Popular Government

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

Resource Recovery in North Carolina

The Local Land Trust

Protecting North Carolina's Children: *The Duty to Report Suspected Abuse and Neglect*

Adolescent Suicide and Public Policy

An Address to the Southern Legislators Conference on Children and Youth

An Analysis of House Bill 1314

Infractions: *A New Class of Non-Criminal Offenses in North Carolina*

Purchase or Possession of Beer and Wine *by Nineteen- or Twenty-Year-Olds*

Summer 1986

Contents

Popular Government

Vol. 52/No. 1 Summer 1986

INSTITUTE OF GOVERNMENT The University of North Carolina at Chapel Hill

Popular Government (ISSN 0032-4515) is published four times a year (summer, fall, winter, spring) by the Institute of Government, Knapp Building 059A, The University of North Carolina at Chapel Hill, Chapel Hill, N.C. 27514. Subscription: per year $8.00. Second-class postage paid at Chapel Hill, N.C.

A total of 7,500 copies of this public document were printed by the Institute of Government, The University of North Carolina at Chapel Hill, at a cost of $4,202, or $.59 per copy. These figures include ***only*** *the direct costs of reproduction. They do not include preparation, handling, or distribution costs.*

Resource Recovery in North Carolina

William A. Campbell

TWO-HUNDRED TONS of garbage is a lot of garbage. Two-hundred tons of municipal solid waste a day is what New Hanover County burns in its mass-burning, water-wall, waste-to-energy facility. New Hanover County was the first North Carolina local government to establish a resource recovery facility as an alternative to burying municipal solid waste in a landfill. It was the first in what appears to be a rapidly increasing transition in North Carolina from landfills to resource recovery facilities as local government after local government exhausts its available landfill sites. Already Mecklenburg, Gaston, Burke, and Rowan counties and the city of Greensboro are actively planning for the establishment of resource recovery facilities.

This article (1) examines the reasons more and more local governments must forgo landfilling solid waste and turn to other methods of disposal; (2) reviews resource recovery technology in use; (3) examines the environmental problems that arise from the operation of resource recovery facilities and the federal and state statutes that address those problems; (4) reviews six illustrative projects in operation in other states and those either operating or planned in North Carolina, with special attention to the New Hanover County facility; and (5) discusses North Carolina laws that bear on the financing and operation of resource recovery facilities.

The problem

Local governments that build resource recovery facilities usually cite numerous reasons for investing in such a relatively expensive—and sometimes uncertain—technology as an alternative to a landfill. But the chief reason, the reason that motivates local officials to keep moving ahead in the face of uncertainties, is almost always the exhaustion of available landfill space. One knowledgeable observer asserts that it usually requires a landfill crisis before a local government will seriously entertain resource recovery as an alternative.[1] The crisis may take one of several forms: Because of geological conditions, soil types, a high water table, or other physical feature, the local government may have no suitable land left for use as a landfill; there may be suitable land available, but political opposition to placing a landfill on that particular property may be so strong that alternatives must be pursued; or stringent state and federal regulations on landfills may make burial of the waste so expensive that the costs of a resource recovery facility appear more acceptable.

New Hanover County was forced to turn to resource recovery because it had almost exhausted its available landfill capacity, and exhaustion of landfill capacity is no doubt the leading motive for other North Carolina local governments to turn to resource recovery. Another reason, however, that seems bound to become more substantial, is the increasingly higher cost of disposing of waste in landfills. A major contributor to these costs will be the stringent regulations applicable to landfills

As it is used in this article, the term "resource recovery" describes the incineration of municipal waste to generate energy in the form of steam and electricity. It is not used—as it sometimes is—to describe the recovery of used materials through recycling or the recovery of methane gas from closed landfills.

The author is an Institute of Government faculty member whose fields include environmental protection issues.

1. H. Gershman, The Planning and Development Process for Resource Recovery Projects 2 (Gershman, Brickner & Bratton, Inc., Washington, D.C., April 27, 1984).

that the Environmental Protection Agency is required to promulgate pursuant to the 1984 amendments to the Resource Conservation and Recovery Act.[2] These amendments, in summary, require EPA—by no later than March 31, 1988—to revise the criteria that sanitary landfills must meet.[3] These criteria will apply to all sanitary landfills that receive household hazardous wastes.[4] This means that virtually all sanitary landfills will be covered by the criteria.[5] The revised criteria will be those "necessary to protect human health and the environment . . .," and "[a]t a minimum . . . should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate."[6]

Within 18 months after EPA promulgates these revised criteria, each state must adopt a permit program or other prior approval scheme to assure that every landfill is in compliance with the criteria.[7] These more stringent regulations, assuming they are enforced, will substantially increase the costs of operating a landfill. This is the stick in the 1984 amendments that is being used to prod local governments out of the landfill business. The carrot to entice them into the resource recovery business was an appropriation of $8,000,000 for the 1985-86 fiscal year to be used for grants to cities and counties to assist them with feasibility planning for resource recovery and recycling activities.[8]

Other reasons given for building resource recovery facilities are that they are environmentally preferable to landfills, that they generate steam and electricity and thereby aid in energy conservation (and help pay for the facility), and that they can result in increased amounts of recycled metals, glass, and paper, and thereby aid in conserving natural resources. These are all benefits of resource recovery and are incentives to build and use resource recovery facilities. When added to the problem of diminishing or exhausted landfill capacity, they can make a persuasive case for resource recovery.

The technology

There are basically two technologies that have proved effective for the incineration of municipal wastes and the generation of energy from that incineration: mass burning of the waste; and burning refuse-derived fuel. *Mass burning*, as the term indicates, means that the waste is burned in the resource recovery facility in the condition in which it is delivered, with no processing and little or no separation of the various components of the waste.[9] In the United States, as of November 1985, 44 mass-burning facilities were operating, and 36 were either under construction or contracts had been signed for their construction.[10]

A mass-burning facility is essentially a furnace and boiler arrangement that burns municipal waste to generate steam or steam and electricity. The basic components of a facility are: (1) A refuse pit; (2)overhead cranes; (3) A furnace with movable grates; (4) boilers; and (5) emission control devices.

The refuse pit is a storage area into which waste is dumped by collection trucks. The pit must be large enough to hold several days' supply for the facility because collections are usually made only five or six days a week, but the incineration is performed continuously, seven days a week.[11]

An overhead crane with a bucket attached is used to transfer loads of waste from the refuse pit to a hopper where it enters the furnace. The crane operator's job in the facility is a critical one for several reasons.[12] When he is not feeding loads of waste into the hopper, he mixes and sorts waste in the pit.[13] This has two purposes. One is to be sure that the flow of waste entering the hopper is neither too wet nor too dry and that items that combust easily are mixed with those that require a high temperature for combustion. For example, a truck dumping mostly wet garbage from restaurants may be followed by a truck dumping mostly cardboard and paper items into the pit; the crane operator mixes these loads and then sees to it that the mixed load is properly fed into the hopper so that combustion occurs in the furnace at an even rate, and a fairly uniform burning temperature is maintained. The second purpose is to remove items from the waste stream that should not be placed in the furnace because of their size or

2. The Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, Nov. 8, 1984.

3. 42 U.S.C.A. § 6949a(c) (Supp. 1985).

4. *Id.* §§ 6945(c) and 6949a(c) (Supp. 1985).

5. See *Current Developments*, 16 ENVIRONMENTAL REPORT 897 (1985), and Lehman, *An Outline of EPA's Subtitle D Program*, WASTE AGE 55-57, (February 1986).

6. 42 U.S.C. § 6949a(c). Lehman, *id.* at 57, says that EPA may have to impose additional requirements that include "liners, waste restrictions, methane gas controls, closure and post-closure standards, and financial responsibility minimums."

7. 42 U.S.C.A. § 6945(c)(1)(B) (Supp. 1985).

8. *Id.* § 6948(g).

9. A local government may, of course, operate a recycling program in conjunction with a mass-burning facility in which various categories of waste—such as paper, glass, and metal cans—are collected and removed from the waste stream before the waste enters the facility. See the description of recycling programs in Dorn, *Recycling Pays Off—Savings in Money and Landfill Space*, 50 POPULAR GOVERNMENT 23 (Spring 1985). But mass-burning facilities are designed to operate efficiently without any recycling.

10. *Resources Recovery Activities Report*, WASTE AGE 99-138 (November 1985).

11. H. HICKMAN, JR., ET AL., THERMAL CONVERSION SYSTEMS FOR MUNICIPAL WASTE, 53-55 (1984).

12. *Id.* at 73-74.

13. In the New Hanover County facility, for example, the crane operator places four loads an hour into the hopper; the rest of the time he mixes wastes in the pit. Interview with C. Ed Hilton, Jr., New Hanover County Engineer, May 20, 1985.

potential explosiveness; for example, tires, large appliances, and gas canisters must be removed.[14]

The furnace is the chamber where combustion of the waste occurs. During the combustion process, grates move the waste through the furnace from its entry into the hopper until it is burned out and removed from the system as ash and residue. Some mass-burning facilities use a small amount of auxiliary fuel such as oil or natural gas to enhance combustion of the waste, but many burn only municipal waste. In most systems air is forced both over and under the grates to supply oxygen for combustion, and the intensity of combustion can be controlled by changing the air supply.[15] A number of designs for grates are on the market, and research continues in ways to improve them and reduce their susceptibility to corrosion.[16]

Boilers transfer the heat to water to create steam used to generate electricity or as an end product itself. Boilers are of two basic types, depending upon the design of the incinerator. In a refractory-lined incinerator, the inside of the furnace is lined with a temperature resistant coating. The boiler is located downstream from the chamber where combustion occurs, and the hot gases pass from the chamber through the boiler to create steam. In a water-wall incinerator, the walls of the furnace contain tubes filled with circulating water. The tubes, in effect, act as the boiler. The heat is transferred directly to the water in the tubes, and steam is then created from them.[17]

Emission control devices are required to reduce the quantity of air pollutants in the exhaust gases to the levels required to meet ambient air quality standards under state and federal regulations. The most common devices are electrostatic precipitators, which trap particulates, and scrubbers, which trap sulfur dioxide and other gaseous emissions.[18] (Air pollution from resource recovery facilities is discussed in the environmental issues section of this article.)

A variation of the mass-burning technology with steam generation or heat recovery that is used in many small-scale facilities—those burning from 50 to 400 tons of waste a day—is the modular incinerator, so called because it is manufactured in a factory and then shipped to the site.[19] The modular units are usually grouped together at a facility, with each unit having the capacity to burn from 12.5 to 100 tons of waste a day.[20] While modular units share many of the features of mass-burning facilities, they typically burn the waste in two or three stages (sometimes using rotary kilns instead of grates), with the waste being dried and burned to produce a gas in the primary stages and then the gas being burned in the secondary stage. These operations are performed in different chambers of the unit.[21]

The second technology encompasses a variety of processes for creating refuse-derived fuel. Refuse-derived fuel (RDF) is fuel that has been derived from municipal waste by different separation processes for co-firing in boilers with coal or for burning by itself in a dedicated boiler.[22] A dedicated boiler is one that has been specially designed and constructed to burn RDF. Most of the RDF projects undertaken in the past several years burn the fuel in dedicated boilers.[23] By means of the separation processes, metals, some glass, and other noncombustibles are removed from the waste, then the waste is shredded or otherwise reduced to a uniform consistency and prepared for burning. In the typical RDF processing facility, the combustible portion of the waste is about 75 per cent of the total waste processed.[24] Typical steps in the creation of RDF are: (1) The waste is conveyed to a flail mill where it is separated and readied for processing; (2) ferrous metals, and sometimes aluminum, are magnetically separated from the waste; (3) the waste is forced through a trommel (a rotating screen that removes many noncombustible items); (4) a shredder reduces the particle size of the waste; (5) an air classifier separates the lighter, more combustible materials from the remaining noncombustible items; and (6) a secondary shredder further reduces the size of the waste particles in some processes.[25]

Refuse derived fuel can be processed in several different forms. The most common forms are *fluff RDF* (shredded fuel that has been processed for the removal of metal, glass, and other entrained inorganics and is of a particle size such that 95 per cent of the the material by weight passes through a two-inch square mesh screen); *densified RDF* (fluff RDF compressed into pellets or briquettes for easier storage and transportation); and *powdered* or *dust RDF* (fluff RDF reduced in particle size to such an extent that 95 per cent of the material by weight will pass through a 0.035-inch square screen).[26]

14. HICKMAN ET AL., *supra* note 11, at 73.

15. C. Peterson & R. Givonetti, Municipal Solid Waste for Energy: A Technology Review 2-3 (Gershman, Brickner & Bratton, Inc., Washington, D.C., March 21, 1984).

16. HICKMAN ET AL., *supra* note 11, at 59-72, 232-33.

17. *Id.* at 79-80, and Peterson & Givonetti, *supra* note 15.

18. HICKMAN ET AL., *supra* note 11, at 88-89.

19. Peterson & Givonetti, *supra* note 15, at 9.

20. *Id.*

21. *Id.*

22. HICKMAN, ET AL., *supra* note 11, at 404-05.

23. Peterson, *Environmental Issues for Municipal Solid Waste to Energy Systems*, ENVIRONMENTAL ANALYST 7-8 (Dec. 1983).

24. *Id.*

25. HICKMAN, ET AL., *supra* note 11, at 416-17, and Peterson & Givonetti, *supra* note 15, at 12-14.

26. HICKMAN, ET AL., *supra* note 11, at 418, and Peterson & Givonetti, *supra* note 15, at 12-14.

Although the processing of municipal waste into RDF before burning it requires more energy and involves more engineering steps than mass-burning facilities, it has a number of advantages. Those most often cited are that metal and glass are recovered in the process; that the RDF does not have to be burned at the facility where it is processed, but may be transported to other locations; that it may be used as supplemental fuel in existing coal-fired steam or electric generators; and because of the homogeneous nature of the RDF, it can be burned more efficiently and with less harmful effects to the furnace and boiler.[27]

As of November 1985, 16 RDF facilities had been constructed and were operating in the United States, and 11 were either under construction or had been contracted for.[28]

As may be apparent from the discussion thus far, resource recovery facilities do not completely eliminate the need for landfills. Materials that cannot be incinerated in the facility, such as large appliances and other large items, tires, and potentially explosive materials must be disposed of in a landfill, and the ash and residue from the resource recovery facility must also be disposed of in a landfill. Between 30 and 50 per cent by weight and 5 to 15 per cent by volume of the waste that enters a resource recovery facility will leave the facility as residue and fly ash and must be disposed of in a landfill.[29] It has been estimated that in a mass-burning facility—on the average—24.4 per cent of the waste taken into the facility will emerge as ash and residue. Of this total percentage, 18.3 per cent is non-combustible material such as glass and metal, and 6.1 per cent is ash.[30] In RDF facilities, about 25 per cent of the waste processed is separated out as noncombustible material, and about 7.3 per cent of the fuel burned is ash and residue.[31]

The officials of most local governments may view the major advantage of resource recovery facilities as their reduction of the amount of land needed for landfills by 75 to 90 per cent. But such facilities also put municipal waste to work in generating energy. The immediate energy product generated by resource recovery facilities is steam, which may be used to heat buildings or may be sold to industrial customers. Some or all of the steam may also be used to generate electricity that may be used to supply the needs of the resource recovery facility itself and sold to the local electrical utility. The Public Utility Regulatory Policies Act of 1978 (PURPA) has the effect of requiring electric utilities to purchase electricity from cogenerators, such as resource recovery facilities.[32] The price the utilities are required to pay is at a rate that does not exceed "the incremental cost to the electric utility of alternative electric energy."[33] This is defined as "the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source."[34] This federal statute thus essentially guarantees that resource recovery facilities that are cogenerators of electricity will have customers for that electricity. As a matter of practice, resource recovery facilities have to negotiate power sales contracts with electric utilities, and although PURPA is an aid to them in the negotiations, the contract price may be less than what the statute might require.[35] Also, since the utility's costs of generating electricity will vary over time, the price it pays to the cogenerator for electricity likewise varies.[36] It appears that because of problems in negotiating satisfactory contracts with electric utilities for the sale of electricity and the fluctuating price paid for the power, a number of resource recovery facilities, including New Hanover County's,[37] have emphasized the sale of steam whenever possible, and have treated the generation of electricity as a secondary product. (Arrangements for the sale or use of the steam and electricity are discussed in the section of this article that describes different resource recovery facilities.)

Environmental concerns

Resource recovery facilities enjoy many advantages over landfills, but they are not pollution free; and to the extent they contribute to pollution of the air, water, or land, they are subject to the same environmental quality laws and regulations as other large incinerators and electric power generators.[38] Air emissions cause the most substantial environmental concern. Both mass-

27. HICKMAN, ET AL., *supra* note 11, at 405-06.

28. *Resource Recovery Activities Report*, *supra* note 10.

29. Gershman, *supra* note 1, at 4.

30. Rusin & Peterson, *Environmental Issues for Municipal Solid Waste to Energy Systems*, ENVIRONMENTAL ANALYST 11, 15 (JANUARY 1984).

31. *Id.* at 16.

32. 16 U.S.C. § 824a-3.

33. *Id.* § 824a-3(b).

34. *Id.* § 824a-(d).

35. *See* Russell, *Solid Waste Disposal—Resource Recovery Projects*, INTERNATIONAL BUSINESS LAWYER (June 1984), 275, 276, and Tam, *Power Sales Contract: An Involuntary Agreement*, in MATERIALS FOR THE 1984 CONFERENCE ON MUNICIPAL RESOURCE RECOVERY (The Energy Bureau, Inc., New York, N.Y., 1984).

36. *See* Worenklein & Silverman, *Introduction and Overview: Resource Recovery—Current Industry Status and Contractual Issues*, in MATERIALS FOR THE 1984 CONFERENCE ON MUNICIPAL RESOURCE RECOVERY 20-21 (The Energy Bureau, Inc., New York, N.Y., 1984).

37. Hilton interview, *supra* note 13.

38. *See* Brandwein, *How Environmental Requirements Influence the Scheduling and Financing of Resource Recovery Projects*, in MATERIALS FOR 1984 CONFERENCE ON MUNICIPAL RESOURCE RECOVERY (The Energy Bureau, Inc., New York, N.Y., 1984), for a detailed discussion and outline of the environmental-quality permits required for a resource recovery facility.

burning facilities and those burning RDF emit particulate matter and gases such as sulfur dioxide, carbon monoxide, and oxides of nitrogen.[39] Particulates can be controlled at a level necessary to meet federal and state air quality standards through the use of electrostatic precipitators, and the level of gaseous emissions is usually low enough that controls are not required, though they could be controlled by installation of scrubbers.[40] An issue that has not been resolved is the extent to which resource recovery facilities emit dioxins, some of which are extremely toxic, and the accompanying environmental hazards posed by those emissions. An RDF-fired facility in Hempstead, New York was closed partly because of dioxin emissions.[41] Reports show, however, that most dioxins are destroyed if the waste is burned at a sufficiently high temperature for a brief time.[42]

The 1984 amendments to the Resource Conservation and Recovery Act (RCRA) require the Environmental Protection Agency to submit a report, as soon after November 8, 1984, as practicable, on the risks posed by dioxin emissions from resource recovery facilities and describing operating practices appropriate for controlling those emissions.[43] Although EPA has not yet published this report, it is currently re-evaluating its regulations applicable to dioxins from resource recovery facilities to determine whether the regulations are not unnecessarily restrictive.[44]

Resource recovery facilities generate a small amount of waste water, most of it from the quench tanks where the burned-out residue is cooled before it is disposed of in a landfill. Much of this quench water is absorbed by the residue and ash and is therefore disposed of along with that material.[45] Any remaining waste water that is discharged directly into a stream or other water course must meet water quality standards for obtaining a permit under the National Pollutant Discharge Elimination System of the Clean Water Act,[46] or the pre-treatment standards under the Act[47] if the waste water is to be discharged into a municipal waste treatment system.[48]

As I have pointed out, ash and residue remaining after the waste is burned and items that cannot be burned in the incinerator or processed as RDF, must be disposed of in a landfill. A provision in the 1984 amendments to the Resource Conservation and Recovery Act states that mass-burning resource recovery facilities shall not be required to have permits as hazardous waste facilities or otherwise be subject to hazardous waste regulations under RCRA so long as they accept only household and commercial and industrial wastes that do not include any wastes listed or identified as hazardous under RCRA, and "the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility."[49] Facilities that qualify for this exclusion (which should be all county and municipal waste facilities) should generally be allowed to dispose of their ash and residue in ordinary sanitary landfills, except in those cases where it is determined that the process of incineration has resulted in heavy metals, dioxins, or other hazardous substances in the residue,[50] in which case any landfill used for disposal must meet the very stringent requirements imposed by the 1984 amendments to RCRA on hazardous waste landfills.[51] But by 1988 even the requirements for sanitary landfills will be considerably tightened, as described in the introduction to this article.

