatures that have acted in the area of the rights of married students have usually done so to exempt them specifically from compulsory attendance laws.[4] In North Carolina, there is no specific statute exempting married students from compulsory attendance, nor any court decisions on the point. However, the Attorney General has ruled that a married child under sixteen may not be required to attend school.[5] The Attorney General reasoned that the married child is an emancipated adult, and the compulsory attendance statute is no longer applicable.

Expulsions and Suspensions. When schools have expelled or suspended students because they are married, the schools have sought to justify their actions as necessary to discourage teen-age marriages, to reduce drop-out rates, and to prevent the more precocious married students from corrupting other students. Attempts to exclude married students from the public schools permanently have been uniformly unsuccessful when students have challenged the school action in court.

In the reported cases, state courts have considered the issue of permanent exclusion on only two occasions, both in 1929.[6] In *McLeod v. State*,[7] the Mississippi Supreme Court emphasized both the state's policy of encouraging education of its children and the traditional public policy highly favoring marriage in finding a school board regulation, which barred otherwise eligible married students from attending public schools, to be arbitrary and unreasonable. The court concluded that married students could not be excluded from public schools without evidence of immorality or misconduct potentially harmful to the welfare and discipline of other students. Taking a view contrary to that of the school officials, the court found that other students would benefit from associating with married students.

More recently, in a case involving the United States

1. Corns, *School Bells and Wedding Bells*, 1 J. L. & Educ. 649 (1972).

2. *See In re* Goodwin, 214 La. 1062, 39 So.2d 731 (1949); State v. Priest, 210 La. 389, 27 So.2d 173 (1946); *In re* Rogers, 36 Misc. 2d 680, 234 N.Y.S.2d 172 (1962); State v. Gans, 168 Ohio 174, 151 N.E.2d 709 (1958), *cert. denied*, 359 U.S. 945 (1959).

3. Although a state may constitutionally require married students to attend school, one commentator has pointed out that there are at least two constitutionally protected exceptions to this power. States cannot compel school attendance when having to attend school would prevent the breadwinner from supporting his family or endanger the health of a pregnant mother. *See* Knowles, *High Schools, Marriage, and the Fourteenth Amendment*, 11 J. Fam. L. 711, 718 (1972).

4. *See, e.g.*, Fla. Stat. & 232.01 (Supp. 1974). The Florida statute exempts married students and unmarried students who are pregnant or have had a child out of wedlock from the compulsory attendance requirement. It also provides that "these students shall be entitled to the same educational instruction, or its equivalent, as other students, but may be assigned to a special class or program better suited to their special needs."

5. *See* 41 N.C. Att'y Gen. Op. 215 (Dec. 16, 1969).

6. Nutt v. Board of Educ., 128 Kan. 507, 278 P. 1065 (1929); McLeod v. State, 154 Miss. 468, 122 So. 737 (1929).

7. 154 Miss. 468, 122 S. 737 (1929).

Merchant Marine Academy,[8] a federal district court has ruled that the Academy could not constitutionally dismiss a cadet because he violated his agreement with the Academy by getting married. The court concluded that the right to marry is a fundamental right guaranteed by the United States Constitution and that the Academy regulation prohibiting cadet marriages was not justified by any compelling governmental interest. Finding no concrete evidence that the marriage prohibition was necessary for academic or disciplinary reasons, the court ordered the Academy to reinstate the cadet. In summarizing the law on school expulsions because of marriage, the court stated:

> [A] student may not be expelled from public school simply because of his marital status, without a factual showing of some misconduct or immorality, and without a clear and convincing demonstration that the welfare or discipline of the other pupils or the school is injuriously affected by the presence of married students.[9]

In cases of suspension, school officials have offered an additional justification for regulations excluding married students. They argue that the confusion and disorder caused by student marriages occur most often immediately after the marriage, and that during this difficult period of readjustment, when married students have the greatest influence on other students, it is better for the student marriage and for the school that the student be suspended. One state court accepted this rationale and upheld suspending a student for the remainder of the term in which she was married.[10] The majority of state courts that have ruled on this issue, however, have not approved even a short-term suspension based solely on the marital status of the student.[11] In *Board of Education of Harrodsburg v. Bentley*,[12] the Kentucky court found such a school regulation requiring a student who married to withdraw immediately from school for one year and then to re-enter only as a special student with the principal's permission to be arbitrary and capricious. The court ruled that the regulation was too sweeping in determining in advance that all married students must miss one year's education, regardless of the individual circumstances. In another case,[13] the Texas Civil Court of Appeals overturned the three-week suspension of a student husband and wife, finding that "marriage alone is not a proper ground for a school district to suspend a student." No evidence showed that the marriage had caused turmoil or interfered with the education of other students.

Restrictions on School Activities. School regulations excluding married students from extracurricular activities have met with greater success when challenged in court. School authorities justify these regulations as necessary to discourage child marriages, to curb dropout problems, and to preserve student marriages by emphasizing basic education while giving the student more time with his spouse and family. The schools have also argued that these regulations do not amount to a penalty on marriage or deprivation of education because extracurricular activities are a nonessential part of education. In a long line of cases, courts have accepted these justifications and upheld excluding married students from participating in extracurricular activities.[14]

More recently, however, federal and state courts have ruled that such restrictions are invalid.[15] These courts have rejected the argument that extracurricular activities are a nonessential part of public education, finding that they are, "in the best modern thinking, an integral and complementary part of the total school program."[16] Emphasizing that restricting a student's participation in extracurricular activities amounts to depriving him of an important element of his state-granted right to an education[17] and to infringing on his constitutional right to marital privacy,[18] these courts have required that the restrictions must be necessitated by a compelling state interest in order to withstand court scrutiny.[19] School systems, faced with this heavy burden of justification, have not successfully shown the necessary relationship between student marriages and their legitimate interest in reducing student dropouts, preventing substantial disruption of school operations, or protecting students from corruption.[20]

Most of the cases involving restrictions on extracurricular activities have been brought by star male athletes excluded from participating in athletic programs.[21] In

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8. O'Neil v. Dent, 364 F. Supp. 565 (E.D.N.Y. 1973).

9. *Id.* at 569. This statement is mere dictum as it concerns state-supported public education. However, in light of the great importance the Supreme Court has attached to the state-granted right to a free public education, it is probably an accurate statement of the standard that federal courts will apply in similar cases. *See, e.g.*, Goss v. Lopez, 419 U.S. 565 (1975); Brown v. Board of Educ., 347 U.S. 483, 493 (1954).

10. State *ex rel.* Thompson v. Marion County Bd. of Educ., 202 Tenn. 29, 302 S.W.2d 57 (1957).

11. *See, e.g.*, Board of Educ. v. Bentley, 383 S.W.2d 677 (Ky. 1964); Carrollton-Farmers Branch Indep. Sch. Dist. v. Knight, 418 S.W.2d 335 (Tex. Civ. App. 1967); Anderson v. Canyon Indep. Sch. Dist., 412 S.W.2d 387 (Tex. Civ. App. 1967).

12. 383 S.W.2d 677 (Ky. 1964).

13. Carrollton-Farmers Branch Indep. Sch. Dist. v. Knight, 418 S.W.2d 335 (Tex. Civ. App. 1967).

14. *See, e.g.*, Cochrane v. Board of Educ., 360 Mich. 390, 103 N.W.2d 569 (1960); State *ex rel.* Baker v. Stevenson, 189 N.E.2d 181 (Ohio App. 1962); Starkey v. Board of Educ., 14 Utah 2d 227, 381 P.2d 718 (1963).

15. *See, e.g.*, Hollon v. Mathis Indep. Sch. Dist., 358 F. Supp. 1269 (S.D. Texas 1973), *vacated as moot*, 491 F.2d 92 (5th Cir. 1974); Moran v. School Dist. Number 7, 350 F. Supp. 1180 (D. Mont. 1972); Davis v. Meek, 344 F. Supp. 298 (N.D. Ohio 1972); Holt v. Shelton, 341 F. Supp. 821 (M.D. Tenn. 1972); Bell v. Lone Oak Indep. Sch. Dist., 507 S.W.2d 636 (Tex. Civ. App. 1974).

16. *See, e.g.*, Davis v. Meek, 344 F. Supp. 298, 301 (N.D. Ohio 1972).

17. *See* Bell v. Lone Oak Indep. Sch. Dist., 507 S.W.2d 636 (Tex. Civ. App. 1974).

18. *See* Holt v. Shelton, 341 F. Supp. 821 (M.D. Tenn. 1972).

19. *See* Bell v. Lone Oak Indep. Sch. Dist., 507 S.W.2d 636 (Tex. Civ. App. 1974).

20. *Id.*

21. *See, e.g.*, Hollon v. Mathis Indep. Sch. Dist., 358 F. Supp. 1269 (S.D. Tex. 1973), *vacated as moot*, 491 F.2d 92 (5th Cir. 1974).

addition to the deprivation of a total education and the infringement of marital rights, courts in these cases have recognized the deprivation of the opportunity to obtain a college athletic scholarship or employment as a professional athlete as sufficient bases for court action.[22] Of course, the restrictions apply to all married students, male and female, and courts also have recognized that nonparticipation in extracurricular activities may deprive a student of opportunities for employment or college admission and scholarships—also protected student interests.[23]

This review of the case law indicates that today, especially in the federal courts, the marital status of students is an insufficient basis for restricting a student's attendance or participation in the full educational program offered in the public schools. In addition, Title IX of the Education Amendments of 1972 prohibits school rules limiting admission to school or participation in the educational program because of marital status when such rules treat students differently on the basis of sex.[24]

No appellate court decisions in North Carolina have dealt with marital status and school attendance. However, a long line of opinions from the North Carolina Attorney General have concluded that marital status alone is not a valid reason for denying a student his state-granted right to an education.[25] Also, at least one Attorney General's opinion has concluded that a school may not restrict the right of married students to participate in extracurricular activities.[26] These opinions have indicated, however, that if a married student discussed openly the "intimacies of married life," the school could show that the student was a menace to other students by setting a bad example and suspend the married student for "immoral and disreputable conduct." The case law outlined above indicates that the burden of proof the school must meet in showing corruption of other students is extremely high. In light of this case law, the court decisions on invalidating school regulations prohibiting obscenity,[27] and the increasingly open discussion of sex in today's society, we think it is highly unlikely that a court would uphold the suspension of a married student for this reason.

PARENTAL STATUS

Permanently excluding students because of their actual or potential parental status has been found to be impermissible in light of the state's strong policies encouraging the education of its children.[28] However, suspension and restrictions on school attendance based on parental status have been approved by a few courts.[29] In 1973 a federal district court in Georgia held that a school regulation prohibiting married students and students who were parents from attending day school to be permissible if it also allowed these students to attend night school if they desired.[30] The court accepted the school's argument that mixing these more precocious students with other students would lead to disruption and was thus rationally related to a legitimate school interest. Providing night classes was found to be a sufficient alternative educational program to withstand the argument of an unwed mother that prohibiting her from attending day school was an unconstitutional denial of her state-granted right to an education and her constitutionally protected rights to procreation and to equal protection. In any case, the regulation was found to violate the equal protection clause because night students were required to pay for their tuition and books, while day students were not. The Georgia case is contrary to the trend of the cases concerning the rights of students who are married or are parents.

The Supreme Court has held that overbroad, conclusive presumptions that pregnant teachers are physically unfit to teach at a fixed point in their pregnancy are unconstitutional.[31] Analogous regulations that deprive a student of her protected interest in an education would also seem to violate the due process clause. In addition, Title IX of the Education Amendments of 1972 has forbidden sex discrimination by recipients of federal educational funds,[32] and the regulations enforcing this legislation expressly prohibit discrimination or excluding any student from a school's educational program, including extracurricular activities, "on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom" unless the student voluntarily asks to be excused or her physician certifies that a different program is necessary for her physical or mental health.[33] The school may require a pregnant student to submit a doctor's certification that she is physically and emotionally fit to participate in the normal educa-

22. *See, e.g.*, Moran v. School Dist. Number 7, 350 F. Supp. 1180, 1182 (D. Mont. 1972); Indiana High School Athletic Ass'n. v. Raike, 329 N.E.2d 66 (Ind. App. 1975).

23. *See* Romans v. Crenshaw, 354 F. Supp. 868 (S.D. Tex. 1972).

24. 20 U.S.C. § 1681 (Supp. 1972), and 45 C.F.R. §§ 86.21 (c), 86.40 (1975). *See also* Dellinger, *Sex Discrimination in the Public Schools: Title IX of the Education Amendments of 1972*, V SCHOOL L. BULL. (Oct. 1974).

25. *See, e.g.*, 33 Biennial Rpt. N.C. Att'y Gen. 265 (August 2, 1954); 32 Biennial Rpt. N.C. Att'y Gen. 484 (May 12, 1954). Many more recent unpublished opinions concur in this result.