Active projects in other states

A number of successful resource recovery projects are in operation in the United States. The six that I describe here illustrate the three different types of technology, mass-burning, modular, and RDF; are examples of both large and small projects; and demonstrate the variety of uses that are made of the steam and electricity from the facilities.

Nashville, Tennessee.[52] The mass-burning facility in Nashville, which is operated by the non-profit Nashville Thermal Transfer Corporation, began operating in 1974. It consists of two furnaces, each having the capacity to burn 360 tons of waste a day. The facility has generally operated considerably below capacity, and in 1982 was processing an average of 350 tons a day. The facility uses either No. 2 fuel oil or natural gas as a supplemental fuel. The residue after burning is 22 per cent by weight and 10 per cent by volume of the waste entering the system.

The facility produces 100,000 pounds of steam an hour to heat 29 buildings in a district heating loop and 14,000 tons of chilled water for cooling the buildings. The plant cost $12.5 million; the steam distribution system, $4 million; and the two electrostatic precipitators that were installed in 1976, $8 million.

39. HICKMAN, ET AL., *supra* note 11, at 88, and 458; and Peterson, *supra* note 23, at 10.
40. *Id.*
41. Peterson, *supra* note 23, at 10.
42. *Id.*
43. 42 U.S.C.A. § 6905(b)(2) (Supp. 1985).
44. 9 RESOURCE RECOVERY REPORT 2 (October 1985).
45. HICKMAN, ET AL., *supra* note 11, at 91.
46. 33 U.S.C.A. § 1342 (1986).
47. *Id.* at § 1317.
48. Rusin & Peterson, *supra* note 30, at 11.
49. 42 U.S.C.A. § 6921(i) (Supp. 1985).
50. *See* HICKMAN, ET AL., *supra* note 11, at 91-92.
51. *See, e.g.*, 42 U.S.C.A. § 6924(o)(1) (Supp. 1985), imposing on new landfills and expansions of existing landfills a requirement for the installation of two or more liners, a leachate collection system between the liners, and a groundwater monitoring system.
52. HICKMAN, ET AL., *supra* note 11, at 146-63.

Hampton, Virginia.[53] The Hampton Refuse-Fired Steam Generating Facility, a mass-burning facility in Hampton, Virginia, is a cooperative endeavor among the city of Hampton, the National Aeronautics and Space Administration, and Langley Air Force Base. The facility began operating in 1980 with two furnaces, each having a capacity to burn 100 tons of waste a day. The average amount of waste processed in the plant is 191 tons a day. No supplemental fuel is burned. The residue after burning is 40 per cent by weight and 14 per cent by volume of the waste entering the system.

The plant sells its steam to NASA-Langley and can generate up to 66,000 pounds of steam an hour. The plant cost $10.4 million.

Cattaraugus County, New York.[54] The Cattaraugus County Energy Recovery Facility is designed to burn 120 tons of waste a day in three controlled-air incinerators. The facility, which began operating in 1983, burns waste from Cattaraugus County and also receives 15,000 tons of waste each year from neighboring Allegheny County under a waste supply contract. The steam produced by the facility is sold to the Cuba Cheese Company, one of the most important industries in the region, under a contract by which Cuba is obligated to purchase a minimum of 130 million pounds of steam a year. The cost of the steam to Cuba is approximately 10 per cent less than what it cost the company to produce its own steam from oil or natural gas. The facility cost $5.47 million.

Frenchville, Maine.[55] A single incinerator in Arrostook County, Maine, is owned and operated by the municipalities of Madawaska, Frenchville, and Fort Kent, and burns 40 to 50 tons of waste a day. The unit is unusual in that its interior is cast from the mineral olivine, which can withstand burning at very high temperatures (up to 2,300 degrees F), and achieves a high percentage of burn out of the wastes; the ash is typically less than 10 per cent of the waste that enters the incinerator. No auxiliary fuel is used. Heat from the facility produces hot water that is used to heat a nearby regional airport. The facility cost $650,000.

Ames, Iowa.[56] The Ames Solid-Waste Recovery System, which began processing refuse-derived fuel in 1975, was the first fully operational RDF plant in the United States. It has the capacity to process 800 tons of waste a day, but it usually processes about 200 tons a day into around 125 to 150 tons of shredded RDF. The RDF is burned with coal by the Ames Municipal Electric Company in a steam electric generating plant. The total capital cost of the facility, including the cost of retrofitting boilers, was $6.45 million.

Haverhill and Lawrence, Massachusetts.[57] The Haverhill/Lawrence Solid-Waste Disposal and Resource-Recovery Facility is designed to process 1,300 tons of waste a day into 950 tons a day of shredded RDF. The RDF is burned in a dedicated boiler. A steam loop serves part of the City of Lawrence for heating, and most of the electricity is sold to the Greater Lawrence Industrial Associates, with any excess power sold to the New England Power Company. The cost of the facility was $99.5 million.

North Carolina resource recovery projects

New Hanover County.[58] The New Hanover County facility began operating in June of 1984. It is a mass-burning, water-wall facility with two boilers. The system is designed to burn 250 tons of municipal solid waste a day, and it typically burns about 200 tons a day. Steam produced by the facility is sold to a nearby W. R. Grace and Company chemical plant. The contract for the sale of steam calls for delivery of the steam on an interruptive basis in an amount of up to 40,000 pounds an hour. An average of 12 million pounds a month is sold. Steam from the facility is also sent through two generators, a small one that generates electricity for the use of the facility, and a large one that generates electricity for sale to Carolina Power and Light Company. When only one boiler is operating, the facility cannot produce both steam and electricity for sale; in such a case the sale of electricity is suspended.

A staff of 30 employees operates the facility. Waste is received in the pit five and one-half days a week, but waste is burned continuously seven days a week. Two overhead cranes are available to mix the waste in the pit and to transfer it from the pit to the hopper that feeds the boilers. No auxiliary fuel is burned in the facility. Ash and residue from the facility are taken to a landfill equipped with a double liner.

The facility is owned and operated by New Hanover County. The project cost $13.1 million. Ten million was raised by the issuance of 16-year general obligation bonds (the proceeds from which also purchased a new landfill), and $3.1 million was obtained from First Union Bank under a 59-month lease-purchase agreement. During the first fiscal year of operation, 1984-85, the facility's operating expenses were

53. *Id.* at 117-32.

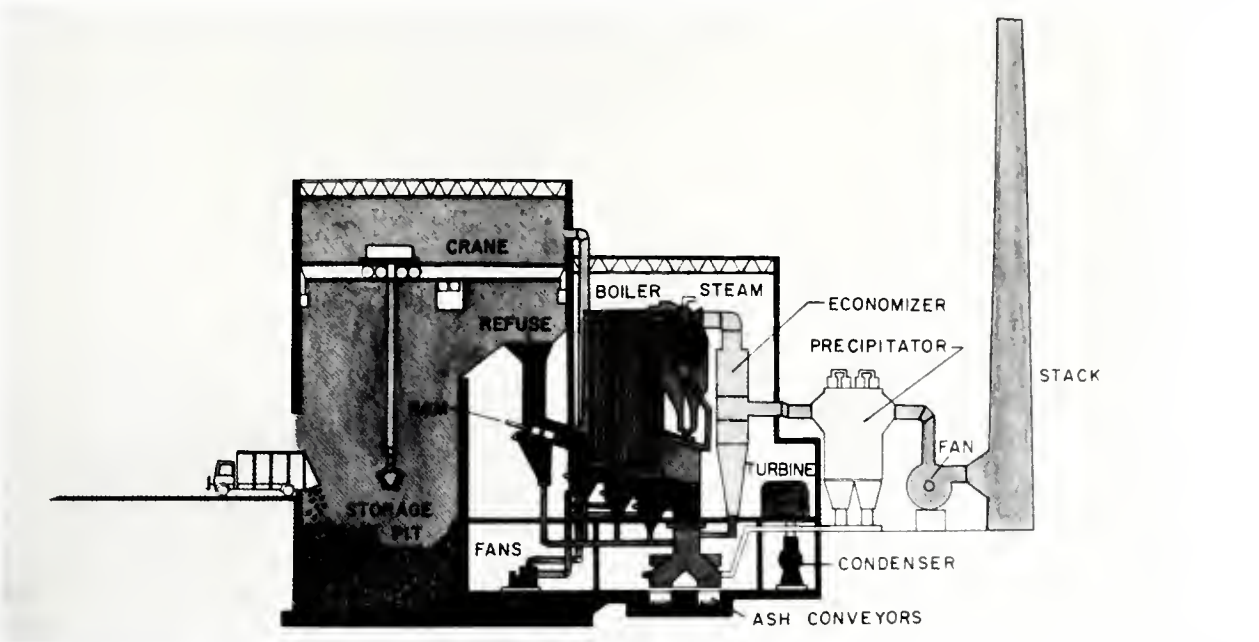
54. Dudden & Radler, *Steam Plant Provides Energy Option*, 26 THE MANAGEMENT OF WORLD WASTES 46 (August 1983), and *Resource Recovery Activities Report, supra* note 10, at 122.

55. Ruel, *Northern Maine Facility Burns Wastes for Less*, 27 THE MANAGEMENT OF WORLD WASTES 40-41 (September 1984).

56. HICKMAN, ET AL., *supra* note 11, at 505-7.

57. *Id.* at 521-23; and *Resource Recovery Activities Report, supra* note 10, at 108.

58. Hilton interview, *supra* note 13.



Photograph courtesy of the New Hanover County Engineering and Facilities Department

A cross-section of the New Hanover County mass-burning, water-wall facility.

approximately $3.8 million. Revenues for that year were $476,000 from the sale of steam, $386,536 from the sale of electricity, and $1,335,946 from tipping fees (fees paid by local governments and private collection firms that collect solid waste in the jurisdiction operating the facility and haul it to the facility, usually calculated on a per ton basis); the remainder of the expenses were paid from the county's general fund.

Burke County.[59] Burke County has received responses from 14 firms as a result of its request for proposals to construct a 135 ton per day mass-burning facility that would sell steam to Broughton Hospital. The possibility exists that the facility could become a regional one, accepting waste from Wilkes County and other nearby local governments. This would require a facility with a capacity of 175 tons per day, or more.

Gaston County.[60] On November 5, 1985, county voters approved a $28 million bond issue to assist in the financing of a 300-350 ton per day resource recovery facility. The county has about one year of capacity remaining in a remote landfill and only a few months remaining in its primary landfill.

City of Greensboro.[61] Greensboro has negotiated with C&H Waste Energies, Inc. for the construction of a 200 ton per day mass-burning modular facility. The facility would be owned and operated by C&H and would sell steam to a textile plant and electricity to Duke Power Company.

Mecklenburg County.[62] Mecklenburg County is rapidly exhausting its available landfill space and is considering a number of resource recovery projects. Options under consideration include a county-owned 200 ton per day mass-burning facility that would sell steam to the University of North Carolina at Charlotte; a 200 ton per day privately-owned facility for the production of ethanol, a gasoline additive; a 400 ton per day RDF facility; and two or more additional waste-to-energy facilities that would be privately owned and operated and would have the total capacity to process up to 1,000 tons of waste per day.

Rowan County.[63] Rowan County is involved in plans for the most complex

59. Conversation with John Thaxton, North Carolina Alternative Energy Corporation, January 2, 1986.

60. Conversation with Richard Wyatt, Gaston County Engineer, January 3, 1986.

61. Conversation with Donald Knibb, Assistant Director, Department of Public Works, January 29, 1986.

62. Conversation with Paul Morris, Mecklenburg County Waste-to-Energy Coordinator, January 3, 1986.

63. Conversation with Tim Russell, Rowan County Manager, January 3, 1986.

public-private arrangements for resource recovery in the state. Negotiations are under way for a project in which C&H Waste Energies, Inc., a resource recovery firm, would build and operate a mass-burning facility on land owned by the Celanese Corporation. All of the steam produced by the facility would be sold to Celanese. Rowan County will contract with C&H to supply all of the solid waste collected in the county to the facility for 15 years at a pre-established tipping fee. By enactment of a flow control ordinance, the county will require that all waste generated in the jurisdiction be delivered to the facility. As planned, the facility will have the capacity to burn 400-450 tons of waste a day. Rowan County will be considered the principal provider of waste and will supply approximately 200-250 tons per day. Also, Celanese Corporation, Davie County, and Iredell County may provide waste to the facility under separate contracts.

Legal powers and restraints

The final section of this article discusses the authority that North Carolina law gives local governments to build and operate, or contract for the building and operation, of resource recovery facilities and the restraints placed on the operation of those facilities. This section takes up, in order, statutory provisions dealing with construction and operation, those dealing with financing, and those dealing with the North Carolina tax treatment of privately-owned facilities.

1. Construction and operation

The North Carolina statutes provide ample authority for counties and cities to build and operate resource recovery facilities themselves or to contract with private firms for their operation, although the statutes applicable to counties are more comprehensive in granting this authority than are those applicable to cities. Solid waste disposal facilities, which presumably would include resource recovery facilities, are included within the statutory definition of public enterprises [counties: G.S. 153A-274(3); cities: G.S. 160A-311(6)], and local governments may build and operate such enterprises themselves or contract for their operation, and they may build and operate them outside their jurisdictional boundaries [counties: G.S. 153A-275; cities: G.S. 160A-312]. Counties are given additional authority to operate solid waste disposal facilities by G.S. 153A-292, which specifically authorizes the operation of such facilities by contract with a private firm. This statute authorizes joint county-city operations, as does G.S. 160A-192(b). A permit to construct and operate a resource recovery facility must be obtained from the Department of Human Resources [G.S. 130A-294(a)(4)], and since a permit must be obtained from a state agency, an environmental impact statement for the facility will have to be prepared pursuant to G.S. 113A-4.[64]

Cities and counties are also authorized to regulate solid waste disposal facilities [counties: G.S. 153A-136; cities: G.S. 160A-192(a)], and to grant exclusive franchises to private operators of disposal facilities [counties: G.S. 153A-136(a)(3); cities: G.S. 160A-319]. The duration of county-granted franchises is seven years; city franchises may be for a term of as long as 60 years.

In addition to the general authorizations in the statutes discussed above that apply to all counties and municipalities, G.S. 153A-299.1 through 153A-299.6 contain special provisions relating to contracts with private firms for solid waste disposal that are applicable in 12 counties and the municipalities located therein.[65] These provisions specifically allow a local government to agree to supply a private firm with a certain quantity of waste, to agree that legal title to the waste passes to the private firm, and to authorize long-term agreements of up to 60 years, notwithstanding the seven-year limitation in G.S. 153A-136(a)(3). All contracts entered into pursuant to these statutes must be approved by the Department of Human Resources before they become effective. Although these statutes apply to only a limited number of jurisdictions, similar provisions are made applicable to all local governments by G.S. 143-129.2, which is discussed below.

In making contracts for the construction and operation of resource recovery facilities, local governments are freed by G.S. 143-129.2 from the generally applicable competitive bidding constraints of state law. Under that statute, a local government may award the contract for the design, construction, and operation of a resource recovery facility to a single firm, which may be a firm that was not the lowest bidder. The procedure called for in the statute is for the local government to send out requests for proposals. In evaluating the responsive proposals, the local government is to consider a number of factors, including the operational experience of the technology proposed for the facility, the reliability of the technology, the environmental impact of the facility, and the projected revenues from operation of the facility. G.S. 143-129.2 further authorizes local governments to enter into contracts with private firms for the operation of resource recovery facilities for a period of up to 40 years, for the delivery of a fixed quantity of waste to the facility, and for the sale of any energy produced by the facility.

Essential to the successful operation of a resource recovery facility is an assurance that an adequate supply of solid waste will be delivered to the facility. This assurance is necessary so that those agencies responsible for approving the financing of the facility can be confident that revenue that is projected to be generated by tipping fees

64. *See, In re* Environmental Management Comm'n, 53 N.C. App. 135, 280 S.E.2d 520 (1981).

65. The twelve counties are Beaufort, Craven, Edgecombe, Hyde, Lenoir, Martin, New Hanover, Pamlico, Pitt, Rowan, Washington, and Wilson.

will actually be generated, and so that the owner of the facility can fulfill its contracts for the sale of steam and electricity. A local government operating or contracting for the operation of a resource recovery facility can assure delivery of the necessary amount of waste by enacting a flow control ordinance, an ordinance that requires all collectors of waste in the jurisdiction—or in a part of the jurisdiction—to deposit the waste collected in the facility and nowhere else.

A flow control ordinance is, however, anti-competitive within the meaning of the federal antitrust laws, and since local governments are subject to those laws,[66] the possibility exists that a disgruntled hauler or landfill operator might bring a successful antitrust suit against the local government that adopted the flow control ordinance. On the other hand, local governments that take anti-competitive actions—such as the adoption of flow control ordinances—pursuant to a state statute that specifically authorizes the action are exempt from the antitrust laws under the "state action" doctrine.[67] The North Carolina General Assembly has enabled local governments adopting flow control ordinances to avail themselves of the state action exemption by enacting G.S. 130A-294(a)(5a) and (5b).

These statutes authorize the Department of Human Resources to approve the adoption of a local flow control ordinance as part of a solid waste disposal plan for a particular jurisdiction. The only condition is that if a privately-owned landfill would be substantially affected by the ordinance, the operator of the landfill must be given two years notice prior to the effective date of the ordinance. Moreover, G.S. 153A-299.1(3) and G.S. 143-129.2(e)(3), in authorizing local governments to enter into contracts with private facility operators that guarantee delivery of a specific quantity of waste, implicitly acknowledge the necessity for flow control ordinances. Local governments that obtain financing for resource recovery facilities through a joint venture or contract with the North Carolina Energy Development Authority are additionally empowered to adopt flow control ordinances by G.S. 159F-2(d) and 159F-5(a)(7).

2. Financing

This section of the article reviews the statutory authority for various means of financing resource recovery projects; it is not intended as a comprehensive discussion of bond financing or other means of financing capital facilities.[68] A local government planning to construct and operate a resource recovery facility will almost certainly use a combination of these financing techniques, as New Hanover County did.

—General tax revenue. G.S. 153A-149(c)(31) for counties and G.S. 160A-209(c)(29) for cities authorize the levy of property taxes, subject to the $1.50 rate limitation, to provide for the disposal of solid waste. Since solid waste disposal facilities are public enterprises, G.S. 153A-276 and G.S. 160A-313 authorize counties and cities to finance them with revenue from taxes other than property taxes. These statutes also authorize financing from grants and other revenues that are not otherwise restricted.

—General obligation bonds. G.S. 159-48(c)(18) includes as one of the purposes for which local governments may issue general obligation bonds—that is, bonds secured by a pledge of the taxing power of the local government—solid waste disposal systems, including incinerators. Solid waste disposal facilities are included within the definition of "public service enterprise" by G.S. 159-44(5)vi., and as a result, the revenue from such a facility must first be used to pay the facility's operating and maintenance expenses; second, to pay interest and principal on any bonds issued to finance the facility; and last for any other lawful purpose [G.S. 159-47(a)].