26. *See* Letter from the N.C. Attorney General to Dr. Charles Carroll, Supt. of Public Instruction, May 24, 1956 (unpublished).

27. For a discussion of the First Amendment protection of speech frequently considered obscene by school officials, see Phay and Rogister, *Student Distribution of Nonschool-sponsored Literature*, 6 SCHOOL L. BULL. (April 1975).

28. *See* Nutt v. Board of Educ., 128 Kan. 507, 278 P. 1065 (1929); and Alvin Indep. School Dist. v. Cooper, 404 S.W. 2d 76 (Tex. Civ. App. 1966).

29. *See* State *ex rel.* Idle v. Chamberlain, 175 N.E.2d 539 (Ohio App. 1961), in which a regulation requiring a pregnant student to withdraw from school as soon as she learned she was pregnant was found to be proper and wise to protect the health, safety, and well-being of the student from the "typical rough and tumble characteristics of children in high school." In this case the school allowed the student to receive full credit by doing her assignments at home.

30. Houston v. Prosser, 361 F. Supp. 295 (N.D. Ga. 1973). *See also* 45 C.F.R. § 86.40(b) (3), discussed at note 33 *infra*.

31. Chesterfield County Sch. Bd. v. LaFleur, 414 U.S. 632 (1974).

32. 20 U.S.C. § 1681 (Supp. 1972).

33. 45 C.F.R. § 86.40 (b) (1975). A school may, however, provide a separate educational program for pregnant students if admittance to the program is completely voluntary and the instructional program is comparable with that for other students. 45 C.F.R. § 86.40(b) (3).

tional program, but only if a similar certificate is required of all students requiring a physician's care for other conditions.[34] These regulations also require that schools recognize pregnancy as a valid reason for a reasonable leave of absence, after which the school must reinstate the student to her original status.[35] Thus, exclusion from school or restriction of school activities of pregnant students is not permissible until it is determined for each individual that health problems justify such actions.

Most restrictions on students because of their parental status concern unwed mothers. Schools usually seek to justify these regulations not because of the pregnancy itself but as necessary because of the student's "lack of moral character" and the possibility that her presence will contaminate other students and taint their education. While "lack of moral character" has been recognized as a legitimate reason for excluding a child from public schools by some courts,[36] the fact that a student is an unwed mother has been found to be insufficient as the sole basis for exclusion.[37] Courts that would allow exclusion based on "lack of moral character" require that before excluding an unwed mother, she must be given "written notification of the charges of immoral character" and a due process hearing by school officials to determine whether she is "so lacking in moral character that her presence in the public school would taint the education of other students."[38] Another problem with these regulations is that they most often cover only unwed mothers and are therefore subject to attack on equal protection and sex discrimination grounds.[39] These same objections exist even if the rule covers unwed fathers, as well as mothers, because the difficulty of proving paternity means that in most cases the rule is discriminatory as applied.[40] Under recent federal statutes and federal and state case law, it is clear that broad regulations automatically excluding students because of pregnancy are impermissible. Excluding a student because of pregnancy is permissible only after an individual determination that health considerations dictate such action and never as a basis for disciplinary action.

CONCLUSION

Today, neither marital status nor parental status is a justification per se for excluding a public school student from school or restricting that student's participation in the school curriculum or extracurricular activities. These factors may be "some" evidence of misconduct or health problems that, with other things, would justify temporary suspension, but never permanent exclusion. Any suspension or restriction, however, must be justified on a case-by-case basis, and there is a heavy burden on the school to show that the student should be deprived of his or her state-granted right to a free, public education. School regulations should recognize that only rarely will marital or parental status be a factor in expulsions or suspensions.

34. 45 C.F.R. § 86.40(b)(2) (1975).
35. 45 C.F.R. § 86.40(b)(5) (1975).
36. *See* Perry v. Grenada, 300 F. Supp. 748, 753 (N.D. Miss. 1969).
37. *See, e.g.*, Shull v. Columbus Municipal Separate Sch. Dist., 338 F. Supp. 1376 (N.D. Miss. 1972); *see also* Ordway v. Hargraves, 323 F. Supp. 1155 (D. Mass. 1971).
38. *See* Shull v. Columbus Municipal Separate Sch. Dist., 338 F. Supp. 1376 (N.D. Miss. 1972). In this case, the court awarded the plaintiff $1,500 for attorney's fees because the school had excluded her in the face of earlier court decisions holding the same regulation invalid.
39. *See* 45 C.F.R. § 86.40(a) (1975), which states:
A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.
40. In North Carolina, the Attorney General concluded in 1969 that a school board could promulgate a rule allowing a pregnant, married student to complete the semester in session but requiring her to withdraw from school thereafter until the child is born. This opinion also indicated that a rule requiring immediate expulsion of unmarried students who become pregnant would be permissible. 40 N.C. Att'y. Gen. Op. 259 (Feb. 14, 1969).

Collective Bargaining (continued from page 27)

with the privacy of employee records, these provisions could not supersede state law dealing with these matters. Fourth, supervisors would be covered under H.R. 1488, although they would not be in the same bargaining unit as nonsupervisors (except for fire-fighters); under the NLRA, supervisors are excluded from the definition of employees. Fifth, under H.R. 1488, the employer would have to withhold union dues from employee paychecks at the request of individual employees, while under the NLRA such an arrangement is a mandatory subject of bargaining. Finally, the list of unfair labor practices that may be committed by unions would be less extensive under H.R. 1488 than under the NLRA.

PROSPECTS FOR PASSAGE

There is general agreement that congressional consideration of either H.R. 77 or H.R. 1488 will not take place until the Supreme Court decides *National League of Cities v. Dunlop,* a case challenging the constitutionality of applying the Fair Labor Standards Act to state and local governments. The essential issue in that case is whether and to what degree the federal government's power to legislate under the "commerce clause" should be limited by the countervailing principles of states' rights inherent in our federal system. If the Court declares the FLSA unconstitutional as applied to state and local governments, then passage of federal legislation requiring states to allow public-sector collective bargaining (which legislation would also have to be based upon the power to regulate commerce) becomes less likely. Some observers believe, however, that collective bargaining provisions could then be appended to legislation authorizing financial assistance to state and local governments—such

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WORK RELEASE IN NORTH CAROLINA'S STATE PRISONS

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SOCIETY SENTENCES PEOPLE TO PRISON for four basic reasons: to rehabilitate them, to incapacitate them, to deter them and others, and to make them "pay for their crime."[1] Society's judgment of the relative importance of these various goals of imprisonment has varied through time. Until the later part of the nineteenth century, retribution and deterrence were considered the most important reasons for imprisonment. The reform movement in corrections that began in the later part of the nineteenth century sought to increase the relative importance of rehabilitation as a goal of imprisonment. The leaders of this movement saw the prison inmate as a "sick" person who was to be cured through treatment, rehabilitative programs. Thanks largely to the efforts of these reformers, rehabilitation came to be considered the primary goal of imprisonment.