—Revenue bonds of the local government. G.S. 159-81(3)d. includes solid waste disposal facilities within the list of projects for which a local government may issue revenue bonds pursuant to G.S. 159-84. G.S. 159-83(a)(6) authorizes local governments to set fees and charges for the use of facilities financed by revenue bonds.

—Revenue bonds of the Energy Development Authority. Chapter 159F of the General Statutes establishes the North Carolina Energy Development Authority and sets out procedures by which local governments may enter into contracts or joint ventures with the Authority for the construction and operation of resource recovery facilities. By using this procedure, a local government can take advantage of the Authority's ability to issue revenue bonds secured only by payment of Authority revenues.

—Tipping fees. An obvious source of revenue to pay operating and maintenance costs and to service bonds is from the charge of tipping, or processing, fees to all persons who deposit waste in the facility. Authority to fix and revise such fees is contained in G.S. 153A-277 for counties and G.S. 160A-314 for cities. Local governments that own and operate resource recovery facilities in joint venture or under contract with the Energy Development Authority are authorized to charge fees by G.S. 159F-5(a)(9) and 159F-7(b)(1). G.S. 153A-292, however, prohibits a county from charging a disposal fee to a municipality within its jurisdiction if the county uses county property tax revenue to finance the facility, either in whole or in part.

—Lease-purchase agreements. A local government may select one or two

66. *See* City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 (1978).

67. Town of Hallie v. City of Eau Claire, 85 L.Ed.2d 24 (1985).

68. For such a discussion, see D. LAWRENCE, FINANCING CAPITAL PROJECTS IN NORTH CAROLINA (Institute of Government 1979).

major parts of the facility, such as the boilers, generators, or electrostatic precipitators, and arrange for their financing through a lease-purchase agreement. This essentially involves paying for the property over a period of years under a financing agreement with the lender, and then taking title to the property at the conclusion of the lease.[69]

—Sale of steam and electricity. There are no specific statutes authorizing the sale of steam and electricity from resource recovery facilities owned by local governments. Since these energy products are the property of the local government that owns the facility, the property disposition provisions of G.S. 160A-265 through 270 and 153A-176 would appear to apply. The value of the energy products will almost certainly exceed the $5,000 maximum above which a privately negotiated sale is not permitted, and therefore the contracts for sale must be entered into after either an advertisement for sealed bids [G.S. 160A-268] or a negotiated offer with an opportunity for upset bids [G.S. 160A-269]. As a practical matter, this usually should not present any difficulty because the purchasers of steam will be limited by the facility's location—steam can only be transported a relatively short distance without incurring large expense and loss of energy—and the sale of electricity must be to the electric utility serving the area. In this regard, a local government that plans to construct a resource recovery facility must obtain a certificate of convenience and necessity for the facility from the North Carolina Utilities Commission.[70] A facility that sells steam to a single customer and electricity to the local electric utility company is not regarded as a "public utility" within the meaning of G.S. 62-3(23), and therefore the sale of the steam is not subject to the Commission's rate-making jurisdiction.[71] Also, local governments operating resource recovery facilities as a joint venture with the Energy Development Authority are expressly excluded from the definition of "public utility" by G.S. 159F-3(5).

—Sale of refuse-derived fuel, recovered metals, and glass. As with the sale of steam and electricity, there are no specific statutory provisions dealing with the sale of these materials from resource recovery facilities. They would therefore be governed by the statutes regarding the sale of city and county property generally, discussed above.

3. Tax provisions

Although most of the emphasis of this article has been on resource recovery facilities owned and operated by local governments, it should be apparent to the reader who has come this far that local governments may enter into a variety of contractual and regulatory relationships with private firms for the construction and operation of resource recovery facilities. And, indeed, several North Carolina local governments are considering such arrangements. Several tax provisions offer incentives to private firms to enter the resource recovery business. G.S. 105-275(8)b exempts all real and personal property used exclusively for resource recovery from city and county ad valorem property taxes. G.S. 105-122(b) allows corporations to treat the costs of constructing resource recovery facilities as deductible liabilities from their capital stock and profits for the purpose of computing the corporate franchise tax. G.S. 105-130.10 allows a corporation, in computing its income tax, to amortize over a period of 60 months the cost of constructing resource recovery facilities. All of these tax breaks are conditioned upon the firm's obtaining from the Department of Human Resources a certificate to the effect that the facility is for the purpose of resource recovery and is in compliance with the Department's regulations. Finally, G.S. 105-130.25 allows a corporation that is not a public utility to take as a credit against its income tax 10 per cent of the cost of the electrical or mechanical power generating equipment installed in a cogenerating power plant that uses municipal solid waste as fuel.

Conclusion

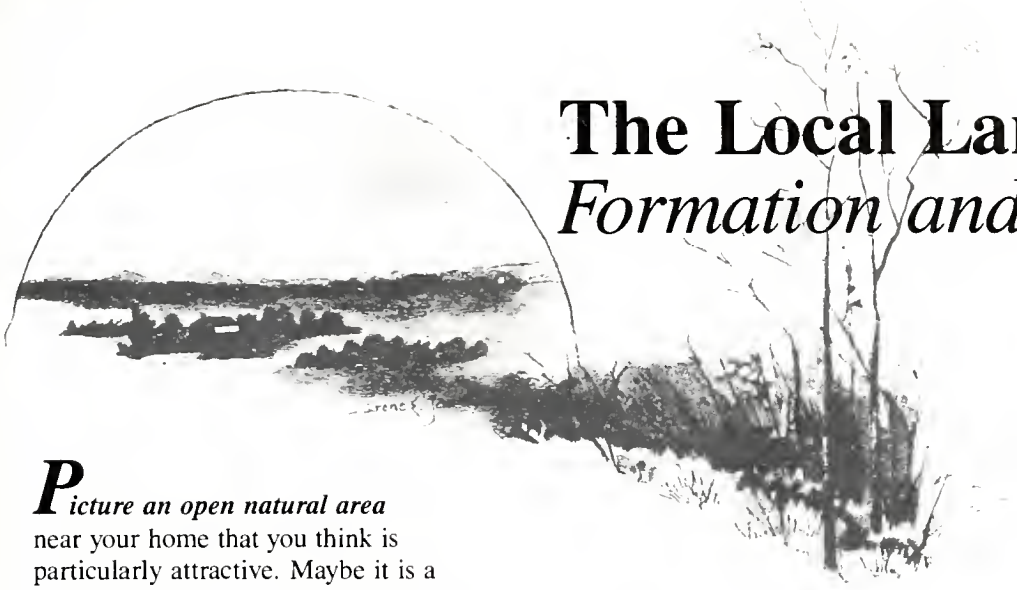
It has been wisely observed that for most local governments the construction and operation of a resource recovery facility will be the most complex endeavor it ever undertakes.[72] The technical, financial, and contractual issues associated with such a facility make its planning, construction, and operation a task requiring much time, study, and hard work from many departments of local government. But for some local governments—Mecklenburg, New Hanover, and Gaston Counties, for example—there are no alternatives. Other cities and counties may have more time to plan, but many of them will also soon face the prospect of exhausted landfills. This article has reviewed and summarized developments in North Carolina and elsewhere and identified North Carolina legal provisions that apply to resource recovery. Its purpose has been to inform as well as to encourage local government officials to think about resource recovery as an alternative to landfills. ☐

69. For comprehensive discussions of this method of financing, see Bell, *Lease-Purchase Agreements and North Carolina Local Governments*, 49 POPULAR GOVERNMENT 10 (Spring 1984), and A. VOGT, ET AL., A GUIDE TO MUNICIPAL LEASING (1985).

70. The Attorney General's opinion is that a local government is a "person" within the meaning of G.S. 62-110.1(a) and therefore a certificate is required under the statute. N.C. Att'y Gen. Op. to Robert H. Bennink, Jr., General Counsel, North Carolina Utilities Commission, August 29, 1985.

71. *See* N.C. Utility Commission Order In the Matter of Cogentrix of North Carolina, Inc. (Docket No. SP-100, February 29, 1984).

72. H. TAYLOR, ENERGY RECOVERY FROM MUNICIPAL SOLID WASTE: A FEASIBILITY GUIDE FOR LOCAL GOVERNMENTS IN VIRGINIA 48 (Va. Office of Emergency and Energy Services, 1984). This is an excellent source of information for local government officials who wish to learn more about resource recovery.



The Local Land Trust: *Formation and Operation*

David H. Bland

Picture an open natural area near your home that you think is particularly attractive. Maybe it is a river bottom where you like to walk on Saturday afternoons with your dog, or maybe it is a hay field you pass as you drive along the highway to work. Think about that spot and what it means to you and your community. You don't own it, but yet you would hate to see it changed. In a way, it has become a part of the identity of the community. Picture that same spot being developed for second homesites or as a shopping center. This scenario is being repeated all across North Carolina. One mechanism for keeping land in its present state is the local land trust, an idea whose time has come in North Carolina.

This article will explain how to form and operate a land trust, how to acquire and manage property, and will explore in general the issues facing any group interested in establishing a local land trust. In setting forth some of the problems involved in local land trusts, the experiences of the Triangle Land Conservancy will be cited. Triangle Land Conservancy is a local land trust covering the counties of Chatham, Wake, Orange, Durham, Lee, and Johnston. Triangle Land Conservancy was formed in 1983 with the assistance of the Triangle J Council of Governments.

The author is president of the Triangle Land Conservancy and a partner in the law firm of Maupin, Taylor, Ellis & Adams, P.A. in Raleigh, North Carolina.

Local land trust movement

While relatively new to North Carolina, the local land trust has been an active institution in the northeastern part of the country for decades. In the Connecticut area there is a land trust for almost every county. In the Brandywine Valley area of Pennsylvania, local land trusts have been instrumental in preserving thousands of acres of farmland and watersheds. The North Carolina Nature Conservancy has been very successful, but it has primarily dealt with lands having statewide or national significance. To a lesser extent, the Trust for Public Land has also been involved in North Carolina with lands of national significance. The examples, however, of local land trusts have been few and far between.

The Southern Appalachian Highland Conservancy has been very successful in preserving the Roan Mountain Highlands on the North Carolina and Tennessee border, and the Northwest Environmental Preservation Committee and the Eno River Society have been instrumental in raising funds and promoting state parks in the Winston-Salem and Durham areas. It is believed that the Triangle Land Conservancy is the first attempt in North Carolina to establish a local land trust with goals and responsibilities focused on a regional level.

Why form a local land trust?

The main reason for forming a local land trust is that if private citizens do not take the initiative to preserve land, nobody will. Recently, the North Carolina Legislature appropriated $24 million for the purchase of state park lands. This is just a drop in the bucket that will serve to purchase only inholdings in some of our parks. There are hundreds of other natural areas located outside the boundaries of our national and state parks that deserve the same sort of protection. In this time of budget cutbacks, our governments simply are not going to have the resources, or the inclination, to take on more acquisitions.

If additional land is to be preserved, the efforts of private individuals are essential. But there is a further reason for establishing local land trusts, a self-serving one, but one that perhaps is more fun-

damentally important. Over the years, North Carolina has been known as a rural state. Although it is the tenth most populous state in the country, it still retains its rural character. A ten- or 15-minute trip allows even those of us who live in cities to drive among fields and wooded bottom lands. This rural character has been cited again and again as being one of the most attractive features to people and companies moving to North Carolina. At North Carolina's present rate of growth, however, this attribute will soon disappear. Therefore, if not for the sake of the lands themselves, but for the selfish reason of preserving our beautiful living environment, a local land trust can be an important tool.

Just as there are good reasons for forming a local land trust, there are some inappropriate ones. A local land trust should not be used as a tool to combat development, or as a vehicle for implementing strict land use or zoning controls. Groups and individuals interested in pursuing that type of agenda should join one of the many environmental advocacy groups, or form their own neighborhood associations. A local land trust should keep itself free from controversy. Local land trusts operate in the private real estate market just like any other business. Land trusts need to be able to work with developers, farmers, businessmen, and anyone who owns property. If people perceive land trusts as being biased one way or the other, then they will not deal with them in a straightforward manner. A local land trust is not the vehicle to bring about wide-ranging reforms for the use of land in an area. That is an advocacy process that must be handled through the local government in the political arena. Local land trusts can have an effect on land use in the area, but that effect is accomplished by dealing with individual land owners one at a time.

Formation of a land trust

While the paper process of forming a land trust is important, it is fairly easy and uncomplicated. On the other hand, the process of getting the right people involved will be one of the hardest tasks, but is probably the most important. Land trusts will acquire property, and hold it for the public benefit. Title to property, of course, has to vest in someone. The best procedure is to incorporate the land trust as a legal, separate entity pursuant to the Non-Profit Corporation Act of North Carolina, G.S. 55A. To do this, articles of incorporation need to be drafted and filed with the Secretary of State. These articles set up a legal entity that can acquire and convey property. The articles should be recorded in any county where the trust acquires land. The articles will designate a board of directors until the trust can meet and elect its own.

Most land trusts are membership organizations, and the directors are elected by the members. Officers can either be elected by the members, or by the board of directors. It would be helpful if an attorney could donate legal services to help draft the articles and a set of bylaws to govern the operation of the land trust. Organizers should be very patient during the process of getting the proper people involved, and not go beyond it until they are sure that they have received input and advice from every section of the community.

In the case of the Triangle Land Conservancy, this initial stage lasted more than a year. The Triangle J Council of Governments organized a committee to look into the formation of a local land trust. Invitations were sent to environmental leaders, county and city officials, developers, realtors, and anyone else who might be interested in preservation of land and land management. This committee met intermittently for a year, discussing reasons for estabishing a land trust, ways of financing a land trust, how the land trust should be formed, criteria of land to be preserved, and other pertinent issues. The composition of the group changed during the process as some people lost interest, and new people were added.

It is important for the group to end up being a workable size, with representatives from local governments, environmental groups, realtors, developers, and businesses. Unless all of these groups are represented, the land trust will progress very slowly. A land trust can be compared to a real estate company. In order for it to succeed, it will need contacts from every part of the community. It cannot afford to be perceived by one part of the community as being solely representative of another sector.

A second step of the formation process is finding resource people. Funds may be short to begin with, and the trust may be unable to afford the services of needed professionals. Therefore, strong efforts should be made to interest a real estate attorney and an accountant in the enterprise. Later on the services of surveyors, landscape architects, and other land management professionals will be necessary. People in the academic community will also be able to provide valuable help in spreading the idea of the land trust, as well as in giving technical advice on plant and animal resources located on any property in question and in managing that property. Finally, during the period of forming the land trust, and as an ongoing process throughout its life, the members will need to focus on the purposes of the organization.

When people hear about a local land trust, they immediately ask about its purposes. The simplest and most ideal purpose of a local

land trust is to preserve a particular area, a particular stream valley, for example. The Eno River Association and the Southern Appalachian Highlands Conservancy are fortunate in that their efforts are focused upon two distinct geomorphologic features. However, a land trust like the Triangle Land Conservancy has much more difficulty deciding on primary purposes. Should the trust concentrate on the river bottoms, on natural areas, or on farmlands? It is sometimes extremely difficult to decide on the purposes and focus of the organization, and it may take several years to do so. For some groups this may be unavoidable; nevertheless, the sooner they can define their identities, the sooner they will be successful.

Operation of a local land trust

The guiding star in operating a local land trust is to remember that the foremost goal is the preservation of land in its natural state. Local land trusts should stick to that goal, and stay away from all others. Groups may approach a local land trust to ask it to become involved in zoning battles, nuclear waste dump controversies, watershed basin restrictions, and a variety of other issues. But, as I mentioned earlier, a local land trust should perceive itself not as an environmental organization, but as a real estate business with limited purposes. If a land trust should allow itself to become involved in one issue, it will quickly find itself isolated from another part of the community. A successful land trust cannot afford to alienate anyone. Beyond this, a local land trust will operate much as any other business or group. It will elect officers and hold both annual and directors' meetings. The trust should make decisions based upon sound business criteria, including budget restraints.

Recordkeeping

One item particularly important for a local land trust is recordkeeping. The business of acquiring land can involve several years, and managing land continues indefinitely. Each meeting between any representative of the land trust and a local land owner should be recorded. This will enable the land trust, even with different representatives, to build on the first meeting. A third important item in operating a land trust is cash flow. Like any business, a local land trust needs operating funds. Particularly at the beginning, funds are necessary for brochures, slide shows, and other promotional materials. If donations from people involved with the formation of the trust do not provide enough operating money, then a grant from a local foundation may be a possibility. Scattered across North Carolina are dozens of local foundations that support private projects, ranging from the provision of health care, to the arts, to land preservation concerns. It may be well worth the effort to contact some of these foundations in the area to see if they would consider making a gift to help start a land trust.[1]

Most foundations are interested only in "start-up" grants. They do not want to maintain an organization for a period of years. Thus the local land trust will quickly need to develop a steady stream of funds from membership fees and donations. Although the purpose of this article is not to examine the various means of fund raising, it should be pointed out that the better an appeal is defined, the easier the fund-raising and membership efforts will be. It is easiest for land trusts to raise money when they have a tract of land they want to purchase. People can see what their money is going for, and they know that if they do not give, the reason for donating will not be there in the future. Administrative expenses are equally important, but much harder to raise. Administrative funds are necessary for such vital activities as publishing a news letter to inform members about the trust's efforts, publishing brochures promoting the trust, paying travel expenses, and covering the vast array of other unexciting expenses that will arise.

Obtaining a Charitable Tax Status

A valuable part of any fund-raising effort will be obtaining a charitable tax status. The importance of this is that if people can deduct contributions to the group, then they will be much more likely to give. To establish a charitable status, a representative of the local land trust must complete and file form number 1023 with the Internal Revenue Service.[2] The IRS will review the trust's bylaws, articles of incorporation, the make-up of the board of directors, and any other information that has been gathered concerning the group. Basically, it is necessary to show that the organization has been formed for *charitable*, *educational*, or *scientific* purposes. These are the main "catch words" that are significant in the process of qualifying local land trusts. If the group meets the preliminary tests, it usually will be given a provisional status. At the end of two years, the IRS reviews the records to see if that status should be revoked, altered, or continued. In essence, the IRS is trying

1. Anita Shirley, *Grant Seeking in North Carolina: A Guide to Foundations and Corporate Giving*, (Raleigh, N.C.: North Carolina Center for Public Policy Research, 1985) is a very helpful guide to these foundations.

2. *See* IRS Publication 557.

to ascertain whether the group is a publicly supported organization. Even if a group is preserving property, if it is not "a public organization" for IRS purposes, then it will not receive a charitable tax status. The concern is that a private individual could set up a "land trust" to preserve land for selfish reasons and not to be held in public trust or used for the public benefit. Therefore, the IRS has established the 33 per cent test and the 10 per cent test.

The 33 per cent test is the first test the group will try to qualify under, and if they do not qualify, then they must fall back to the 10 per cent test. If it is possible to show that over 33 per cent of the funds and property the group has received were the result of donations from the public as a whole, then it will qualify. If the level of donations from the public falls below 33 per cent, then the group must go to the second test, the 10 per cent test. If the level of public donations is between 10 per cent and 33 per cent, then there must be additional factors that qualify the group as an organization operating for the public benefit. These factors include such items as the organization's attempts to gain new members from the public; the organization's placing public officials on its board of directors; the organization's attempting to educate the public on the need for land preservation. The closer the level of donations from the public is to the 10 per cent level, the stronger these factors must be. If the level of donations falls below 10 per cent, then the group will be unable to qualify.

A key to understanding the above system is knowledge of what funds are considered to be from the "public" and what funds are considered to be from "private" sources. To ascertain this, the IRS has devised the 2 per cent test. The first step is to ascertain the dollar value of gifts received during the year, including land and money. The next step is to compute the figure equal to 2 per cent of that amount. The donations valued above that 2 per cent figure are "private," and the donations valued below that figure are "public." For example, let's say a land trust had total donations in a year, including the value of land donated, of $100,000. Two per cent of that figure is $2,000. Therefore, all of the $5, $10, $15 and $100 donations received would be considered as donations from the public. However, let's say Mr. X donated a piece of property worth $75,000. Of that $75,000, $2,000 would be deemed to be from the public, and $73,000 would be deemed to be private. If we take that $73,000 and plug it back into the 33 per cent test, we see that the land trust has not received donations from the public equal to at least one-third of its total support for that year. Therefore, the land trust must demonstrate some of the other factors mentioned in the 10 per cent test above.

As one can see, these tests require careful planning for the land trust, and also for potential donors. It seems frustrating, but the very reason for forming a land trust, acquisition of property, could conceivably wreck the trust's charitable tax status. The only way to offset this is to maintain an active and vigorous campaign, soliciting donations of every size. In the example above, the land trust was fairly fortunate in that it had $27,000 worth of donations that would help it to meet the public support tests. The IRS does recognize one exception. If "out of the blue" a land trust is given a donation that would upset its IRS status, and the IRS determines that this occurrence was not a scheme to avoid taxes, but was simply a once-in-a-lifetime windfall, the IRS can waive the above rules. It is also important to note that the rules apply to foundation grants. Thus a foundation will only donate to a charitable corporation, or one that has an active outreach program to involve the public.

It is important to be aware that a grant, no matter how large, from a public institution is considered all "public funds." Recently, the Triangle Land Conservancy was fortunate enough to receive a grant from the Wake County Parks and Recreation Department. The grant was figured into its total receipts for the year, but the 2 per cent test does not apply because the grant originated from public funds.

Acquisition of property

As I have emphasized, acquisition of property is the first and foremost task of the land trust, and as such must be approached in an orderly, deliberate, well planned manner. The first step is to define the focus of the organization. The next step is to define the criteria of property in which the trust is interested. Must it be of a certain size? Does it need to have a unique plant or animal community? Does it need to have value to the community as open space? These criteria can be as broad or as narrow as the group wishes, but for most local land trusts they will be fairly broad. This is because land is important not only for what is located on it, but also for its location. For example, an open field near a congested community may not support any unique plants or animals, but because it is open land near a congested community, it has value to the people of that community.

Another reason for criteria is that occasionally the land trust will be faced with making an unpopular decision about a tract of land. From time to time, land trusts are offered parcels that really are not appropriate for being held in public

trust. People will ask a land trust to accept a donation of a lot in a residential community because they have become tired of maintaining it themselves. These people are seeking to continue their private enjoyment of the lot, while passing headaches of management on to another group. In this kind of situation, the neighborhood should form a community association to maintain the property. Having a clear set of criteria will help the local land trust make such a decision. Often, there will be people in the group anxious to accept any donation. A land trust should insist that each donation or acquisition measures up against the list of criteria established by the trust as a whole. One somewhat surprising need for criteria is to justify acceptance of a piece of property that may help an unpopular development. On two occasions, the Triangle Land Conservancy has been offered property by developers who were developing projects immediately adjacent to the property. On occasion, the developer will use his offer of donation as an argument for his rezoning or subdivision petition. If the land trust is not careful, it can be perceived by the public as being a tool of the developer. In this kind of circumstance, the land trust should not take any position on the rezoning one way or the other, but simply state that the land offered does or does not meet its criteria, and that it will base its decision to accept or not accept the land on that factor alone.

The next step in the process of land acquisition is inventory. Before the land trust can systematically begin acquiring land, it must have a good idea of what land is available in the area. This is assuming that the scope of the trust's operations is to reach beyond that of a single topographical feature. Of course, the group may receive donations before the inventory process is complete; nevertheless, a land trust should immediately begin to inventory the land in its area. Furthermore, that inventory needs to be continually updated and maintained. We are very fortunate in North Carolina to have the Natural Heritage Program. This is a state agency whose responsibility is to inventory and protect North Carolina's natural areas. While the Natural Heritage Program has not had the funds and manpower to complete a systematic survey of North Carolina, it has compiled a large amount of information and should be the first place to check.

If, however, not much information about a particular area is available from the Natural Heritage Program, then the group may wish to raise funds for its own inventory, or it can lobby public officials in the area to support the project. Several counties, through special bills in the legislature, have received money to employ biologists and botanists working through the Natural Heritage Program to do inventories for their counties. Other counties have appropriated funds from county sources to do their own. Again, the staff of the Natural Heritage Program can administer these county surveys. If public funds are not available to a particular group, then it may wish to raise them itself and employ a local biologist to perform a complete or partial inventory. In that case, the Natural Heritage Program may provide technical and supervisory assistance. Even if hiring a biologist is not a possibility, a person with no technical knowledge can gather existing reports about the natural areas in his county. Bird watchers have their favorite areas, as do hikers, canoeists, and a variety of other people. If these people are systematically contacted, a wealth of information on natural areas in any county can be amassed.

Once the group has defined its focus and had a good overview of land available in its area, it can begin to acquire property, using a variety of means, ranging from donations to outright purchase. All of these methods must involve private participation, because a local land trust does not have any condemnation authority. Of course, donation is the preferred method for a land trust to acquire property. There are more opportunities for donations of land than one might think. In addition to the federal income tax advantages discussed previously, a property donor is also eligible for a credit against his state income taxes (G.S. 106-130.34). To some people, however, tax advantages are not really helpful. These people might be more interested in being relieved of the headaches of managing property, or they might be thankful for finding someone to manage property they love after their death. Often it is attractive to these people to know that they will be able to continue to enjoy the property after it has been donated. In

Selected Sources for Further Reading

Harper, Stephen F. *The Nonprofit Primer: A Guidebook for Land Trusts.* (Available from The State Coastal Conservancy, 1330 Broadway, Suite 1100, Oakland, CA 94612.)

Roe, Charles E. and Richard H. Sussman. *Forming a Conservation Foundation in North Carolina.* (Available from the North Carolina Natural Heritage Program.)

Williams, Suzanne and Roger Koontz. *Connecticut Land Trust Handbook, 1982.* (Available from the Connecticut Land Trust Service Bureau, P.O. Box MMM, Wesleyan Station, Middletown, Conn. 06497.)

working with people on donations, the land trust must have patience. Contacts made in one year may not bear fruit until several years later. Another popular vehicle for donations is through a will, and a land trust should have an active bequest program.

Most land trusts eventually determine that to meet their goals, they must enter the real estate market and purchase property. This should be handled just as if an individual were purchasing a home or property for a business. The land trust will probably have to raise funds for this project, but if it can show people that it needs "x" dollars for a particular piece of land by a certain date, fund-raising efforts will be much easier. It is possible to combine a donation with a purchase. That is, instead of the land owner selling the property for fair market value, he agrees to sell it for less than fair market. He is then free to take a deduction on his income tax for the difference between fair market value and the price the land trust pays. This is often an attractive alternative in that it provides some cash to a buyer who is in a frame of mind to help the land trust.

Generally, it is preferable for a land trust to acquire a piece of land in "fee simple." With a fee simple title, the land trust acquires all rights to the property. Sometimes, however, a land trust will be unable to do this and will find it necessary to acquire less than full title. There are a variety of measures the land trust can use in this instance. For example, land trusts have leased property or entered into management agreements with the land owners, whereby the property is designated for conservation purposes. However, these measures are but temporary in nature, and are not as viable a solution as the conservation easement, which has been used for years, or the dedication statute that was recently enacted. In the conservation easement, a land owner donates or sells to a land trust his right to develop the property. He continues to own the property, but it cannot be developed. This agreement between the land owner and the land trust is in the nature of a contract, and the land owner can convey away or keep as many of the rights of ownership as he wishes. For example, the land owner can retain the right to use the property for hunting, farming, or other activities that would not interfere with preservation of the property.

The conservation easement is often very attractive for the land owner who wishes to retain contact with his property, but wants to protect it from development. The property would continue to pass from generation to generation, or the land owner could even sell the property. However, any deed or devise would be subject to the conservation easement held by the land trust. Recently, the North Carolina General Assembly enacted a statute (G.S. 113A-164.1) that enables the land owner to dedicate his property for conservation purposes. This works in much the same way that a conservation easement would work, in that the land owner by signing articles of dedication gives up his right to develop the property. The articles of dedication are in essence a contract between the land owner and the state that the land owner will use his property only in certain ways. Nevertheless, under the dedication statute, the state must take some interest in the property, and decide that it wants to monitor the management of the property according to the articles.

Management of property

Management of property owned by a local land trust requires a greater commitment and involvement of time than the acquisition of property. Generally, when a local land trust acquires property, it intends to own and manage that property itself. In the past, some groups have bought property with a prearranged plan to turn it over to a state or local agency. However, with today's budget restraints, most public agencies are unwilling to take on the management responsibilities for any additional land. Therefore, before acquiring any property, a local land trust must satisfy itself that it can manage the property in perpetuity. *Perpetuity* is the key word, and if a local land trust is not prepared to make this commitment, then it must turn the property down. Management of land requires money, but most of all it requires the involvement and commitment of volunteers and/or staff. A land trust should be careful not to get involved in issues that do not fit into its goals; however, when those issues affect property it owns, it must get involved just as any responsible land owner would. Thus, if land owned by a local land trust is in an area proposed for a high level nuclear waste dump, then the trust may become involved in that issue as it relates to its property, even though the trust would not otherwise be interested in the issue. This kind of issue requires relatively little time and involvement, however, when compared to the time and involvement needed to respond to the day-to-day headaches of being an absentee land owner.

When people see land with no one living on it, they often assume the right to use it for their own purposes. The Triangle Land Conservancy at present owns only a few tracts, but it has spent many hours dealing with illegal dumping, illegal firewood cutting, access roads being plowed up, and the variety of other problems that face any land owner. These items do not take much money to remedy, but they do take a

(continued on page 47)

Protecting North Carolina's Children: *The Duty to Report Suspected Abuse and Neglect*

Janet Mason and **L. Poindexter Watts**

In fiscal year 1984-85, county social services departments in North Carolina received 19,301 reports about suspected abuse or neglect of children.[1] Reports were made by a variety of professionals and non-professionals—educational personnel, medical personnel, relatives, non-relatives, human service agency personnel, and others.[2] Despite increasing awareness of the duty to report suspected abuse and neglect, there is much confusion—among professionals as well as among the general public—about the abuse and neglect laws, including the law that mandates reporting. This article explains the statutory reporting requirement and related laws and attempts to address some of the primary sources of confusion.[3]

The North Carolina Juvenile Code[4] includes a provision, commonly referred to as the "Child Abuse Reporting Law," that requires anyone who suspects that a juvenile is abused or neglected to make a report:

> Any person or institution who has cause to suspect that any juvenile is abused or neglected shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the present

---

The authors are Institute of Government faculty members, working respectively in the fields of social services law and criminal justice administration. This article is adapted from their similar article in 17 SCHOOL LAW BULLETIN No. 2 (Spring 1986). This article is also being published as SOCIAL SERVICES LAW BULLETIN No. 9, available from the Institute of Government.

1. Division of Social Services, North Carolina Department of Human Resources, "Selected Statistical Data, Child Abuse & Neglect Central Registry, SFY: 1984-85" (unpublished) (available from the Division of Social Services, Albemarle Building, 325 North Salisbury Street, Raleigh, N.C. 27611).

2. *Id.* Only 393 reports were made by the victims themselves. Other reporting sources were: anonymous—2,082; child-care providers—354; educational personnel—3,110; law enforcement/courts—1,450; medical personnel—1,873; relative—3,236; nonrelative—3,438; human services—2,013; and parent—1,352.

3. The reporting law and questions relating to it are discussed in J. MASON, ABUSE AND NEGLECT OF CHILDREN AND DISABLED ADULTS: NORTH CAROLINA'S MANDATORY REPORTING LAWS (Institute of Government, 1984) (with 1985-86 Update). Juvenile court proceedings, which may flow from abuse and neglect reports, are discussed in Mason, *Juvenile Justice and North Carolina Schools*, 15 SCHOOL LAW BULLETIN No. 4, 1, 13-22 (October 1984).

4. N.C. GEN. STAT. ch. 7A, subch. XI (G.S. 7A-516 to -744). The present Juvenile Code has been in effect since 1980. For a description of the background and main provisions of the 1980 Code, *see* Thomas, *Juvenile Justice in Transition--A New Juvenile Code for North Carolina*, 16 WAKE FOREST L. REV. 1-44 (February 1980).

whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse or neglect and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give his name, address, and telephone number. . . .[5]

Companion statutes in the Juvenile Code set out the duties of the county social services director to whom the report is made. The director is required to (1) initiate an investigation within specified time limits;[6] (2) give written notice of the result of the investigation to the person who made the report;[7] (3) take appropriate actions to protect the child;[8] and (4) report to the district attorney (a) if the investigation reveals evidence that a juvenile has been abused, or (b) if the report itself contains information indicating that a child has been the victim of any of several criminal offenses.[9]

While the terms "child abuse" and "child neglect" are commonly used in reference to the reporting law, it is significant that the legislature chose to frame the reporting requirement in terms of "abused juveniles" and "neglected juveniles." The Juvenile Code defines these and other key terms in fairly precise and somewhat special ways. To understand the reporting requirement, it is essential to look at certain applicable definitions:

(1) *Abused Juveniles.*—Any juvenile less than 18 years of age whose parent or other person responsible for his care:
   a. Inflicts or allows to be inflicted upon the juvenile a physical injury by other than accidental means which causes or creates a substantial risk of death, disfigurement, impairment of physical health or loss or impairment of function of any bodily organ; or
   b. Creates or allows to be created a substantial risk of physical injury to the juvenile by other than accidental means which would be likely to cause death, disfigurement, impairment of physical health, or loss or impairment of the function of any bodily organ; or
   c. Commits, permits, or encourages the commission of vaginal intercourse, any sexual act, the obscene or pornographic photographing, filming or depicting of a child in those acts for commercial or noncommercial usage, or any other offense against public morality and decency provided for in Article 26, Chapter 14 [G.S. 14-177 through -202.1, including such offenses as crime against nature, incest, employing or permitting a minor to assist in offenses involving obscenity, disseminating obscene materials to minors, sexual exploitation of a minor, and taking indecent liberties with children] by, with, or upon a juvenile in violation of law; commits, permits or encourages any act of prostitution with or by the juvenile; or
   d. Creates or allows to be created serious emotional damage to the juvenile and refuses to permit, provide for, or participate in treatment. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or
   e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile. [Delinquent acts are those that would be crimes if committed by an adult.]

. . . .

(5) *Caretaker.*—Any person other than a parent who is in care of a juvenile, including any blood relative, stepparent, foster parent, or house parent, cottage parent or other person supervising the juvenile in a child-care facility. "Caretaker" also means any adult person [present] with the approval of the care provider in a day-care plan or facility as defined in G.S. 110-86.

. . . .

5. N.C. GEN. STAT. § 7A-543 (1981).

6. *Id.* § 7A-544 (Supp. 1985). An investigation of alleged abuse must be initiated immediately, but not more than 24 hours after the report is received. An investigation of alleged neglect must be initiated within 72 hours after the report is received.

7. *Id.* The notice must be given within five working days after the report is received unless a petition to take the matter to court is filed within that time, or unless the reporter waived his right to notification, or unless the reporter did not identify himself. The notice must inform the reporter that if he is dissatisfied with the social services director's decision, he has five working days within which to request that the district attorney review the decision.

8. *Id.*

9. *Id.* § 7A-548.

(11) *Custodian.*—The person or agency that has been awarded legal custody of a juvenile by a court.

. . . .

(20) *Juvenile.*—Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. . . .

(21) *Neglected Juvenile.*—A juvenile who does not receive proper care, supervision, or discipline from his parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law.

. . . . (Emphases added.)[10]

These definitions make it clear that the reporting law applies to abuse or neglect of anyone who is under age 18 and not married, emancipated (that is, declared by a court to be free of parental control), or in the armed services. They also make clear that the abuse and neglect that must be reported include much more than physical harm. For instance, the definitions include creating or allowing "a substantial risk of physical injury"; creating or allowing "serious emotional damage"; encouraging, directing, or approving the juvenile's commission of certain delinquent acts; failing to provide proper "care, supervision, or discipline"; and illegally placing a child "for care or adoption." In other respects, however, these definitions create an unfortunate degree of uncertainty about an area of the law that ought to be especially easy for everyone to understand.

Differences between the Juvenile Code and criminal law definitions

The reporting provision of the Juvenile Code is not a crime-reporting statute. North Carolina law contains no general requirement that crimes be reported. The report required by the Juvenile Code must be made to the social services department, not to a law enforcement agency. The required responses to the report and the court proceedings provided for by the Juvenile Code focus on protecting the juvenile, not on identifying and prosecuting the perpetrator. Child abuse *is* a crime, but it is the suspicion that a child is an "abused juvenile" or "neglected juvenile," as defined in the Juvenile Code, that must be reported.

The definition of "abused juveniles" covers many more situations than do the crimes of misdemeanor[11] and felony[12] child abuse. In the first

10. *Id.* § 7A-517. An administrative rule issued in 1985 by the State Social Services Commission expands the definition of "neglected child." The rule, 10 N.C. ADMIN. CODE 41I .0303(2), provides as follows:

> A neglected child is also a disabled infant with a life-threatening condition from whom appropriate nutrition, hydration or medication is being withheld; a neglected child is also a disabled infant under one year of age with a life threatening condition from whom medically indicated treatment, which in the treating physician's reasonable medical judgment would be most likely to be effective in ameliorating or correcting such life threatening conditions, is being withheld, unless in the treating physician's reasonable medical judgment any of the following conditions exist:
>
> (a) [the] infant is chronically ill and irreversibly comatose; or
>
> (b) the provision of medical treatment would merely prolong dying, would not ameliorate or correct all of the life threatening conditions, or would otherwise be futile in terms of the survival of the infant; or
>
> (c) the provision of medical treatment would be virtually futile in terms of the survival of the infant and under the circumstances the treatment would be inhumane.
>
> The term "infant" means a child less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any other protection regarding medical neglect of children over one year of age.

The use in the regulation of the term "neglected child," instead of the Juvenile Code term "neglected juvenile," typifies the poor drafting that seems endemic to this whole area. The Juvenile Code is generally consistent in using the term "neglected juvenile" or "abused juvenile" when referring to a circumstance or condition addressed by the Code. The term "child abuse" could be meaningfully distinguished as referring to the criminal offenses of misdemeanor and felony child abuse. *See infra* notes 11 and 12. In fact, "child" instead of "juvenile" is frequently used in reference to Juvenile Code matters. *See, e.g.*, document cited in note 1, *supra*, and text following note 27, *infra*. The caption to G.S. 7A-543, the Juvenile Code reporting requirement, reads "Duty to report child abuse or neglect," even though the statute itself refers only to juveniles.

11. The criminal offense of misdemeanor child abuse is defined in G.S. 14-318.2 as follows:

> (a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the misdemeanor of child abuse.

12. The criminal offense of felony child abuse is defined in G.S. 14-318.4 as follows:

> (a) A parent or any other person providing care to or supervision

place, these criminal statutes apply only to offenses against children under age 16, while the reporting statute applies to "juveniles"—those under age 18 who are not married, emancipated, or in the armed services. Second, the criminal child abuse statutes do not address emotional abuse, encouraging delinquency, and other conduct that may cause a child to be an "abused juvenile" whose case must be reported. A child who is the victim of the crime of child abuse is almost certainly also an "abused juvenile"[13] for purposes of the reporting law, but the definition of "abused juveniles" is much broader in scope than the crime of child abuse.