There are two basic approaches to rehabilitation. One approach (personality-changing) seeks to alter the prisoner's personality mainly through psychological treatment so that he will no longer wish to commit illegal acts. The second approach (opportunity-changing) seeks to alter the opportunities facing a man after release by providing him with such things as new job skills and job and marital counseling. This approach holds that a man turns to illegal activity only because he lacks legitimate opportunities.

In recent years the predominance of the goal of rehabilitation has come under sustained and persuasive attack. The strength of this attack is largely due to the failure of rehabilitative program evaluations to show that these programs have any substantial effect on the likelihood that a man released from prison will return to illegal activity. The vast majority of these evaluations have dealt with programs that seek to change personality and not with programs that seek to change opportunities.[2]

By far the most important rehabilitation program in North Carolina is work release, which allows prisoners to work in the community by day and return to prison after work. The program has expanded from eight inmates in the first two years the program was authorized (July 1, 1957, to July 1, 1959) to more than 1,900 men[3] per day—or approximately 17 per cent of the total prison population in North Carolina—in the third quarter of 1973.[4]

The legislators who established the work-release program and the members of the Department of Correction who administer it believe that participation in the work-release program leads to a decline in criminal activity after release. They feel that this decline in criminal activity will occur because work release will both change a prisoner's personality (improve his attitude toward both himself and society) and change the opportunities that face him after release. Participation in work release is believed to change post-release opportunities in a number of ways. First, it is believed to improve the releasee's job skills and job habits, thus giving him better legitimate opportunities after he is released. Second, the program is thought to help keep his family together, since he contributes to their support. Third, participation in the program is believed to ease his readjustment to society, since he is not totally divorced from it while on work release. In addition, a man who leaves prison after being on work release has both a job and the funds he accumulated while on the program to help his adjustment after release.

The North Carolina Department of Correction, in an effort to examine the soundness of their faith in the rehabilitative effects of work release, asked the Institute of Government to evaluate the program. The Department wished to know whether participation in the work release program did lead to a decline in criminal activity after release, and, if so, whether this decline was due to changes in the releasee's personality or to changes in the opportunities available to him.

1. Douglas Gill gives an excellent description of each of these in "The Use of Criminal Sanctions," *Popular Government* 40 (1974), 1-3.

2. For reviews of these evaluations, see R. Martinson, "What Works? –Questions and Answers about Prison Reform," *Public Interest* 35 (1974), 22-54, and J. Robinson and G. Smith, "The Effectiveness of Correctional Programs," *Crime and Delinquency*, 17 (1971), 67-80.

3. Quotas for laundry and other institutional work done by women were so great in 1969 and 1971 that few women were on work release, and none in the South Piedmont area where this evaluation was conducted.

4. After reaching a peak in June, 1974, the number of prisoners on work release has declined due to the general economic recession. The number of men on the program reached a low of 1,130 in February, 1975, and has increased since then to 1,413 in September.

THE WORK-RELEASE EXPERIENCE

How does the prison experience of a man on the work-release program differ from the experience of inmates who are not on work release? If he receives a prison term, a convict is taken to one of the state's reception and diagnostic centers, where Department of Correction personnel review his record and administer various tests to determine the appropriate level of supervision for him. The diagnostic center personnel also determine what treatment program they feel would be best for him while he is in prison. Next, the convict is assigned to a prison unit based on the level of supervision he requires, space availability, and the rehabilitative program recommended by the diagnostic center.

Only when he arrives at an assigned prison unit can the situation of a future work releasee begin to diverge from that of an inmate who will not participate in the program. Divergence in experience is possible at this point for some prisoners because of a 1975 amendment to the work-release statute that became effective July 1, 1975. Under this amendment, the Secretary of Correction may authorize a man's placement on work release as soon as he arrives at his prison unit if the man: (1) is considered to be a minimum security risk, (2) has a sentence of five years or less, (3) has a job, and (4) has the sentencing judge's recommendation for immediate placement on work release. But since the coincidence of all these factors is rare, a man who will later be on work release usually must spend the first month or so of his incarceration in routine prison activities. This time allows officials of the prison unit to get to know the man and learn whether he is responsible enough to receive work-release privileges.

Men with sentences of more than five years are not eligible to participate in the work-release program until they have served 15 per cent of their sentences. Hence, these men will spend the first 15 per cent of the sentence in normal prison activities, and then they may be recommended for work release by the Division of Prisons. However, before such a man can be placed on the program, the Board of Parole must approve his work-release application. Before approving a work-release application, the Board of Parole conducts a field investigation to determine whether work release is an appropriate program for him and whether the job he proposes would be in the best interests of both him and society. In general, the Parole Board has used work release as a testing ground for parole. Because of this, a man with a sentence of more than five years is likely to participate in normal prison activities until approximately six month before his consideration for parole.[5]

Before an individual can be seriously considered for work release, he has to have a job. In general, work releasees' jobs are obtained for them by employees in their prison unit (64 per cent of the time);[6] only 17 per cent were able to keep the job they had before entering the prison system. This percentage is based on a sample of men who participated in work release in 1969 or 1971 and should be considerably greater now due to the 1975 amendment to the work-release statute discussed above. Before this amendment, the three- to six-week processing lag required for placement on work release meant that many potential work releasees lost their jobs. Ten per cent of work releasees obtain their work-release jobs by their own efforts. It is often difficult for a potential work releasee to obtain his own job since usually he must be accompanied to interviews and prison units have too few employees to serve this function. (If additional personnel or appropriate community volunteers were available, training and practice in job search methods could be given to potential work releasees. This experience might prove very useful.) The remaining work releasees either obtained jobs through friends and relatives (5 per cent) or by a variety of other methods such as through local church and civic groups (4 per cent).

As Table 1 shows, the way in which a man obtains his work-release job is a very important factor in determining whether he remains on that job after release. While over 90 per cent of the men who held work-release jobs obtained for them by the Department of Correction left the jobs within six months after release, less than 60 per cent of those who found their jobs by other means did so.

What type of jobs do these men obtain? The following were typical of the jobs obtained by work releasees in the summer of 1973: (1) helper with a chicken processor, working five days a week, being paid $1.90 per hour, with private means of transportation; (2) painter with a decorating firm, working five days a week from 8:00 a.m. to 5:30 p.m., being paid $2.25 per hour; (3) mill laborer with a lumber company, working five days a week from 7:30 a.m. to 4:30 p.m., being paid $1.70 per hour, with transportation provided by the Division of Prisons; (4) machine operator with a heavy construction firm, working five days a week from 7:00 a.m. to 6:30 p.m., being paid $2.25 per hour, with transportation provided free by the employer.

How do work-release jobs compare with the jobs these men held before they entered prison? In general they require lower levels of skill and pay lower wages. The average wage on work release was $.46 per hour less than the average wage a man had received on his pre-prison job. Forty-four per cent of the jobs held by work releasees were classified in the lowest skill category of the U.S. Department of Labor's occupational classification, while only 27 per cent of the jobs they held before going to prison were so classified. Although former work releasees overwhelmingly supported the work-release program when interviewed, they did voice numerous and understandable complaints about their work-release jobs.

5. A man is eligible for parole after he has served 25 per cent of his sentence.

6. All data reported in this section unless otherwise noted is based on systematic samples from random starts of men on work release in the South Piedmont in 1969 or 1971.

Table I

Relationship Between the Method of Obtaining Work Release Job and Amount of Time Remaining on This Job After Release, by Percentage in Each Category (n = 217)

Number of months remaining on work-release job after release	Method of Obtaining Job			
	Own efforts (n = 17)	Job before prison (n = 38)	Prison personnel (n = 146)	Family, friends, or other (n = 16)
Left immediately	47%	18%	70%	63%
6 months or less	29	24	23	6
More than 6 months	24	58	7	31
	100%	100%	100%	100%

These facts and reactions point up the need for a wider variety of higher skilled jobs for work release. Shortage of personnel makes it very difficult for the Division of Prisons actively to search out more desirable work-release employment However, it would seem that community involvement in the search for jobs could be beneficial.

Not surprisingly, not all placed on work release complete the program successfully. Sixteen per cent of the men placed on the program are removed from it before they complete their prison term because they violate the rules governing the program or escape, and may be considered work-release failures. The remaining men either complete the program successfully (77 per cent) or are removed from it for such reasons as illness, transfer to another prison unit, or the ending of their job (7 per cent).

CRIMINAL ACTIVITY AFTER RELEASE

To determine whether participation in work release decreases the likelihood of return to illegal activity, two random samples were selected: (1) 297 men who had been in prison and on the work-release program in 1969 or 1971;[7] and (2) 344 men who had been in prison in 1969 or 1971, did not receive work release, but did not appear to have been ineligible for work release at the time. Men in both samples were followed up from the date of their discharge from prison custody until an interview and check of their criminal record could be conducted. Interviews and record checks were carried out by the research staff between July 1, 1973, and June 30, 1974. Because prison discharge dates and interview dates differed, men were followed-up for varying amounts of time after discharge, ranging from three to 71 months and averaging 37 months. There were no significant differences in average follow-up period for any of the groups in the study.

Eighty-two per cent of the former work releasees and 78 per cent of the men who had not been on the program were arrested during the period in which the project followed their activities. The majority of these men were also convicted of an offense: 76 per cent of the former work releasees and 70 per cent of the men who had not been on the program. Considering only those convictions that resulted in imprisonment of 15 days or more, 31 percent of former work releasees and 34 per cent of the men who had not been on the program had such a conviction in the period during which the project followed their activities.

The above figures indicate no substantial differences in post-release criminal activity between work releasees and those who had not been on work release. To discover a difference, we must look more closely at the seriousness of criminal activity. We can define seriousness in terms of (1) whether an offense is classified as a misdemeanor or a felony, and (2) the length of sentence that an offender receives for an offense.

Eighteen per cent of the men who did not participate in the work-release program were convicted of felonies in the period during which the project followed their activities, whereas only 8 per cent of the men who did participate were convicted of such offenses. Of the men who were in prison for a felony in 1969 or 1971, 6 per cent of the former work releasees and 32 per cent of the men who had not been on the work-release program were convicted of a felony in the period during which the project followed their activities. Of the men who had been in prison in 1969 or 1971 for a misdemeanor, 8 per cent of the former work releasees and 12 per cent of the men who had not been on the work-release program were convicted of felonies during the follow-up period. According to this measure of seriousness, men who had been on the work-release program committed less serious offenses after release than did men who had not participated in the program. This difference in seriousness of recidivism was particularly marked for men who had been in prison for felonies.

What about the other measure of seriousness, length of sentence received? Former work releasees had an average sentence of five months for their conviction that resulted in imprisonment in the period during which the project followed their activities; men who had not been on the program had an average sentence length of 13 months. The average sentence length received for the most serious offense committed after release was one year, six months for men who had been on the work-release program, and three years and 10 months for those who were not on the program. The probability that such large differences in average sentence length occurred by chance is extremely small—or more formally, these differences are statistically significant.[8] These differences should be interpreted as indicating something inherently different in the two groups.

Is the difference in seriousness of recidivism due to the one group's participation in the work-release program or to some other characteristics in which the two groups dif-

7. This sample contains both men who were unsuccessful and men who were successful on the work-release program and, thus, provides a rigorous basis for measuring the effectiveness of the work-release program

8. The test of statistical significance used is a one-tail test at the 5 per cent (= .05) level

fer? When one compares the characteristics of the group that participated in the work-release program with the group that did not, one finds significant differences in a number of important characteristics. To determine whether participation in the work-release program, in and of itself, changes the seriousness of post-release criminal activity, one must adjust statistically for other factors and see whether men who participated in the program are still found to commit less serious offenses.

First, we adjusted for the seriousness of each man's criminal activity before his incarceration in 1969 or 1971. This was done by judging each man's performance after release only in relation to his own performance before his sentence in 1969 or 1971. Under this scheme, a man who had received an average sentence of five years when convicted before his 1969 or 1971 sentence and a sentence of five years when convicted in the period during which the project followed his activities would be judged to have no change in the average seriousness of his criminal activity between the two periods. On the other hand, if he received a seven-year sentence during the follow-up period, we would say that the seriousness of his criminal activity *increased* by two years, and if his sentence was two years, we would say that the seriousness of his criminal activity *decreased* by three years.