There is no criminal child neglect statute comparable to the criminal child abuse laws. The Juvenile Code definition of "neglected juvenile" does include some things, such as abandonment, that may also be criminal offenses. But the conditions of neglect that must be reported by anyone who has cause to suspect that they exist are not limited to conditions that result from criminal conduct.

Many instances of neglect and abuse will be covered under a criminal statute that provides:

> Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile . . . to be in a place or condition, or to commit any act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7A-517 [the Juvenile Code definitions] shall be guilty of a misdemanor.
> . . . .[14]

Although this statute is used most often in relation to delinquency, it clearly applies to cases in which a parent or other person "knowingly" or "willfully" causes a child to be an "abused juvenile" or a "neglected juvenile" as defined in the Juvenile Code.

Thus, many cases of abuse or neglect that come within the reporting requirement may involve criminal conduct. It is not the crime, however, but the *condition of the child,* that must be reported. In some cases, such as those in which a parent's conduct is not "willful," a juvenile may be abused or neglected even though no crime has been committed.

Although the reporting law covers a broader range of abusive and neglectful conduct than the criminal statutes, it does not cover all children who are maltreated, harmed, or placed at risk. This is because the reporting law applies only when the proscribed conduct is committed by specified persons. For example, a child is "abused" for purposes of the reporting law only when the parent or other person responsible for the child's care commits one of the acts set out in the definition of "abused juvenile." The crimes of misdemeanor and felony child abuse are similarly limited to acts by the parent, guardian, or "other person providing care to or supervision of a child."[15] Nevertheless, children may be assaulted, raped, or otherwise criminally victimized by anyone. When a child has been harmed or placed at risk of harm, the identity of the person who caused or allowed that condition determines whether the law requires that a report be made and whether the social services department must investigate after it receives a report.

A child who is the victim of a crime committed by a third person is probably not an "abused juvenile" whose case must be reported to the social services department. It is important to remember, however, that such a child may be a "neglected juvenile" for purposes of the reporting law if the failure of the parent or other responsible person to provide adequate care and supervision contributed to his victimization. For example, if a child is raped by the mother's boyfriend, she may not be an "abused juvenile" as defined by the Juvenile Code because the boyfriend is not a parent or other person responsible for her care. But if the mother failed to provide "proper care or supervision," or if the child was liv-

---

of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class H felony.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class H felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commision of any sexual act upon a juvenile is guilty of a Class H felony.

13. The crime of child abuse includes children who are not also "abused juveniles" only if the criminal statutes are interpreted to apply to a broader group of perpetrators—*i.e.*, only if the phrase "other person providing care to or supervision of a child" is read to include more people than the Juvenile Code language "other person responsible for his [the juvenile's] care." *See infra* note 21 and accompanying text.

14. N.C. GEN. STAT. § 14-316.1 (Supp. 1985).

15. *See supra* notes 11 and 12.

ing in "an environment injurious to [her] welfare," she would be a "neglected juvenile" whose situation must be reported to the social services department. A child who is the victim of a crime may also *become* an "abused juvenile" or "neglected juvenile" in the language of the Code if the parent or other responsible person does not provide appropriate care or medical treatment in response to the child's victimization.

The reporting statute, then, requires a report not of the crime of child abuse or other crimes against children but rather of the broader—but in some respects narrower—situations in which a juvenile may be abused or neglected according to the Juvenile Code definitions. In many such instances there will also be a crime against the child that has produced the condition of abuse or neglect. Although the Juvenile Code is not primarily concerned with responding to crimes, it acknowledges the importance of criminal aspects of situations in which children are harmed or placed at risk. The county social services department is under a specific duty to report to the district attorney any *evidence* it finds that a juvenile has been abused as defined in the Juvenile Code.[16] Social services departments often receive reports about children who have been the victims of crimes, but who do not come within the Juvenile Code definition of abused or neglected juvenile, even though the law does not require that such cases be reported. The department is not required to investigate those cases, but it must report to the district attorney any *information* it receives "that a juvenile has been physically harmed in violation of any criminal statute by any person other than the juvenile's parent or other person responsible for his care . . . ."[17]

Many people are surprised that the law requires a report to the social services department only when someone suspects that a child is an "abused juvenile" or "neglected juvenile" and that it does not require anyone except a social services department to report child abuse or other crimes against children to law enforcement authorities. Although the General Assembly has not mandated such reports by the public, almost everyone would agree that a person who knows of such a crime *should* report it. Technically, a report about a crime against a child whose condition does not bring him within the Juvenile Code definition of "abused juvenile" or "neglected juvenile" should be made to a law enforcement agency, not to a social services department. But, as noted above, if a social services department receives a report about such a case, it is required to relay the information to the district attorney if physical harm is involved.

No one should struggle long in trying to decide whether the case of a child who has been harmed comes within the Juvenile Code definitions, criminal law offenses, or both. The important thing is to report if there is even a suspicion that a juvenile is abused or neglected. Some suspicions of abuse or neglect will, upon investigation, prove to be unfounded, and some individuals may fear that they risk liability for making such a report. The Juvenile Code acknowledges that concern and provides the following protection:

> Anyone who makes a report pursuant to this Article [Article 44 of Chapter 7A of the General Statutes], cooperates with the county department of social services in any ensuing inquiry or investigation, testifies in any judicial proceeding resulting from the report, or otherwise participates in the program authorized by this Article, is immune from any civil or criminal liability that might otherwise be incurred or imposed for such action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed.[18]

If there is any doubt about to whom the report should be made, one should report to the county social services department. These points are amplified in the "Guidelines for Reporting" that accompany this article.

Whose conduct is covered by the reporting law?

As noted above, the terms "abused juvenile" and "neglected juvenile" as used in the reporting law do not cover abuse and neglect—as those terms are or-

16. N.C. GEN. STAT. § 7A-548 (Supp. 1985).
17. *Id.*
18. *Id.* § 7A-550 (1981).

Guidelines for Reporting

It is no wonder that people are sometimes uncertain about what *they* should do about incidents of suspected child abuse or neglect. The uncertainty is especially understandable for school personnel trying to decide what they should do about incidents of suspected abuse or neglect involving children in their school. The statute that is generally known as the Child Abuse Reporting Law, while it clearly requires that everyone—including school personnel—report cases of suspected abuse and neglect, contains language that almost invites misunderstanding. A recent case in which an assistant superintendent was convicted of violating the reporting law adds to the confusion about how that law should be interpreted.

The following material will describe the law briefly, explain some of the sources of confusion, and make recommendations for policies that can be developed to guide school personnel and others in dealing with suspected child abuse and neglect.

Summary of the Law

The reporting law is set out in the North Carolina Juvenile Code—a group of laws that includes provisions for protective social work and civil court (as opposed to criminal court) responses to children who are "abused juveniles" or "neglected juveniles" according to the Code's definitions. The crimes of misdemeanor and felony child abuse and other crimes against children are dealt with in the General Statutes chapter that covers crimes. The criminal law definition of child abuse differs from the Juvenile Code definition of "abused juvenile," which is much broader. Thus the reporting law applies not only to children who are victims of the crime of child abuse, but also to other children who come within the broader definitions of "abused juvenile" and "neglected juvenile." The reporting law requires all persons who suspect that a juvenile is abused or neglected to report their suspicions to the county department of social services. The social services department is required to investigate promptly, take appropriate action to protect the child if the report is substantiated, and report possible criminal behavior to the district attorney. The law defines a "juvenile" as a child under 18 years of age who is not married, emancipated (that is, legally released from parental control), or in the armed services.

For purposes of the reporting law, "abuse" refers to the conduct of the child's *parent or other person responsible for his care* who inflicts physical or psychological damage to the child, or subjects him to major hazards to his health, or subjects him to sexual or obscene practices or exploitation, or encourages or directs him to commit delinquent acts involving moral turpitude. (Delinquent acts are acts that would be crimes if they were committed by an adult.) It also includes cases in which a parent or other person responsible for the child's care permits or allows these kinds of harm to the child. It is important to note that whether an act renders a child an "abused juvenile" whose case must be reported to the social services department depends on whether the act is committed by the child's parent or by another person who is responsible for his care. There are crimes involving violent or immoral acts against children that do not come within this definition when they are committed by someone who does not have this special relationship with the child. Like all crimes, these offenses should be reported to law enforcement authorities.

A "neglected juvenile," for purposes of the reporting law, is a child who does not receive proper care, supervision, or discipline *from his parent, guardian, custodian, or caretaker.* A caretaker is defined as anyone other than a parent who "is in care of a juvenile," including blood relatives, stepparents, foster parents, house parents, and adults in day-care plans and facilities. A child is also neglected if he is not provided necessary medical or remedial care, or is abandoned, or lives in an environment injurious to his welfare, or is placed illegally for care or adoption.

The Juvenile Code specifically provides that the conduct of day-care personnel is covered by the reporting law. One area of uncertainty is whether the acts of teachers, baby sitters, or other temporary-care providers are covered by the abuse and neglect statutes. For example, if a teacher commits any of the acts listed in the abuse and neglect statutes against one of his or her students, is that student an "abused juvenile" or "neglected juvenile" whose case must be reported to the social services department? Do teachers—or other temporary-care providers—have that special care-giving relationship that brings such incidents within the reporting law's mandate (not to speak of any moral obligation that citizens may have to report crimes)?

In general, the reporting law has been interpreted to exclude the acts of temporary-care providers, other than day-care personnel, from its coverage. That is, abuse of a child by a teacher, a baby sitter, or other temporary-care provider, is not an event that must be reported to the social services department under the reporting provisions of the Juvenile Code, because these people do not have the continuing care-giving responsibility contemplated by the statute. Nevertheless, a trial court judge (in a case that was not appealed and is therefore not binding on other judges) recently ruled that the failure to report suspected abuse by a teacher is a misdemeanor. Responsible people will report such incidents to proper authorities, even if the reporting law is not read to say that they must report them to the social services department.

Basic Rules for Reporting

1. If you *suspect* that a child is an "abused juvenile" or "neglected juvenile," as those terms are defined in the Juvenile Code, make a report to the county social services department.

2. If you are uncertain whether a child's situation comes within either of those definitions, but you have a reasonable concern that it might, make a report to the county social services department.

3. If you know or suspect that a child has been the victim of a crime, but you are sure that his situation does *not* come within the definition of "abused juvenile" or "neglected

juvenile," notify the child's parent, guardian, custodian, or caretaker; notify law enforcement officials; or notify both.

4. If such an incident arises in a school, hospital, or other institutional setting, report according to the institution's policy. If the institution does not have a reporting policy, encourage the development of one. Meanwhile, for a particular case involving a crime against a child whose case clearly does not come within the Juvenile Code definitions, consult the institution's administrators and/or attorney if you are unsure of the appropriate response.

Policies and Procedures

Increasingly, schools and county social services departments in North Carolina are working together locally to develop policies and procedures for responding to cases of suspected abuse or neglect. Similar policies can be developed for cooperation between the social services department and other agencies and institutions that serve children. Some suggestions for developing local guidelines for schools and social services departments—which could be modified to apply to other agencies and institutions—include:

1. Local guidelines should be developed jointly, not presented by one agency to the other.

2. If the guidelines provide—as many do—that the principal or some other designated person will receive reports from school personnel and communicate them to the social services department, it should be made absolutely clear that:

a. That liaison person's role is not to screen, investigate, or evaluate reports but rather to relay them immediately to the social services department; and
b. If an individual who suspects abuse or neglect has any doubt that his suspicion will be reported to the social services department by the designated person, he should make a report to the department himself.

3. Guidelines should provide for cooperative efforts to train school personnel in recognizing the symptoms of abuse and neglect and in understanding the law and social services procedures related to reports and investigations.

4. Guidelines should address cooperation between the school and the social services department during the investigation of a report of suspected abuse or neglect, whether the report originated with the school or not. They should:

a. *Ensure* that social services workers are allowed to interview children at school in appropriate cases.
b. *Ensure* that the school will not be used inappropriately as a site for interviewing children—such as, when the child could be seen at home but it is simply more convenient for the social worker to talk with him at school.
c. *Provide* for advance notice to the school, cooperative scheduling, appropriate sharing of information, and other steps to avoid disruption or confusion when an interview at the school is needed.
d. *Acknowledge* that the school is not required to notify the child's parents before allowing a social worker to interview the child at school, but specify conditions under which notification of the parents before or after an interview will be considered appropriate.
e. *Address* decisions concerning appropriate personnel who will be present during a social worker's interview with a child at school—school personnel, parent(s), law enforcement officers, or others. Decisions must be made on a case-by-case basis, but some general rules may be stated: The number of people should be kept to a necessary minimum. Allowing law enforcement officials or others to be present may be appropriate if it will avoid the child's having to undergo repeated interviews. If a law enforcement official is present, he or she preferably should not be uniformed. The parent or other person suspected of abusing or neglecting the child should not be present.
f. *Guarantee* an appropriate private setting for the interview and implement procedures that will minimize embarrassment or disruption for the child.

5. Guidelines should also provide for appropriate follow-up and sharing of information within the constraints of legal confidentiality requirements.

6. The school or person who makes a report of suspected abuse or neglect is entitled by law to a written notice from the social services department within five days after a report is made, unless (1) the department has initiated court action within that time; (2) the one who makes the report waives his right to receive the notice; or (3) the one who reports does not identify himself. Guidelines should:

a. *Provide* that the school will receive notice even if court action is initiated within five days, since the school is not a party to the court action and has no way of knowing that the action is why it has not been notified; and
b. *Describe* any circumstances in which, or procedures through which, the right to written notice will be waived.

7. Guidelines should identify appropriate persons to be contacted and procedures to be followed if either the school or the social services department is dissatisfied with the other's performance in relation to an abuse or neglect matter.

Local guidelines may address numerous other subjects, such as cooperative prevention efforts, curriculum development, and coordination of services to the child and family. In 1984, the State Departments of Human Resources and Public Instruction developed a set of recommended procedures to be used in cases of suspected abuse and neglect. This set of recommendations can serve as a useful starting point for local schools and social services departments that want to develop guidelines. [See the Memorandum to All Local Superintendents from Craig Phillips, dated July 12, 1984 (available from the Department of Public Instruction or the Institute of Government). The memorandum includes a list of relevant statutes and a copy of the North Carolina Attorney General's opinion dated April 27, 1984, which answers the following question in the affirmative: "May public school officials permit protective services workers of the county department of social services to interview a reported victim of child abuse or neglect on school premises in the absence of and without prior notice to the parent(s) of the reported victim?"]

dinarily understood—by every person who may harm a child. The statute applies to the conduct of parents and other care providers. The provisions concerning abuse speak of the "parent or other person responsible for his [the juvenile's] care."[19] The provisions concerning neglect refer to the "parent, guardian, custodian, or caretaker."[20] It is not clear why the two definitions use different phraseology in regard to the care providers whose conduct is covered. The context of the statute and the purposes of the Juvenile Code suggest that "other person responsible for his care" means at least guardian and "custodian" and probably also "caretaker." It is not clear whether the phrase includes others as well. In practice, social services personnel construe the two definitions to cover the same set of care providers—those set out in the definitions of "neglected juvenile" and "caretaker."[21] Because the definitions of "abused juvenile" and "neglected juvenile" were adopted at different times, there is little basis for reading any legislative intent into the use of different language. The difference is probably attributable to artless drafting of the legislation.

If the two definitions are read to cover the same care providers, they do not appear to include school teachers, baby sitters, or others with only temporary care responsibilities for juveniles. The emphasis is on parents and other parent-like persons who have on-going, long-term relationships with the child.[22] One important exception is that the statute explicitly defines "caretaker" to include adults in day-care plans and facilities.[23] To date, the only basis for doubting that the definitions exclude school teachers, baby sitters, and other short-term care providers, is a recent North Carolina case in which a school administrator was convicted in district court for not reporting suspected sexual abuse of students by a substitute teacher.[24] Since the law would not require a report in that situation unless the substitute teacher was a "person responsible for [the juvenile's] care," apparently the prosecutor and the judge who decided the case viewed teachers as coming within that category. Since the conviction in that case was not appealed, this lower court ruling does not create any precedent; that is, it is not binding on other judges who may hear similar cases. The case does illustrate a critical area of uncertainty, especially for school personnel and parents, in interpreting the reporting law.

---

19. *Id.* § 7A-517(1) (Supp. 1985).

20. *Id.* § 7A-517(21). Part of the definition of "neglected juvenile" does not address who is responsible for the juvenile's condition, and it could be argued that in some cases the neglect involved could be caused by someone other than the primary care provider. The part in question defines as neglected a "juvenile who . . . is not provided necessary medical care or other remedial care recognized under State law . . . or who has been placed for care or adoption in violation of law." A court might restrict findings of neglect to cases in which basic care providers place a child illegally or fail to provide medical care, but it might just as easily find neglect when medical personnel, adoption personnel, or others are responsible. *See also* the rule regarding disabled infants who are denied medical treatment, *supra* note 10, in which the same issue could be raised concerning the conduct of involved medical personnel.

21. N.C. GEN. STAT. § 7A-517(5) (Supp. 1985). Addressing a county social services director's inquiry about the meaning of the term "caretaker," a 1981 letter from the North Carolina Attorney General reflects the assumption, as do most discussions of the question, that whatever "caretaker" means, it means the same thing as "person responsible for [a juvenile's] care":

> . . . . With regard to abused and neglected children, . . . the Juvenile Code envision[s] that the State, acting through the county departments of social services and the district courts, will act to prevent and to protect children from physical or emotional injury or deprivation at the hands of those responsible for their care.
>
> Determination of exactly who falls within that group (i.e., those responsible for the care of children) to which the Code applies has been a matter of some discussion and difficulty since the inception of the Code. In practical effect, however, implementation of the Code's provisions has tended to limit and define that group.

[Letter from Attorney General Rufus L. Edmisten to Mr. David A. Noland, Director, Jackson County Department of Social Services (July 14, 1981) (unpublished)].

A related question that this article will not address is whether the phrase "person providing care to or supervision of a child," which is used in the criminal child abuse statutes, means the same thing as either or both of the Juvenile Code terms "caretaker" and "person responsible for [the juvenile's] care." *See* notes 11, 12, and 13, *supra*.

22. *See* Letter of the Attorney General, *id.*, which states:

> The term ["caretaker"] does not include school teachers, because:
> (a) They do not have permanent or long-term responsibility for care and supervision of a particular child;
> (b) The definition of day-care facility appearing in G.S. 110-86(3) specifically excludes schools, among other institutions; and
> (c) School teachers have certain privileges with regard to supervision and disciplining of students, recognized in *State v. Pittard*, 45 N.C. App. 701, 263 S. E. 2d 809 (1980), which . . . [the statute] does not purport to abrogate.

23. While persons in day-care plans and facilities were added to the definition of "caretaker" in 1985, day-care workers were actually added to the Juvenile Code's coverage for reporting purposes in 1981 by an amendment to G.S. 7A-542.

24. State v. Freitag (Unreported, Wake County District Court, January 31, 1986). *See Assistant Superintendent Convicted for Not Reporting Suspected Child Abuse*, 17 SCHOOL LAW BULLETIN 46 (Spring 1986).

Taking that case as a point of departure, it can be argued that the phrase, "person responsible for his care," was used deliberately in the abuse definition to cover a broader range of abusive conduct than would be reportable if the covered perpetrators were confined to parents, guardians, "custodians," and "caretakers" as they are in the neglect definition. Considering the extent to which teachers or baby sitters may be "responsible for the care" of juveniles during large parts of a day, it is understandable that prosecutors might push for an interpretation that includes these people among the care providers covered by the abuse portion of the reporting law.

On the other hand, the arguments for ruling that teachers and other temporary care providers are not covered in either the abuse or the neglect definition are perhaps stronger. The arguments include:

(1) The Juvenile Code, in which the reporting requirement appears, is designed primarily to ensure protective social services and court intervention on behalf of juveniles who are not receiving proper care and treatment from their parents or similarly responsible people.