Men who participated in the work-release program *decreased* the seriousness of their criminal activity, while men who did not participate in the program *increased* theirs (see Table 2). Specifically, the average sentence length received by men who had participated in the work-release program declined by four months compared with their average sentence length before 1969 or 1971, while the average sentence length for men who had not participated in the program increased by five months. These results are interesting. Men who did not participate in the work-release program were worse offenders after their prison experience than they had been before it. On the other hand, men who participated in the work-release program not only did not behave worse, but actually behaved better.

But what about the other characteristics, such as age and marital status, in which these two groups differed? A statistical analysis (multiple regression) that adjusted for these other differences showed that men who had participated in work release significantly decreased the seriousness of their criminal offenses when compared with men who had not been on the program. Specifically, being on work release meant, on the average and adjusting for other factors, a decline in average sentence length of 13 months when compared with not being on work release. It should be emphasized that this positive effect results even when all significant intergroup differences are adjusted for.[9]

9. Length of the follow-up period was another factor adjusted for in the multiple regression model. It proved to be not significantly related to change in average sentence length, probably because the follow-up period averaged 37 months, and most recidivism occurred within 24 months.

Table 2

Difference in Average Seriousness of Crimes Committed Before and After the Sample Sentence

Change in average seriousness	Relative Frequency (percentage)	
	All work releasees (n = 297)	Not on work release (n = 344)
IMPROVEMENT		
Average seriousness before exceeds average seriousness after by 3 years or more	5	5
Average seriousness before exceeds average seriousness by 1 year to 2 years, 11 months	18	9
Average seriousness before exceeds average seriousness after by less than a year	24	22
NO DIFFERENCE	34	41
DETERIORATION		
Average seriousness after exceeds average seriousness before by less than a year	13	10
Average seriousness after exceeds average seriousness before by 1 year to 2 years, 11 months	3	6
Average seriousness after exceeds average seriousness before by 3 years or more	3	7
	100	100
Mean:	-4.33	5.01
Standard deviation:	27.58	50.04

TEST FOR DIFFERENCE BETWEEN MEANS

All work releasees vs. non-work releasees: $t = 2.86$*

*Statistically significant at the 5 per cent level ($\alpha = .05$).

On the basis of this evidence, it appears that although participation in the work-release program does not prevent return to illegal activity, it does decrease the seriousness of illegal activity. Was this improvement due to a change in personality or opportunity?

PERSONALITY CHANGES

Personality changes such as improved attitudes toward one's self and society are very difficult to measure, but psychologists have made considerable strides in this area. We measured attitude changes by selecting appropriate scales (Pd, HC, Ma, O1, and ES scales) from the Minnesota Multiphasic Personality Inventory (MMPI). The MMPI was chosen for use because many inmates who enter the North Carolina prison system are given this test. By comparing the scores of members of the sample when they enter prison and when they are interviewed after release, historical changes in attitudes can be noted.

The results of these tests show that men who have participated in the work-release program have attitudes significantly less amoral and antisocial and demonstrate less hyperactivity than do men who have not been on the pro-

gram. Such differences in attitudes did not exist when these men entered prison. An examination of the subscales of one test (Pd) indicates that the less antisocial and amoral attitudes for men who had been on work release takes the form of a better attitude toward society and a greater feeling of self-worth. These are exactly the type of changes that one would expect a program like work-release to allow. An improved attitude toward work might also be expected. Although men who had been on work release do score lower on the occupation instability scale than men who were not on work release, the difference in mean score between groups is not significant. This failure of significant improvement in attitude toward work may be a reflection of the failure of work release to change significantly the type of jobs that the work-release participants pursue after release.

OPPORTUNITY CHANGES

Does participation in work release change opportunities as well? Apparently so. Participation appears to change a number of the situations that a man faces after release. These changes may be measured both objectively by comparing the situations of men who participated in work release with the situation of those who did not, and subjectively by asking men who had been on work release whether they feel that participation in the work-release program changed the situation they faced on release.

Objectively, after release men who had been on work release had more stable job records, lower unemployment rates, and higher wages than those who had not participated in the program. Subjectively, 16 per cent of the men who had been on work release said that work release helped them after release by providing a job reference, and 25 per cent said that the work experience they gained while on work release helped them after release.

Those who had been on work release did not experience significantly greater family stability than those who had not participated in the program. However, work-release participants felt that the ability that work release gave them to support their dependents while in prison was a major benefit of the program.

The work-release program also does not seem particularly effective in providing men who participate in it with new skills, but it apparently prevents a decline in the skill level of the first job after release. The skill level of the first job after release for work-releasees was only marginally higher than the skill level of the job they had before going to prison. However, the skill level of the first job after release for former work releasees was significantly higher than the skill level of the first job obtained by men who had not been on the work-release program. Perhaps this difference results from the fact that men who have not been on work release are in a dire financial situation and must accept the first job they can find after release. Twenty-three per cent of the men who had been on the work-release program said that they had learned new job skills that they could use after release.

Participation in the work-release program seems to ease a man's adjustment after release from prison. Work release provided a job at release for 39 per cent of the men who had been on the program. Due largely to this fact, releasees on the average obtained their first post-release job twice as fast as men who had not been on the program (10 vs. 20 days).

The effect of the accumulated money that work release provides a man on release is rather interesting. The immediate effect appears to be early but relatively minor trouble. Former work releasees were arrested significantly earlier than men who had not been on the program (see Table 3); these arrests usually involved alcohol (public drunkenness, driving under the influence, assault on a female). The joy of release, coupled with the receipt of accumulated work release funds, probably leads to celebration that may get a man in early minor trouble. But the over-all effect of those funds seems to be positive: men with a greater number of months on work release, and therefore with more accumulated funds, tend to be less serious offenders than men with fewer or no months on the program. Another positive effect of the money is that it enables a man to search for a good job rather than having to take the first job that comes along. Men who did not remain on their work-release jobs after prison were able to obtain substantially better jobs than men who remained on their work-release jobs or men who had not been on the program. The men who had participated in the work-release program found the money it provided them on release to be its single most important benefit.

The effect of contacts with the free community is very difficult to measure, but men in the work-release program felt such contact to be beneficial. Thirty-three per cent of them felt that such contacts eased their adjustment.

These facts indicate that participation in the work-

Table 3

Length of Time Until First Arrest After Release from Sample Sentence

Length of Time (in months)	Relative Frequency (percentage)	
	All Work Releasees (n = 244)	Not on Work Release (n = 269)
0-3	30	25
4-6	22	17
7-9	13	15
10-12	9	10
13-24	21	20
25-36	4	9
over 36	1	4
	100%	100%
Mean:	8.8	11.2
Median:	6.1	8.0
Mode:	4.0	1.0
Standard deviation:	8.4	10.7

Test for difference between means
All work releasees vs. non-work releasees: $t = 2.76^*$
*Significant at the 5 per cent level ($\alpha = .05$).

release program decreases the seriousness of post-release criminal activity by changing both the attitudes and the opportunities of those who participate in it.

CONCLUSIONS

The data presented here support the conclusion that, while being on work release does not result in total abstinence from illegal acts, it helps decrease the seriousness of such acts. A man with at least one prison conviction and usually several is placed on a job for approximately five months of his latest prison term. Can a major adjustment in his life style after release really be expected? Limited adjustments seem more reasonable to expect. Perhaps this limited change is really no more than can be reasonably expected of work-release.

There is widespread disenchantment with rehabilitative programs today. Perhaps one reason is that too much was expected. Most evaluations of rehabilitative programs to date have used rates of return to criminal activity (recidivism rates) as their principal measure of success. Significant differences in recidivism rates between a treated and nontreated group will result only if a substantial number of the group treated cease to commit illegal acts, i.e., decide to alter (substantially) the way they live their lives. We may note in this regard that a number of evaluations showing that participation in rehabilitative programs have no effect on recidivism rates do decrease the seriousness of their post-release criminal activity.[10] It appears that in criminal rehabilitation as in many other social programs, the failure to achieve inflated expectations has led to complete rejection of the possibility of social change.

Increased emphasis on incapacitation and deterrence may now be necessary to reduce crime, but it also seems beneficial to continue rehabilitative programs that can be shown to have benefits that more than outweigh their costs. I believe that work release in North Carolina is such a program and should be continued and improved. The immediate financial benefits of work release are substantial.[11] In addition to these immediate financial benefits, the decline in the seriousness of criminal activity for men in the work release program should lead to long-term reductions in the costs of correction in North Carolina.[12]

10. *See,* for example, A. J. W. Taylor, "An Evaluation of Group Therapy in a Girls' Borstal," *International Journal of Psychotherapy* 17 (1967), 168-77; C. F. Jesness, "The Fricot Ranch Study: Outcomes with Small Versus Large Living Groups in the Rehabilitation of Delinquents," Research Report No. 27, California Youth Authority, October 1, 1965 (mimeographed); and R. B. Levinson and H. L. Kitchenet, "Demonstration Counseling Project," 2 vols. (Washington, D.C.; National Training School for Boys, 1962-1964) (mimeographed).

11. *See* A. D. Witte, "North Carolina's Work Release Program: Does It Help Reduce Crime?" *Newsletter of the Institute for Research in Social Science,* 60 (1975), and W. D. Cooper, "An Economic Analysis of the Work Release Program" (unpublished Ph.D. dissertation, North Carolina State University, 1968).

12. Copies of the complete report ("Work Release in North Carolina: An Evaluation of Its Post-release Effects") from which this article was excerpted can be purchased from the Institute of Research in Social Science of the University of North Carolina at Chapel Hill.

Collective Bargaining (continued from page 31)

as the Revenue Sharing Law and the Housing and Community Development Act—just as antidiscrimination provisions are now included in these laws.

One thing is certain: Nearly every major national union representing public employees—such as the American Federation of State, County and Municipal Employees, the National Education Association, and the American Federation of Teachers—has declared that passage of national collective bargaining legislation is a major priority for this session of Congress. The unions disagree somewhat as to which bill to support, but published reports now seem to indicate some consensus developing for support of a slightly modified version of H.R. 77.

CONCLUSION

There is no guarantee that collective bargaining legislation will pass Congress this session (in fact, recent reports suggest that public sentiment, as perceived by Congress, is running against legislation extending benefits to public employees at this time[15]), or that any bill passed will not be vetoed by the President. And even if a bill passes, collective bargaining would then be required only in communities where the public employees have organized and requested it. For most North Carolina cities and counties, this means that the impact of federal collective bargaining legislation would be substantially less than the impact of the Fair Labor Standards Act. Nevertheless, for the state and for a number of local governments, collective bargaining may one day become a reality, and an understanding at this time of what a comprehensive collective bargaining law is all about and how it could change personnel practices may be useful.

15. *Government Employee Relations Report,* No. 626, October 6, 1975, pp. 1-6.

Presidential Primary Revisited

H. Rutherford Turnbull, III

THE FALL 1975 ISSUE of Popular Government contains an explanation and analysis of the North Carolina General Assembly's action in deciding not to abolish the presidential primary and separating the date of that election from the date of state and local primaries. That analysis focuses on the undeniable fact that some members of the General Assembly were motivated by considerations revolving around the likelihood that Alabama Governor George Wallace and former North Carolina Governor Terry Sanford would both enter the North Carolina presidential primary. It also mentions other factors motivating certain members of the General Assembly but treats them in relation to the Sanford-Wallace contest. The analysis should be extended to treat these factors separately and to point out that some members of the legislature, particularly in the House of Representatives, were attempting to accomplish purposes unrelated to the Wallace-Sanford confrontation when they sought to abolish the presidential primary or to separate it from the state-local primaries.

FOR EXAMPLE, SOME MEMBERS sought to abolish the presidential primary altogether (H 269), and some wanted to move the state and local primaries from May into the summer and leave the presidential primary in May (H 11). Those who sought abolition included some legislators who thought that the 1972 presidential primary was unduly damaging to the state Democratic Party. In their opinion, the damage was done in several ways: First, they believed that the eventual Democratic nominee, Senator George McGovern, had been perceived by North Carolina voters as being closely identified with former Governor Terry Sanford, who actively supported both McGovern in the national campaign and also worked in North Carolina on behalf of the Democratic gubernatorial nominee, Hargrove ("Skipper") Bowles. Sanford's association with McGovern was thought to have had negative effects on Bowles' campaign. Second, many thought that in the 1972 presi-

dential primary the "moderate" party "regulars"--whom many believe to be most representative of the party--were displaced by the "Wallace" or "conservative" members of the party, who turned out in force to support Wallace in the 1972 primary and probably would do so in the 1976 primary. Third, they believed that the state's delegates to the Democratic National Convention had been left with no flexibility to negotiate at that convention, since their ballots were committed to Wallace through the first ballot. These legislators believed that the 1976 convention will result not in the nomination of a candidate who was successful in presidential primaries but in the negation of the nomination by a "broker" convention in which North Carolina delegates should have a stronger hand (one not tied by presidential primary results in this state).