(2) The dispositions available to the court in proceedings under the Juvenile Code relate to the juvenile's home situation and generally do not give the court authority to enter orders regarding schools, teachers, baby sitters, or others.

(3) When a juvenile is mistreated by someone other than the parent or other primary caretaker, responsibility for protecting the child from further mistreatment and for meeting his special needs that result from the mistreatment rests with the parent, guardian, custodian, or caretaker. Protective intervention by a governmental agency is justified only when parents, guardians, etc., do not carry out their primary duties.

(4) Any governmental response to abuse or neglect by a school teacher should come from the school itself and from law enforcement agencies; if, however, the Juvenile Code is interpreted to require that such conduct by a school teacher be reported, it also requires that the social services department investigate the report. This assumption of jurisdiction over schools is a step that neither social services departments nor the district court hearing juvenile matters has taken in any large measure. (Similarly, it can be argued, parents and law enforcement agencies—not social services departments—should respond to allegations of abuse or neglect by a baby sitter.)

(5) The General Assembly, having specifically included day-care personnel within the definition of "caretaker," would have been equally explicit about including school personnel and other short-term care providers if it had intended for their acts to be covered by the reporting law, social services investigations, and other Juvenile Code provisions.[25]

As a matter of caution, knowing that one school official was prosecuted and convicted for not reporting suspected abuse by a teacher, people may prefer to operate under the broader interpretation and report to the social services department any case of suspected abuse by a teacher or other temporary-care provider. It is important to understand, however, that if the county social services department is operating under the narrower interpretation, it will handle the report by merely conveying to the district attorney any information that suggests that a child has been physically harmed in violation of a criminal statute. In addition, despite the one case that has caught school officials' attention, criminal prosecution for not reporting such a case to the social services department is extremely unlikely if the person who knows about it makes other appropriate responses—such as reporting directly to parents and law enforcement officials and ensuring that the child or children are not exposed to further abuse.

Special provisions; privileged information

The reporting requirement is universal. Anyone who "has cause to suspect" that a juvenile is abused or neglected must make a report. The duty falls on institutions[26] as well as on individuals. Thus schools, hospitals, day-care centers, as well as individuals, are clearly covered. The General Assembly apparently considers school personnel to have peculiarly important opportunities, abilities, and responsibilities in identifying and reporting juvenile abuse and neglect,

25. *See also* note 22, *supra*.

26. The term "institution" is defined by administrative rule, 10 N.C. ADMIN. CODE 41I .0303(5), as follows:

"Institution" means any public or private institution, facility, agen-

and it enacted a statute intended to pin the matter down with certainty:

> § 115C-400. **School personnel to report child abuse.**
>
> Any person who has cause to suspect child abuse or neglect has a duty to report the case of the child to the Director of Social Services of the county, as provided in G.S. 7A-543 to 7A-552.[27]

Despite the phrase "child abuse or neglect" in the statute, the cross-reference to the Juvenile Code reporting provisions makes it clear that the requirement applies to "juveniles" and their abuse and neglect as defined in the Juvenile Code.

Then, immediately following G.S. 115C-400, the General Assembly added another provision that raises a somewhat more complex issue:

> § 115C-401. **School counseling inadmissible evidence.**
>
> Information given to a school counselor to enable him to render counseling services may be privileged as provided in G.S. 8-53.4.[28]

This statute's placement raises the question of whether school counselors are subject to the abuse and neglect reporting requirement. They clearly are! So, too, are others who are the subject of "privilege" statutes similar to the one cited above for school counselors. The explanation lies in the plain wording of the reporting statute and in the law governing what "privileged" means.

As a general rule, the state can compel anyone to testify in court concerning a relevant issue in a legal proceeding. That the testimony may be inconvenient, embarrassing, or disruptive of friendships or other relationships makes no difference. However, there are exceptions to this general rule. People in certain relationships expect their communications to be private and confidential. In some cases—such as counseling or psychotherapy—the relationship probably would not exist at all without some assurance of confidentiality. Because these relationships have a strong social value, the General Assembly has protected them by providing that a witness may not be compelled to testify about such communications. The information shared in these special relationships is said to be "privileged," and it is protected by statute from disclosure in court. Examples of such testimonial privileges include the physician-patient privilege,[29] the clergyman-communicant privilege,[30] the husband-wife marital-relationship privilege,[31] the husband-wife confidential-communication privilege,[32] the psychologist-client privilege,[33] and the certified social worker-client privilege.[34]

For example, the school counselor-student privilege is based on a statute that provides:

> § 8-53.4. **School counselor privilege.**
>
> No person certified by the State Department of Public Instruction as a school counselor and duly appointed or designated as such by the governing body of a public school system within this State or by the head of any private school within this State shall be competent to testify in any action, suit, or proceeding concerning any information acquired in rendering counseling services to any student enrolled in such public school system or private school, and which information was necessary to enable him to render counseling services; provided, however, that this section shall not apply where the student in open court waives the privilege conferred. Any resident or presiding judge in the district in which the action is pending may compel disclosure, either at the trial or prior thereto, if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be the district court judge, and if the case is in superior court the judge shall be a superior court judge.[35]

Other privilege statutes read similarly. Note that the statute shields privileged information only from

---

cy, group, organization, corporation or partnership employing, directing, assisting or providing its facilities to persons who, as a part of their usual responsibilities, give care or services to children less than 18 years of age and any hospital or other health care facility providing treatment to infants with life threatening conditions.

This definition was enacted at the same time as the rule expanding the definition of "neglected child" to include certain disabled infants who are denied treatment. *Supra* note 10. Thus the definition's emphasis on health-care facilities should not be interpreted as imposing a restrictive reading on the term "institution" as used in the reporting law.

27. N.C. GEN. STAT. § 115C-400 (1983).

28. *Id.* § 115C-401.

29. *Id.* § 8-53 (Supp. 1985).

30. *Id.* § 8-53.2 (1981).

31. *Id.* §§ 8-56, -57 (Supp. 1985).

32. *Id.*

33. *Id.* § 8-53.3.

34. *Id.* § 8-53.7. This privilege applies only to a "person engaged in delivery of private social work services, duly certified pursuant to Chapter 90B of the General Statutes."

35. *Id.* § 8-53.4.

disclosure in courtroom testimony. It does *not* prohibit a school counselor from complying with the duty to report suspected juvenile abuse or neglect to the county social services director. Neither does it, or any other privilege statute, provide a legal justification for not reporting such cases. Professional ethics may impose important limits on a school counselor's or other professional's freedom to disclose shared confidences,[36] but neither professional ethics nor the privilege statutes override the statutory duty to report suspected abuse or neglect.

Once inside the courtroom, a testimonial privilege may be waived by the person who gives the confidential information.[37] For example, G.S. 8-53.4 states that the student may waive the privilege. Even if the child, under parental or other pressures, refuses to waive the privilege, the statute expressly provides that the judge may override the privilege "if in his opinion disclosure is necessary to a proper administration of justice." For two sets of testimonial privileges—the husband-wife privileges and the physician-patient privilege—the statutes explicitly state that the privileges do not apply in juvenile abuse or neglect proceedings.[38] Although there is no similar explicit statutory exception for the other privileges, the judge's authority to override the privilege can serve the same purpose in most instances.[39] A judge is not likely to override a privilege lightly, and should not do so unless the privileged information is truly necessary—a determination the judge may make after reviewing the information privately. The fact that the professional made the initial report does not determine whether the privilege will be overridden when the matter goes into court. And certainly a professional may be called to testify and the privilege overridden, even when the professional did not make the report.

Is failure to report suspected juvenile abuse or neglect a crime?

The recent criminal conviction of a school administrator for violating the reporting law has attracted attention and generated concern, especially among school personnel. Another recent prosecution of a psychologist for not reporting suspected juvenile abuse is before the courts.[40] At this writing, these two are the only North Carolina cases in which criminal charges have been brought for violating the reporting law. Unlike many other states, North Carolina has no statute that explicitly provides that the failure to report suspected juvenile abuse or neglect is a crime. The General Assembly enacted the state's first mandatory reporting law in 1971 and has amended it several times, but it has never by statute provided for civil or criminal penalties for not making a required report. The Juvenile Code Revi-

---

36. Professional ethics might also raise the question of whether a counselor, psychologist, or other professional who gives an assurance of confidentiality should disclose to the student, client, etc., that he has a legal duty to report suspected abuse or neglect, since that constitutes an exception to confidentiality over which the professional has no discretion.

37. The General Assembly has amended this aspect of the law on privileges pertaining to husbands and wives. The present general rule is that a spouse may be called to the witness stand, and the testifying spouse is free to testify or not. The privilege thus belongs to the testifying spouse rather than to the spouse who communicated the information. Also in certain types of criminal cases the privilege does not apply, and the spouse on the witness stand can be forced to testify. N.C. GEN. STAT. §§ 8-56, -57 (Supp. 1985).

38. *Id.* § 7A-551; *id.* §§ 8-53.1, -57.1 (1981). G.S. 7A-551, a section of the Juvenile Code, provides:

> Neither the physician-patient privilege nor the husband-wife privilege shall be grounds for excluding evidence of abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse or neglect is in issue nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications.

G.S. 8-53.1, in the chapter of the General Statutes that addresses evidence, provides:

> . . .[T]he physician-patient privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code . . . .

G.S. 8-53.1, also in the chapter on evidence, provides:

> . . . [T]he husband-wife privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law . . . .

39. Of the privilege statutes without specific abuse and neglect exceptions, only the clergymen-communicants privilege statute, G.S. 8-53.2, does not contain authority for the judge to compel disclosure when necessary to the proper administration of justice.

40. This case was prosecuted in Durham County and resulted in a district court conviction that has been appealed to superior court. At this writing, the outcome of the case has not been determined.

sion Committee,[41] which drafted much of the present Juvenile Code, said in its 1979 report:

> The Committee considered a penalty for not reporting . . . to insure that the administrators of hospitals, schools, and other institutions whose employees may see evidence of abuse . . . [or] neglect develop a mechanism for reporting and encourage their employees to report such incidents as required by law. The Committee, however, concluded that the threat of civil suit for failure to report should be sufficient incentive for institutions to encourage reporting.[42]

Thus, in addition to questions about the scope of the reporting duty, there is a question about how the failure to make a report becomes a criminal offense.

How did the criminal prosecutions come about? The answer lies in a common law rule—that is, a rule derived from English law and past decisions of appellate courts, in the reporting law itself, and in a catch-all criminal punishment statute. The courts have not often applied this common law rule, which received its clearest modern statement in cases decided in 1884, 1886, and 1947. In the first, a Mr. Parker was indicted under a statute that said that it was "unlawful" to sell or receive compensation for any spirituous or intoxicating liquors within two and one-half miles of Zion Baptist Church in Cleveland County.[43] Parker argued that his conduct was not a crime, since the statute provided no penalty, and similar statutes relating to such conduct in other counties specifically made the violation of those statutes a misdemeanor.[44] The State Supreme Court, upholding the conviction, said:

> If a statute prohibit a matter of public grievance, or command a matter of public convenience, all acts or omissions contrary to the prohibition or command of the statute, being misdemeanors at common law, are punishable by indictment, if the statute specify no other mode of proceeding. . . .[45]

In the second case, a New Hanover County farmer was indicted under a statute that said, "Every planter shall make a sufficient fence about his cleared ground under cultivation, at least five feet high . . . ."[46] The statute did not say that the failure to build such a fence was either "unlawful" or punishable as a misdemeanor; it simply said that "[e]very planter shall . . . ." But the Supreme Court cited the language quoted above from the earlier case and stated that the failure to carry out the statute's mandate was an indictable offense.[47]

In the 1947 case the Supreme Court affirmed a conviction under a statute that provided that "No person shall be required by any employer to become or remain a member of any labor union or labor organization as a condition of employment . . . ."[48] Rejecting the employer's argument that violation of the statute was not a criminal offense, the court cited the two cases described above and emphasized that (1) the statute's main purpose was the promotion of the public interest; (2) the statute dealt with public policy; (3) it was intended to promote the welfare of the whole public rather than to sow the seeds of private litigation; and (4) it was aimed at a practice that was detrimental to the public welfare.[49]

The relevant criminal punishment statute provides: "[E]very person who shall be convicted of any misdemeanor for which no specific punishment is prescribed by statute shall be punishable by fine, by imprisonment for a term not exceeding two years, or by both, in the discretion of the court."[50] Thus, since the General Assembly has not said how to proceed when the reporting duty is violated, the common law rule provides the basis for characterizing the violation as a misdemeanor, and the criminal statute, G.S. 14-3(a), establishes the range of possible punishments.

If prosecutors continue to use the common law theory successfully, its applicability to violations of

---

41. The Juvenile Code Revision Committee was created by legislation in 1977 as an adjunct committee of the Governor's Crime Commission. Among other duties, it was charged to "study problems relating to young people who come within the juvenile jurisdiction of the District Court" and to "study the existing laws, services, agencies and commissions and recommend whether they should be continued, amended, abolished or merged." N.C. GEN. STAT. § 143B-480(c)(6) (Supp. 1985).

42. "The Final Report of the Juvenile Code Revision Committee," Raleigh, N.C.: North Carolina Department of Crime Control and Public Safety (January 1979), pp. 34-35.

43. State v. Parker, 91 N.C. 650, 651 (1884).

44. *Id.*

45. *Id.* at 651-52.

46. State v. Bloodworth, 94 N.C. 918, 919 (1886).

47. *Id.* at 920 (dictum). The case reversed the decision because of errors in the indictment and the jury's special verdict.

48. State v. Bishop, 228 N.C. 371, 45 S.E.2d 858 (1947).

49. *Id.* at 375, 45 S.E. 2d. at 860.

50. N.C. GEN. STAT. § 14-3(a) (1981). The statute escalates a misdemeanor for which no specific punishment is provided to a felony if the offense is "infamous, done in secrecy and malice, or with deceit and intent to defraud." *Id.* § 14-3(b).

the reporting law will certainly be tested in the appellate courts. The language of the cases cited above undoubtedly fits the juvenile abuse and neglect reporting requirement. If the issue is appealed, however, it can be argued that (1) the key question is one of legislative intent; (2) the General Assembly, if it considered the question at all, probably agreed with the Juvenile Code Revision Committee that the threat of civil liability precluded the need for criminal penalties for failing to report; and (3) if the General Assembly intended the failure to report juvenile abuse or neglect to be a crime, it would have said so explicitly in the statute. But if the appellate court were to find that the General Assembly simply stated a public rule and either failed to consider the matter of criminal penalty or ducked it as a political "hot potato," the common law rule would prevail.

Conclusion

All citizens, professionals and non-professionals alike, are bound by the law's requirement that any person or institution who suspects that a juvenile is abused or neglected make a report to the county social services department. Because the reporting law applies to everyone, it should be as easy to understand as it appears on its face to be. But because the reporting requirement must be read along with the rather special definitions of "abused juvenile," "neglected juvenile," and "caretaker" in the Juvenile Code, the requirement covers both more and less than a simple reading of the statutory mandate would suggest. This article has attempted to clarify some of the resulting confusion about what must be reported. While stressing that any suspicion of juvenile abuse or neglect, as defined in the Juvenile Code, *must* be reported to the social services department, it has also tried to convey that there are matters outside the scope of the reporting law that certainly *should* be reported to parents, to law enforcement officials, or to both.

Even a careful reading of the reporting law and applicable definitions leaves an unfortunate ambiguity regarding some aspects of the duty to report suspected abuse or neglect. One of the most serious uncertainties is whether school teachers, baby sitters, and other short-term care providers are either "person[s] responsible for [a juvenile's] care" or "caretaker[s]," so that their abuse or neglect of a juvenile must be reported to the social services department. The rule to follow is: "If in doubt, report." The law encourages this rule of thumb by providing immunity from civil or criminal liability to anyone who makes a report in good faith. The immunity extends to cooperating in an investigation or testifying in court about an abuse or neglect matter. The failure to report when a report is required, however, may result in criminal prosecution. ☙

Sorry, We Made a Mistake

The fourteenth line from the bottom of column 1 on page 20 of *Popular Government* for Spring 1986 begins the sentence: "If the work period is 28 days, law enforcement employees are entitled to overtime compensation for hours worked over 212 in the work period and fire protection employees for hours worked over 171." The numbers are reversed: Law enforcement personnel are entitled to overtime for hours over 171 per 28-day period, and firefighters are entitled to overtime for hours over 212 in the same period. We apologize for any inconvenience this error may have caused.

ADOLESCENT SUICIDE: Is There a Need for Public Policy in North Carolina?

Philip N. Henry

Adolescent suicide has reached epidemic proportions in the United States. Each year since 1977 some 5,000 young people between the ages of 15 and 24[1] have taken their own lives.[2] In fact, suicide among this age group has increased nearly 300 per cent since 1950, while increasing only 11 per cent in the general population. Experts predict that the numbers will continue to remain high, and at the present rate 5,000 to 7,000 will commit suicide this year. Another 250,000 to 500,000 will attempt suicide. Based on available data, suicide is ranked third among the causes of death for adolescents.

Efforts to prevent the early deaths of young people by suicide are commendable. The outpouring of concern from parents, teachers, mental health professionals, radio and television personalities, and the media has engendered a campaign of awareness with high intensity. New suicide-prevention programs have been established and existing services revitalized in many communities. There are some 500 suicide prevention centers across the country with hot-lines staffed by professionals and volunteers.

Federal initiatives

The federal government has taken a number of initiatives to curtail the high rise in adolescent suicide. In October 1983 the United States House of Representatives Select Committee on Children, Youth and Families held a public hearing entitled "Teenagers in Crisis: Issues and Programs." Members of the committee heard testimony from experts on the plight of youth and about innovative programs and services to meet their needs. Adolescent suicide was a focal point of the testimony.

In October of 1984, the Subcommittee on Juvenile Justice of the Committee on the Judiciary in the United States Senate held a similar hearing, which focused specifically on adolescent suicide.[3] Witnesses, including

---

The author previously served as a child advocate with the Governor's Advocacy Council on Children and Youth and is currently a research and evaluation consultant to the North Carolina Department of Public Instruction.

1. According to the National Institute of Mental Health, the 15-24 age group has been defined as *adolescent* for the purposes of research on suicides. Statisticians gather data for age groups in cohorts spanning five-year periods, i.e., 1-4, 5-9, 10-14, 15-19, and 20-24. The 15-24 age group, which is generally associated with high school and college years, has displayed common characteristics in relation to suicidal behavior. There are few suicides by adolescents below age 15. For example, according to 1984 N.C. Detailed Mortality Statistics, there were no suicides committed by children nine or younger and only seven in the 10-14 age group. On the other hand, in the 15-19 age group there were 48 suicides and a total of 79 in the 20-24 age group.

2. Published data, Division of Vital Statistics, National Center for Health Statistics.

3. United States Senate, Subcommittee on Juvenile Justice of the Committee on the Judiciary on Teenage Suicide, Hearings, 99th Cong., 2d Sess. (Washington, D.C.: GPO, 1984).

Dr. Allan L. Berman, president of the American Association of Suicidology, offered testimony on factors leading to adolescent suicide and made recommendations to the committee regarding preventive action the federal government should take.

This momentum at the federal level coupled with nationwide community concern led to the introduction of two bills in the United States House of Representatives. The first bill (H.R. 1099), introduced in February 1985 by Representative Gary Ackerman (D-N.Y.), would establish a grants program under the Secretary of Education and authorize $10 million annually over a three-year period to be given to local educational agencies for suicide prevention. The total amount received by any one group or school board could be no more than $100,000. This bill was referred to the House Education and Labor Committee. The second bill, entitled "Youth Suicide Prevention Act of 1985" (H.R. 1894), was introduced in April 1985 by Representative Tom Lantos (D-CA). This legislation, if passed, will establish a commission to study the causes of suicide and identify promising crisis intervention strategies. The bill would also create a three-year grants program to aid states, communities, and private nonprofit groups in suicide prevention activities. Awards would be no more than $500,000 to one applicant for fiscal years 1986, 1987, and 1988. A total of $6,000,000 would be made available for each fiscal year. This bill has been referred to the House Education and Labor Committee and the Energy and Commerce Committee.

Finally, on May 15, 1985, a joint resolution of the Senate and the House of Representatives authorized and requested the President to designate the month of June 1985 as "Youth Suicide Prevention Month."

North Carolina initiatives

According to data published by the National Center for Health Statistics in 1980, North Carolina ranked tenth among states in the rate of suicidal deaths by 15- to 24-year-olds.[4] Data compiled by the North Carolina State Center for Health Statistics indicate that in each of the years between 1981 and 1984, approximately 130 young people ages 15 to 24 took their lives in this state.[5] Since the national trend is to under-report deaths of a suspicious nature that may be suicides, it is probable that these figures are not accurate. Hence, the true picture of suicide in the state could be much worse.

During the summer of 1984, the Governor's Advocacy Council on Children and Youth surveyed suicide-prevention centers in North Carolina regarding their adolescent suicide-prevention programs. Data filed with the Information and Referral Office (Careline) of the Department of Human Resources indicated that there were 41 suicide and self-harm prevention services, 210 crisis intervention programs, and 794 personal counseling services listed as referral sources. Many of these facilities offered multiple services and could be placed in all three categories. Through a selection process based on name and description, the Council determined that a possible 150 of these facilities provided services directed toward suicide prevention.

A survey form was mailed to the 150 facilities identified as having suicide-prevention services. Eighty-six questionnaires were returned with complete information; ten were non-deliverable; and 39 were returned incomplete or with notes indicating that suicide intervention or prevention services were not provided. In May of 1985 the Governor's Advocacy Council on Children and Youth published its findings in a report entitled *Teenage Suicide: The Final Cry.* The report indicated that 82 per cent of the 86 respondents had 24-hour services, and 60 per cent had hot-lines. However, a mere 30 per cent had crisis housing, and only 43 per cent offered special programs to address specifically the needs of teenagers.[6]

Many of the Council's recommendations dealt with the need for more and better training for professionals, non-professionals, and adolescents on suicide prevention. Another focus of concern was the need for public awareness, especially among adolescents, regarding the problem, warning signs, and available services. Finally, this study indicated a void in special programs within the mental health community aimed specifically at problems and concerns of adolescents.[7]

4. Published data, *supra* note 2.

5. Detailed Mortality Statistics Reports, North Carolina, State Center for Health Statistics.

6. The Governor's Advocacy Council on Children and Youth, *Teenage Suicide: The Final Cry* (Raleigh, N.C.: N.C. Department of Administration, May 1985), p. 25.

7. *Id.*

Legislative initiatives in other states

In addition to efforts at the federal level, a number of states have taken legislative initiatives to deal with the problem of adolescent suicide. In 1983 California passed a bill to develop a statewide youth suicide-prevention program through the establishment of state-mandated demonstration programs in two counties. These models will serve as coordinating centers for the planning and development of the statewide initiative. In the following year the Florida legislature passed the Florida Youth Emotional Development and Suicide Prevention Act to curtail the high suicide rate and deal with the contributory factors. This act calls for coordination between educational programs and community suicide-prevention and crisis center agencies. A plan was to have been developed by the Department of Health and Rehabilitation Services for submission by January of 1985. A third state, New York, has earmarked some $3,500,000 for suicide awareness and a prevention program in schools statewide.

Along with the legislative efforts expressed by a few states, suicide-prevention programs have been initiated by schools and communities. In 1977 the Suicide Prevention and Crisis Center of San Mateo County in California initiated a one-year project in response to the high rate of adolescent suicide. Sponsors of the program, in coordination with school officials, trained existing resource persons in the school community to deal effectively with adolescents under stress. The training program offered participants a basic understanding of suicidal crises, ways in which school personnel could identify pre-suicidal behavior, and responses that are most helpful and effective in such situations. A brochure was developed for school personnel with specific guidelines for identifying and dealing with adolescent depression and suicide. A second brochure designed to help students understand pre-suicidal symptoms in themselves and their peers was also developed. Both guides were distributed in the workshops and throughout the school community. According to Charlotte P. Ross, one of the sponsors, calls from the school system for assistance and back-up increased significantly and have continued upward, with the most frequent request being for consultation with school personnel.[8]

The Denver Cherry Creek Suicide-Prevention Project, begun in 1980 after four Denver adolescents committed suicide within an 18-month period, became the first federally funded in-school suicide prevention program in the country. Each Cherry Creek school has a mental health team that offers seminars and counseling to students, parents, and school personnel. Students discuss warning signs of a potential suicide, as well as the appropriate steps to take to get help, and teachers and counselors are given guidelines for identifying the "high-risk" student.

Another noteworthy project is the Adolescent Suicide Program in Fairfax County, Virginia, which began in the 1982-83 school year. This initiative was endorsed by the Fairfax County School Board and involved a school/community advisory committee with representatives from the school system, mental health centers, medical and mental health associations, and law enforcement. An in-service program that addressed depression and suicide in children was provided for high school and intermediate school faculty. Since most school administrators would not permit programs dealing with suicide to be offered to students, in 1983-84 project sponsors organized student programs around social and emotional issues. These programs have been successful and rewarding. While it is difficult to show the effects of this project on the suicide rate in Fairfax County, the number of adolescent suicides has declined significantly, and mental health and guidance personnel indicate that more students are being referred to their offices.[9]

Adolescent suicide in North Carolina

North Carolina's initiatives in the area of suicide prevention are commendable, but in no way pacesetting. Students are exposed to health-related problems of adolescents in their comprehensive curriculum. However, it is quite likely, especially in light of the continuing high rate of suicide among adolescents, that a more broad-based plan should be activated. The report issued by the Governor's Advocacy Council on Children and Youth recommends that workshops be initiated to train school counselors, teachers, and school administrators so that they can better observe and detect warning signs that may lead to suicide. It also recommends that schools form

8. C. Ross, "Mobilizing Schools for Suicide Prevention," *Suicide and Life Threatening Behavior* 10 (Winter 1980), 239-42.

9. *Op. cit. supra* note 3, at 48-54.

crisis teams that can implement a designated plan of action if and when a crisis occurs.[10]

There are awareness campaigns and training workshops sponsored by the North Carolina Divisions of Mental Health, Mental Retardation, and Substance Abuse Services (MH/MR/SAS); local public mental health centers; private crisis prevention facilities; and the news media (WPTF-FM of Raleigh had a week-long series on adolescent suicide in late August 1985). Hopeline, a 24-hour crisis intervention/suicide prevention telephone service serving Wake County, recently initiated a Teen Hopeline that will use teen volunteers as helpers.[11] Between March and June 1985, MH/MR/SAS, along with other state agencies, sponsored a series of workshops aimed at preventing suicide in residential facilities that serve youth, and more recently a similar workshop was held (January 1986) for special education personnel. Adaptation and expansion of this format to train and alert parents, teachers, medical doctors, youth services workers, and law enforcement officers are desirable and very much needed. The 1986 John Umstead Distinguished Lecture Series sponsored by MH/MR/SAS, in conjunction with other advocacy and youth-serving agencies, focused on adolescents in crisis and featured lecturers of national stature in suicide prevention.

It is probable that more coordination and leadership are needed from the state level to insure that efforts at combating adolescent suicide are maximized. In 1984, 127 adolescents in North Carolina between the ages of 15 and 24 took their own lives.[12] Many of these deaths were preventable. In testimony before the United States Senate Subcommittee on Juvenile Justice, Alan L. Berman stated, "Clearly, adolescents give messages on their way toward death. We know that roughly 80 per cent will communicate in one form or another that suicide is on their mind, and that it is a possibility."[13] The challenge to North Carolinians is to hear these pleas for help. Awareness of the verbal and non-verbal cues that accompany adolescent depression and knowledge of how and where to find help are paramount to any sustained effort to thwart these high suicide statistics.

10. *Id.*, at 8-9.

11. "Teen Hopeline to Open May 1," *Hopeline* (January 1986), 1.

12. Detailed Mortality Statistics Reports, North Carolina, State Center for Health Statistics.

13. *Op. cit. supra* note 3, at 34.

Suicide Warning Signals

—A suicide threat or comment

—Withdrawal from family and friends

—Suicide themes in essays or artwork

—A drop in school performance

—Use of drugs or alcohol

—Giving away prized possessions

The statistics of adolescent suicide

Statistically, much is known about adolescent suicide. Research[14] shows that:

—one out of every five suicides in 1980 involved a 15- to 24-year-old male;

—five to ten times as many girls attempt suicide as boys, but boys use more lethal methods and succeed four times as often;

—firearms and explosives accounted for 62 per cent of all adolescent suicides in 1980; eighty-five per cent of those using firearms are male, and states with stricter handgun control laws have lower rates of suicide using this method;[15]

—females are more likely to ingest drugs and poisons than males, which accounts for their higher representation as non-fatal attempters (nonetheless, 52 per cent of females who completed suicide used firearms);

—nine out of ten adolescent suicide attempts occur in the person's own home;

—more than one in four suicides among blacks occurs in the 15 to 24 age group, although blacks of all ages

14. *Id.*

15. Studies conducted by David Lester and Mary E. Murrell published in 1980 and 1982 concluded that: (1) results supported the proposition that controlling the methods available for suicide may reduce the suicide rate; and (2) the preventive effect of strict gun control laws pertain specifically to suicide by firearms. States with firearm laws do have a higher rate of suicide by other means. However, such states have a total suicide rate that is much lower than states with liberal laws. See "The Influence of Gun Control Laws on Suicidal Behavior," *American Journal of Psychiatry* 137 (January 1980), 121-22, and also "The Preventive Effect of Strict Gun Control Laws on Suicide and Homocide," *Suicide and Life Threatening Behavior* 12 (fall 1982), 131-40.

have a lower suicide rate than whites; the rate for black males in this age group is increasing at a faster rate than for black females; and
—suicide is the second leading cause of death among college students.[16]

Since the incidence of suicide is most prevalent among white males, the National Institute of Mental Health is engaged in studies of the psychosocial factors that differentiate white males from others in the 15 to 24 age group.

Besides gathering statistical data, experts have identified some contributory factors in adolescent suicide. Among the factors are broken homes; a suicidal parent or relative; drug and alcohol use; physical, psychological, emotional, and social pressures of adolescence; sexual promiscuity; family disruption/disintegration; inability to cope with failure; academic pressures; and the influence of movies and television. Studies of adolescents who have attempted suicide indicate that in many cases the adolescent is coping with parents' marital instability and unhappiness, disruption of residence, and lack of parental nurturance.[17] Suicidal adolescents often feel a sense of hopelessness and lack of control over their environments and are unlikely to have a confidant with whom they can share problems.[18] While depression is most often mentioned as the root cause of adolescent suicide, the combination of variables present at the point of decision is more elusive. Alan L. Berman sounded the bewilderment of experts in the following statement:

> The decision to end one's life can never be simple. Suicide is a complex multi-determined behavior that is acted out either on impulse or as a life plan. In adolescence, the motives for suicidal behavior appear largely interpersonal, directed at effecting change in or escape from the conflictual family or peer system. The intended communication may range from hostility to hopelessness; each case has its idiosyncratic message. One thing appears clear: no other way to achieve the intended goal is apparent to the suicidal adolescent at the time the behavior is compelled.[19]

While all of the pieces to this intricate puzzle have not been found, experts posit that the rate of suicides could be significantly decreased if parents, teachers, peers, and others working closely with youth were better educated about the problem and more aware of the warning signs. Awareness of the signs allows those closest to the youth to begin an assessment, make a referral, or notify appropriate mental health personnel. Some signs that offer a degree of reliability are previous suicide attempts, a suicide threat or comment, withdrawal from family and friends, themes of suicide in essays or artwork, a drop in school performance, use of drugs or alcohol, and giving away prized possessions.

Formulating public policy

Leadership and coordination are vital elements in any successful suicide prevention program. The role of the state through its various agencies has not been clearly defined. Strategies to address the problem have been too isolated and have lacked the networking that is necessary if prevention is to be a statewide objective. Among the many concerns that beckon the attention of state officeholders and other public officials are:
—the public desire for information and training on suicide prevention;
—the development of standards for crisis staff and facilities operating in the state;
—a definition of the role that school personnel and the curriculum, as well as private nonprofit facilities, will play in prevention;
—the coordination and promotion of research efforts to broaden strategies and insure that services are maximized; and
—the recognition and promotion of successful programs in North Carolina and other states that can be adapted to similar settings.

One response to the problem in North Carolina could be to organize a state committee under the guidance of the National Committee on Youth Suicide Prevention.[20] This is a nonprofit organization whose goal is to reduce the number of committed and attempted suicides among young people through research, knowledge sharing, and public awareness. Currently, this organization has stimulated statewide committees in all states with the excep-

16. B. J. Silver, S. E. Golston, and L. B. Silver, "The 1990 Objectives for the Nation for Control of Stress and Violent Behavior: Progress Report," *Public Health Reports* 99 (July-August 1984), 380.

17. C. L. Tishler, P. C. McKenry, and K. C. Morgan, "Adolescent Suicide Attempts: Some Significant Factors," *Suicide and Life-Threatening Behavior*, (Summer 1981), 86-92.

18. P. Topol and M. Reznikoff, "Perceived Peer and Family Relationships, Hopelessness and Locus of Control as Factors in Adolescent Suicide Attempts," *Suicide and Life Threatening Behavior*, 12 (Fall 1982), 141-50.

19. *Op. cit. supra* note 3, at 37-38.

20. National Committee on Youth Suicide Prevention, 666 Fifth Ave., 13th Floor, New York, N.Y. 10103. (212) 957-9272.

tions of Nebraska, New Hampshire, North Carolina, Utah, Wyoming, and the District of Columbia. North Carolinians could benefit from this sharing and networking.

Second, adolescent suicide is a concern that could be addressed through study by a state legislative committee that could procure available research along with suggestions from mental health experts, parents, school personnel, and adolescents. The committee could then determine the need for further legislative initiatives.

Finally, the Governor or the Secretary of Human Resources could establish a commission or task force charged with recommending guidelines for suicide prevention.

One objective of these approaches should be the stimulation of more and better research on adolescent suicide so that North Carolina's responses to this calamity will be rational, prudent, and cost efficient.

The establishment of suicide-prevention programs has not come about without controversy and criticism. Many feel that the content of such programs is suggestive and may induce a depressed adolescent to commit suicide. There is some evidence that depressed adolescents respond more readily to the suggestion of suicide than adults.[21] Therefore, it is important that accounts of suicide and suicide attempts be handled with extreme care. For instance, adolescent suicide should not be front-page news. Nonetheless, psychiatrists have found that confronting a depressed adolescent about suicide does not implant suicidal thoughts:

> Many professionals still believe the myth that questioning a depressed person about the presence of suicidal ideas may "put the idea in his head" or make the idea of suicide more acceptable if he is already thinking about it. Actually, we have found that encouraging a patient to talk about his suicidal ideas generally helps him to view them more objectively, provides necessary information for therapeutic intervention, and offers some degree of relief.[22]

Suicide-prevention programs are based on the belief that the adolescent suicide rate will be reduced if adolescents, parents, teachers, and youth-services workers have a knowledge of the symptoms, warning signs, and available services. The intention is to provide a link between depressed adolescents and mental health professionals and does not suggest in any way that untrained persons attempt to administer services.

These programs are only a first step and may offer a plausible alternative through referral, but they are insufficient to heal the deep-seated mental and emotional scars apparent in many of today's adolescents. At the conclusion of its 1985 report, the Governor's Advocacy Council on Children and Youth listed five recommendations for further research:

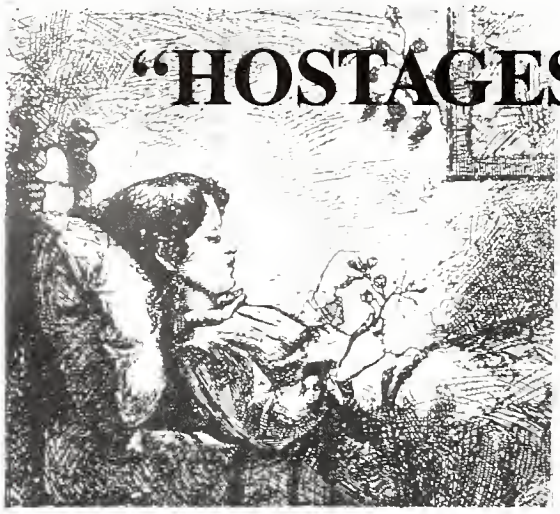
1. A study to assess the degree of coordination among existing suicide-prevention facilities and to find out if a state plan is needed.
2. A study to ascertain the effectiveness and/or weaknesses of publicity methods employed by suicide-prevention centers.
3. A study to determine the extent such factors as insurance and concern for the victim's family influence medical examiners and doctors in reporting suicide and suicide attempts.
4. A study on the effectiveness of techniques used to monitor suicidal adolescents in institutions.
5. A study to determine the relationship between child abuse and suicidal behavior.

Many youths in North Carolina, as well as throughout the nation, find it extremely difficult to cope under stressful situations. They are crying out each year for help as they strive to fashion some alternative to their pain and bewilderment. North Carolina must insure that there are life-sustaining alternatives available and that adolescents are aware of these options. More than that, young people must be invited to live and be constantly reinforced with the idea that their uniqueness is a contribution to the world that cannot be replaced.

---

21. K. Den Houter, "To Silence One's Self: A Brief Analysis of the Literature on Adolescent Suicide," *Child Welfare* 25 (January 1981), 2-10.

22. A. Beck, A. Rush, B. Shaw, and G. Emery, *Cognitive Therapy of Depression* (New York: The Guilford Press, 1979), p. 209.



"HOSTAGES TO FORTUNE"

An Address to the Fifth Annual Southern Legislators Conference on Children and Youth

Willis P. Whichard

When I informed my children that I had agreed to address this conference, they were puzzled. Engagements such as this inevitably produce an overcommitted schedule, a problem they know I struggle to avoid. They thus wanted to know why this invitation was different.

When I explained the topic and that there were some things I wanted to say about children, their mood changed from perplexity to dismay. Surely, they wondered, you are not going to tell them about us. When informed of my title and its source, they were convinced that they were indeed the subject; for the title comes from Francis Bacon's essay, "Of Marriage and Single Life," in which he wrote: " He that hath wife and children hath given hostages to fortune; for they are impediments to great enterprises, either of virtue or mischief."

Bacon used the word *hostage* to mean an impediment, something that stands in the way. That is not the sense in which I use it today. I use it in the sense to which, by virtue of recent events, we are lamentably more accustomed—to refer to a form of imprisonment. I suggest that children themselves are hostages, or prisoners, of fortune—the fortune that their predecessors and the society in which they are born and nurtured create for them.

It is true that children share in the human condition. The problems that affect them thus are incapable of perfect solution. My theology, my personal experience, and my study of history all preclude a belief in human perfectability or earthly Utopia.

The wisdom of the English critic and essayist William Hazlitt, though, is still pertinent. "Man," he said, "is the only animal that laughs and weeps; for he is the only animal that is struck with the difference between what is and what ought to be." The purpose of this conference is to explore the difference between what is and what ought to be regarding children, and to examine the potential for bridging that gap.

Child victimization, currently the topic of a Governor's Commission in North Carolina, is not new. It was a frequent theme of an early child advocate, the novelist Charles Dickens, who saw himself as a product of parental mistreatment in childhood. Dickens' father had cornered the market on downward mobility. As a consequence the family was constantly moving to a lower class of housing until the father ultimately went to debtor's prison. Dickens' mother not only allowed her son to work in a shoe blacking factory while his father was in debtor's prison, but even wanted him to go back when he found a means to escape. Dickens said that as an adult he never went a month without having a nightmare that he was back in the blacking factory.