Others who acted with respect to the presidential primary were not motivated by the same partisan consideration. They (joined by others whose principal concerns were the Democratic Party's welfare) believed that the presidential primary should be abolished (or separated from the state/ local primaries) and replaced by a national or regional presidential/vice-presidential primary. Thus H 269 sought to abolish the presidential primary; HJR 745 proposed a resolution that national or regional presidential/vice-presidential primaries should replace state presidential primaries; and H 827 (enacted as Ch. 744) sought to move the presidential primary to March, move the state and local primaries to August, and delete the $1,000 filing fee required of candidates in the presidential primary.

SOME SPONSORS OF H 269 argued that the presidential primary ought to be abolished because it prevents state and local primaries from being moved to August; affects only one state and one ballot at a national convention in a national election; detracts from voter consideration of candidates and issues in state and local primaries; does not result in the nomination of party candidates (state and local primaries do directly result in the nomination of party candidates); and, promised to be, in 1976, a repeat of the 1972 primary in which two candidates who, some legislators believed, had little or no chance of obtaining the party's nomination detracted from the consideration of state and local primary races.

Also, some legislators believed that the enactment of H 269, abolishing the presidential primary, would cut into Sanford's chances of rehabilitating himself in the eyes of the Democratic voters of the nation. They reasoned that if there were no presidential primary in North Carolina in 1976, Sanford would not have another shot at Wallace and no prospect of defeating him convincingly enough to demonstrate to the voters of the nation that he is a contender worthy of their serious consideration.

THE ARGUMENT that a presidential primary detracts from consideration of state and local primary races has several facets. When held at the same time as the state primaries, the presidential primary not only detracts from consideration of the state and local candidates on their own merits but also overshadows state and local issues and diverts time, money, and

voter interest from state and local matters (for which the General Assembly is considered to have a greater responsibility than for national matters).

H 827 (Ch. 744) moved the presidential primary from May to March and the state/local primaries from May to August. This separation, its supporters argued, will attract more candidates to North Carolina, thereby making the 1976 primary more important than the 1972 primary in terms of national significance. Such a move, some believed, also might increase the number of hopefuls, since they will not yet have been weeded out. It might also have the effect of cutting into the prospects of former Governor Sanford by diluting votes that might go to him if he were running against only Governor Wallace.

The sponsors of H 827 also said that to separate the presidential primary from the state and local primaries by moving it to March and them to August would shorten the long campaigns (formerly from May to November) of candidates for state and local offices. A shorter campaign period would increase voter interest in state and local elections, reduce campaign costs for candidates, and permit incumbents to remain on their jobs (and out of campaigns and political activity) longer.

SEPARATING THE PRESIDENTIAL AND STATE/LOCAL PRIMARIES, however, would increase the cost of elections by approximately $450,000-$500,000. For this reason, among others, some members sought to have the legislature adopt a resolution favoring national or regional presidential/vice-presidential primaries (HJR 745). There were other arguments for national or regional presidential/vice-presidential primaries: If a presidential primary is desirable in one state, it presumably is desirable in all; the multiplicity of presidential primaries confuses voters and decreases the value of each primary; the history of the Presidency in 1973 and 1974 demonstrates the need for a change in how vice-presidential candidates are selected; and national or regional presidential/vice-presidential primaries will give party members a more effective voice in choosing party nominees. Several members of the House seemed to be particularly interested in regional primaries, and their interest is increasingly reflected among leaders of the national Democratic Party.

CLEARLY, THERE WAS MORE to the action of the General Assembly in moving the presidential primary from May to March and the state/local primaries from May to August than a division among the legislature into Sanford-Wallace camps. Many legislators--particularly those who were not identified with either camp--were motivated by the belief that the legislature's responsibility is to the voters of the state with respect first to state and local issues, and then to the issue of presidential primaries and the fairness of the rules by which candidates may file in a presidential primary in North Carolina. With respect to the latter issue, the legislature eliminated the $1,000 filing fee requirement of the Presidential Primary Act (and thus perhaps opened the field to more candidates), and enacted a provision that will prevent a person who runs in a presidential primary from entering the general election as a candidate of a party other than the one whose presidential primary he entered.

BOOK REVIEWS

MANAGEMENT AND CONTROL OF GROWTH, edited by Randall W. Scott with the assistance of David J. Brower and Dallas D. Miner. Washington, D.C.: The Urban Land Institute, 1975. 3 vols., 1779 pp. $22.50 plus $1.25 postage.

"Managed growth" is defined by the editor of this collection of materials as "the utilization by government of a variety of traditional and evolving techniques, tools, plans, and activities to purposefully guide local patterns of land use, including the manner, location, rate, and nature of development."

The past decade has brought forth a deluge of printed materials falling loosely under this rubric—books, commission reports, magazine and newspaper articles, court decisions. And because most of the authors were environmentalists, civil rights activists, economists, systems analysts, preservationists, and others generally unfamiliar with existing systems of planning and development regulation, they have freely coined phrases and applied new labels to old concepts—to such a degree that experienced professional planners have encountered more confusion than illumination. Added to this has been the usual phenomenon attending any matter in which the public displays interest: the swarm of authors and publishers interested only in making a fast buck. The net result has been extreme difficulty in separating the chaff from the worthwhile materials.

The task that the editors of these three volumes have set for themselves is tantamount to ordering chaos or cleansing the Augean stables. They have identified over 150 selections of major importance, trimmed them to their essentials, added explanatory notes, and then organized them in such a way as to define and illuminate the many legal, policy, environmental, social, economic, and moral issues involved in various growth management measures. In doing this they have sought throughout to be dispassionate and not to become protagonists of any particular viewpoint (other than intellectual honesty).

The end result of their labors is a basic set of materials that (together with lavish citations and bibliographies) can serve as background information and an entry point for researchers and practitioners in the consideration of almost any of the current proposals. (They refer to their work as "background resources current through 1974" to which later publications can be added.)

All the current dogma and new concepts are represented in these materials: "no growth"; "zero population growth"; "zero economic growth"; exclusionary zoning; regional, state, and federal intervention; environmental impact statements; transfers of development rights; staged growth; impact zoning; land-carrying capacity; and all the rest. But they appear against a larger canvas that recognizes that we have had local planning and development controls for a long time, though they may have been used with less than perfection.

It would be difficult to think of a better current collection of basic materials for a planning library than these three volumes. The editors (two of whom have connections with the University of North Carolina at Chapel Hill) are to be commended for an extraordinarily well done job. —P.P.G.

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