The consequence of these boyhood experiences was that Dickens as a novelist is always associated with the child. With *Oliver Twist* he was the first to make a child the cen-

---

The author is an Associate Judge of the North Carolina Court of Appeals. This is the text of his address to the fifth annual Southern Legislators Conference on Children and Youth, Asheville, N.C., November 1985.

tral character of a novel. Many of his works about children are depressingly relevant today. Consider the problem of juvenile crime, and Oliver Twist still walks the streets. Consider the delays of our legal system in dealing with the problems of children, and the Jarndyce litigation of *Bleak House* persists. Consider the child abused in a family setting, and Little Nell still occupies the Old Curiosity Shop with her insane grandfather. Consider the child abuse in our day-care centers, and you see a twentieth-century replication of *Nicholas Nicholby*. Consider the child making the most of a handicap, often with inadequate public assistance, and Tiny Tim yet lives. Consider the illiterate and hungry children in Africa, and the twin spectors of Ignorance and Want from *A Christmas Carol* still stalk the earth.

In Dickens' novels it is always the parent, never the child, who is the prodigal. The underlying theme of *Little Dorrit*, a novel about prison experience and imagery, is that a bad upbringing imprisons people for life, and the broader theme of much of Dickens' work is that Government is the ultimate bad parent—abusive and neglectful—not doing its duty toward its citizens. You will perhaps recall from *A Christmas Carol* Dickens' speculation that the wandering, moaning phantoms linked together with chains "might be guilty governments."

While the guilty governments of Dickens' day have passed, most of us here are involved with one of their successors; for the governments of our time too have been neglectful, in some respects even abusive, of children. For example, it would perhaps be offensive, but I believe accurate, to characterize our foster care system of only a few years ago as a form of child abuse. Figures showing that over 50 per cent of adult criminal offenders in America spent at least a part of their formative years in foster care strongly suggest that there is a connection between the foster care system and adult criminality. When a child is frequently moved from one home situation to another; when foster parents are actively discouraged from developing a strong attachment to a child because its residence with them is temporary; when a child develops no roots, no sense of belonging, no strong emotional ties to people or place, no continually nurtured spiritual values; when a child feels that no one really cares about him or her or what he or she does, our fundamental human feelings and values should tell us that this child is more likely to engage in unsanctioned conduct than one reared in more felicitous circumstances. Our foster care system, however well-intentioned, may well have been among our greatest contemporary scandals, and among the root causes of much adult crime. As Eddie Cantor once said, "When I see the ten-most-wanted lists . . . I always have this thought: If we'd made them feel wanted earlier, they wouldn't be wanted now."

Shortly before leaving the North Carolina Senate, I introduced what I believe was the first legislation in this state to appropriate funds to provide permanent placement for foster children. Since that time we have progressed considerably in this area—so much so that from where I now sit, I am legitimately concerned about occasional excesses in intervention between children and their natural parents. The first priority for a permanent home should always be with the natural parents. When that is not possible, however—when the natural parents are unable or unwilling to care for the child—our efforts to end the scandal of "foster care drift" and to provide permanency must continue, with adoption the preferred permanency option.

Governments must also bear some guilt for one cause of the family destruction that leads to foster care. That cause is the incarceration of parents. While often unavoidable, perhaps equally often alternative punishments would serve the state's purpose yet leave families intact. My long concern for alternatives to incarceration relates to both sexes, but I believe a special concern for women offenders is appropriate. Whatever our commitment to equal rights, we cannot alter the givens that women produce babies, and the maternal function is special. A leading male scholar at a state university tells of rising during a thunder storm to comfort his five-year-old daughter, only to be rebuffed with the words, "What are you doing here? What I need is a mommy."

Women offenders and inmates are different, and the greatest of the differences relates to the sociology of families. Approximately 250,000 American children are waiting for their mothers to be released from jail, according to estimates by the National Council on Crime and Delinquency. Yet, efforts within the criminal justice system to keep mothers and their families intact are "haphazard and uncoordinated." The Director of the North Carolina Correctional Center for Women has stated:

> Often these children feel responsible for their mothers' incarceration, and their guilt is aggravated by the stigma and secrecy that surround commitment to a penal institution. When visiting the institution, the children see guards and guns and hear the clang of bars, and they fear for their safety, as well as [that] of their mothers.

A recent study showed that many incarcerated mothers experienced their childrens' withdrawal during visits. In many cases the children reportedly sat quietly or paid more attention to the person who brought them than to the mother. Children change considerably during a mother's extended period of incarceration, often requiring complete reacquisition of ability to communicate with her upon release.

More detrimental still, some mothers lose contact with their children altogether, in some instances not even knowing with whom they have been placed. Finally, the experience causes children to acquire distorted self-images as well as distorted perceptions of the social order. The child of one inmate wrote her mother recently, "Dear mama, come home. I love you, and anyway don't nobody else want Milton and me." And the nine-year-old son of an inmate told his mother during a visit, "Every night before I go to sleep, I punch my pillow. I punch it and punch it. I pretend it's a policeman, and I punch it." Eventually some of these children will go to prison too, in part because they are hostages to a fortune created by guilty governments insufficiently sensitive to the long-range familial effects of incarcerating their parents.

In that vein it is worth noting that almost one-half of the inmates in this state's correctional system are under the age of 25. We would do well to ask ourselves why. And in asking why, a comment on education is pertinent, for we find that of those recently in North Carolina Prisons, 29 per cent had an eighth grade educational level or less, and 95 per cent had a twelfth grade level or less. We long ago resolved that there should be no elite of the mind in America; that, in Governor Aycock's words, "every child should have the right to burgeon out all there is within him"; that, again quoting Aycock, while "it undoubtedly appears cheaper to neglect . . . the children of this generation . . . the man who does it is cursed of God and the state that permits it is certain of destruction." We long ago learned from a great Southerner and

a great American, Walter Hines Page, that "it is a shining day in any educated man's growth when he comes to see and to know and freely to admit that it is just as important to the world that the ragamuffin child of his worthless neighbor should be trained as it is that his own child should be." But despite our thoroughly democratic philosophy about education, we are losing some children, and we try to compensate by constructing more prisons.

Page also said: "It is always more than likely that among the neglected are those that would be the most capable if they were trained." Democracy has the quality of giving us constant surprises, and we might be pleasantly surprised if we could find a way to reach through a democratic system of education those who end up in our prisons.

The North Carolina Superintendent of Public Instruction recently cited the New Basic Education Plan as a part of a "revolution of great magnitude" in public education, indicating that "for the first time [the state] is saying what [it] believes every youngster ought to have access to." On the same occasion an officer of the national PTA said: "It is imperative that every child be given the same chance to grow and succeed." Despite these very democratic pronouncements, candor compels the concession that equal access to educational opportunity remains a vision, not a reality.

The six million children designated "latchkeys," i.e., those who spend many hours in an empty house without parental or other adult support and supervision, deserve special educational concern. One recent study found that these children suffer no more fear or anxiety than others. Other studies, though, show that a majority of these children suffer considerable anxiety and worry greatly about their responsibilities in the event of emergencies. Experience and common sense suggest giving credence to the latter view.

The more significant question, though, is whether we are wasting valuable human resources by not providing educational opportunities for these children during these hours. On two occasions in the past

eight years I visited the People's Republic of China and spent time in a Children's Palace, where Chinese progeny benefit from a tremendous variety of after-school educational and cultural opportunities. I was sufficiently impressed with these institutions that I wrote Governor Hunt from Peking, stating that while I saw little else in Chinese society that I wished to import, the Children's Palaces merited duplication. We now have an "after school" program, but we continue to miss significant opportunities with many of these children.

Mark Twain once said of Wagner's music: "It's not as bad as it sounds." Neither, perhaps, are the failures in our service to children as severe as I make them appear. Without question we are striving to improve. Lt. Governor Jordan said to the opening session of the 1985 North Carolina Senate: "Of all the things we're going to do this session, I don't know of any issues more important than those involving our children." In response to his leadership and that of others, the 1985 Session produced numerous child-focused initiatives. Yet, despite these efforts and those of states some of you represent, by devoting three days to this conference you have acknowledged that a gap persists between what is and what ought to be regarding the young of a nation in which more children live in poverty today than ten and twenty years ago. Even the time alloted to this conference and to this address has allowed only a fleeting glimpse from a galloping horse at limited aspects of that hiatus.

I do not suggest that the chasm can be bridged by government alone. The church, the synagogue, volunteer civic organizations, and even the family are great untapped resources in this endeavor. But guilty governments are part of the problem, and the principal focus of this conference is the role of government in bridging the chasm between what is and what ought to be. I have no simple solution; if I did, your skepticism would be warranted. I suggest only that children's problems do not occur in isolation, that families and communities as well as government must be involved in resolving them, and that collaborative efforts among the three branches of government and among the responsible executive departments and agencies are essential.

In that regard, a final reference to Dickens: Chapter ten of Dickens' novel *Little Dorrit* deals with a government agency called "The Circumlocution Office." The office is run by a bureaucrat named, appropriately, "Tite Barnacle." "Whatever was required to be done," wrote Dickens, "The Circumlocution Office was beforehand with all the public departments in the fine art of perceiving—How Not To Do It." The chapter is probably the most biting satire in all of literature on the foibles of bureaucracies—on what Dickens in *A Christmas Carol* called "guilty governments." Because of its unfortunately timeless relevance, it should be required reading for all government employees.

An Atlanta minister tells of working as a plumber's helper while in seminary. An elderly black man named Casey also worked for the company. No one knew exactly how old Casey was, but he was quite old, and the depth of his affection for other workers was in proportion to his years. Casey asked the minister one day, "You have children, Tom?" "No, Casey, not yet. In a few years we'll start our family." "Well, when you get 'em, remember something," said Casey. "There's only two things you can give 'em. One's roots and the other's wings." He turned another spade or two of dirt, stopped again, leaned on the handle of his shovel and said, "you understand?" "Not exactly," the minister replied. "Well, roots means where they've come from and who they are. But wings means teaching them to fly to their dreams."

If children are to have wings to fly to their dreams, they must first have roots in permanent homes, good physical and mental health, an excellent and appropriate education, moral and ethical training, spiritual values, and economic opportunity. When governments attempt to balance their budgets by cutting programs for children, we should recall the ancient wisdom of Socrates, who said, "If I could get to the highest plain in Athens, I would lift up my voice and say: 'What mean ye, fellow citizens, that ye turn every stone to scrape wealth together, and take so little care of your children to whom ye must one day relinquish all?'"

The irony of our abuse and neglect of children is that when we make them hostages to ill fortune, we also render ourselves hostage to their resultant criminality, unemployment, under-employment, and consumption of costly public services. Michael Jackson and Lionel Richey thus were right when they said, in the popular song written for the fund-raiser to alleviate African hunger, that by serving children "We're saving our own lives."

1985 was designated "The Year of the Child." Let us hope that designation is not just a phrase on paper but represents instead the beginning of a continuing emphasis on all needs of all children. In part that depends on our commitment and that of our colleagues in guilty governments everywhere, for, as Jackson and Richey concluded, "We are the World; we are the children / We are the ones who make a brighter day."

AN ANALYSIS OF HOUSE BILL 1314: *A Bill to Repeal the Property Tax in North Carolina*

Several Institute faculty members contributed to the analysis, including Charles D. Liner, who coordinated the study; Joseph S. Ferrell; David M. Lawrence; A. John Vogt; Warren J. Wicker; A. Fleming Bell, II; William A. Campbell; S. Grady Fullerton; and Joseph E. Hunt.

The Executive Summary

The Institute of Government's analysis of House Bill 1314 (1985 Session) was made at the request of Harlan E. Boyles, State Treasurer and Chairman of the Local Government Commission, who asked the Institute to analyze the effects the bill would have if the changes proposed in it were to take effect. As he requested, the report addresses the following aspects of the bill: (1) the effects on the capacity of local governments to satisfy their obligations to current bondholders and to borrow in the future; (2) the effects on revenues of the state and local governments; (3) the effects on taxpayers; and (4) the implications with respect to the structure and responsibilities of local governments.

HB 1314 calls for repeal of all local property taxes, taxes on intangible property, and the existing one-cent and half-cent local option sales taxes. Revenues from those sources would be replaced by revenue (1) from a constitutionally-guaranteed statewide sales and use tax (in addition to the 5 per cent state sales and use tax) on sales of tangible personal property and (2) from half of corporate income tax collections.

Low-income taxpayers would be eligible for a state income tax credit or rebate for the sales taxes they pay. Revenue from the two statewide tax sources would be distributed to counties and municipalities on a per capita basis. Under the distribution method specified in the bill, the total amount to be distributed would be divided by the combined state and municipal populations to obtain a per capita amount. That amount would be multiplied by the population of each county and each municipal government to determine the revenues it would receive (each county and municipality would receive the same amount per resident). Counties and municipalities that lost revenue as a result of these measures would be authorized to levy a local income surtax at a flat rate on their residents' net taxable incomes (as computed on state income tax returns). Counties would also be authorized to levy a "land transfer tax" of up to 8 per cent on sales of real property; revenue from that tax, which could be used only for capital spending, would be divided among the county and its municipal governments.

Representative Josephus L. Mavretic, the bill's principal introducer, has stated that he intends to seek to amend the bill in several ways. First, an alternative distribution method would be used. Under that method, the total amount of revenue to be distributed would first be divided among the counties according to their share of the statewide population, and then each county's share would be divided among the county and its municipal govern-

---

This article was originally published as the Executive Summary of *An Analysis of House Bill 1314*, a report prepared for the State Treasurer by the Institute of Government, The University of North Carolina at Chapel Hill, February 1986. The report is available from the Institute of Government at a cost of $5.00 per copy.

ments according to their respective shares of the combined county and municipal populations. Second, all counties and municipalities, not just those that lost revenue, would be authorized to levy a local income surtax. Third, subject to later revenue estimates, items such as certain farm and industrial machinery that are now taxed under the state retail sales tax at the rate of 1 per cent would be exempted from sales taxes.

The Effect of HB 1314 on Debt Financing

Although House Bill 1314 has profound implications for existing and future debt, it contains no provisions concerning the existing debt or future borrowing capacity of local governments.

First, in its current form it appears likely that the changes made by HB 1314 would be held to violate the Contract Clause of the federal Constitution, unconstitutionally impairing the obligation of some contracts held by local government bondholders with local government issuers. The bill makes no provision for replacement revenues for special districts, yet a number of special districts have outstanding general obligation debt. The revenue changes provided for will result in a loss of revenues for a number of cities and counties, and the special replacement revenues provided for in the bill for such cities and counties do not fully replace the unlimited tax pledge that currently secures their general obligation bonds. Thus, for special district debt and some city and county debt, a holding of unconstitutional impairment appears likely. However, the new revenues the great majority of local governments will receive under the bill will equal or exceed the revenues they get from the current system, and for these governments there may be no unconstitutional impairment.

Second, the bill makes no provision for the status of debt that has, at the time of the amendment's effective date, been authorized although not yet issued. Because it has not been issued, such potential debt is not protected by the Contract Clause. However, the bill needs to address the treatment of these authorizations.

Third, the bill makes no provision for debt financing once the new system of local government finance is in place. Under the current proposal, it does not appear that local governments will be able to issue any form of general obligation debt. A variety of new forms of debt could be authorized, either new general obligations secured by an unlimited power to levy income taxes, limited obligations secured by state-shared or other revenues, or an entirely new form of debt. Unless some new form of debt is authorized, however, local governments will be able to issue only revenue-based debt.

Fourth, the changes will affect the credit strength and ratings of local governments. Currently, North Carolina cities and counties enjoy an excellent reputation on national credit markets and with bond rating agencies. The changes proposed by HB 1314 will affect the credit strength of local governments in several ways. First, unless the bill is amended to permit cities and counties to pledge an unlimited income tax, it is likely that the credit markets will perceive the bill's revenue changes as a diminishment, to some extent, of current bond security, even if there is no unconstitutional impairment. The amount of diminishment will depend on the revenue stream underlying the pledge and the circumstances of each local government. Second, the removal of the property tax from the existing system of state-local finance will probably be viewed as leaving a less-balanced system than is currently in place, and that perception will probably have negative effects on the composite level of ratings. Third, substitution of state-shared taxes for local taxes as the principal support for local governments will change the focus of the ratings process, from the local to the statewide economy. This change, together with the effects of the distribution formula, will quite significantly change the ratings, both up and down, of some individual units. And fourth, the absence of any attention to debt in the current version of HB 1314, unless remedied, will itself have unsettling effects on the perceived credit strength of both the state and its local governments.

The Effects of HB 1314 on Governmental Revenue

The report analyzes the effects of HB 1314 on tax revenues of all local governments combined, on state government tax revenue, and on tax revenue of individual local government units. It also analyzes the proposed revenue sources for local governments in terms of growth and stability of revenue under HB 1314 and the relationship of those revenues to current functions, revenues, and spending of local governments. Finally, it discusses the proposed new sources of revenue that would be available for use by local governments, the local income surtax, and the real estate transfer tax.

Net changes in revenue for all local governments. The estimated amount of revenue that would have been distributed to all local governments if HB 1314 had been in effect during fiscal year 1984-85 is 12.6 per cent greater than the amount of tax revenue of all local governments

from the revenue sources that would be repealed by HB 1314 (the property tax and local option sales taxes). These estimates assume that utility sales would not be subject to taxation under the 5 per cent sales tax. No revenue would be provided directly to special districts from the 5 per cent sales tax and the corporate income tax.

Effects on state government revenue. The state government would lose revenue under HB 1314 for the following reasons:

> The state government would lose half of state corporate income tax collections, which would be distributed to counties and municipalities.
>
> The proposed sales tax credit for low-income individuals would reduce state income tax revenue and would also require that the state pay low-income taxpayers for the amount of the credit that exceeded their income tax liability. There was no satisfactory way to estimate the resulting state revenue loss, but it might be on the order of $60 to $80 million (assuming that the credit would be available only to families with low incomes).

These reductions would be partly offset by several indirect effects of HB 1314:

> The state sales tax on items that are now taxed at the 2 per cent rate subject to a maximum tax of $300 (motor vehicles, mobile homes, boats, and airplanes) and, under the bill in its present form, items that are now taxed at the one per cent rate (including items, such as industrial and farm machinery, that are subject to a maximum rate of $80 per item) would be taxed at the 3 per cent rate, with no maximum amount per item. The effect of these changes would have been to increase state sales tax collections by at least $120 million in 1984-85 (complete information was not available to permit estimating the amount precisely).
>
> Repeal of the property tax would eliminate deductions for property taxes in computing individual income taxes, which would result in an increase in income tax collections (by an estimated $23 million in 1984-85).
>
> Repeal of property taxes would also increase corporations' net taxable income (increasing state collections by an estimated $26 million in 1984-85), but the increase in sales taxes paid by corporations would at least partly offset the resulting increase in corporate income tax collections, and the state would retain only half of any net increase, for the other half would go to counties and municipalities.

Effects on revenues of local governmental units. Estimates were made of the revenue that would have been received by counties and municipalities if HB 1314 had been in effect during 1984-85. Under the distribution method prescribed in the bill, each county and municipality would have received an equal amount of revenue per resident from statewide revenue sources. The revenue the units would have received under HB 1314 was compared with revenue they received during 1984-85 from property taxes and local sales taxes (revenue from the half-cent sales tax was the amount units would have received if the tax had been levied for the entire year in all counties).

The effects that HB 1314 would have had on tax revenue varied substantially among counties and municipalities:

> For counties, the net change in revenue that would have been received under HB 1314 as a percentage of revenue from the repealed sources varied from a net loss of 62 per cent in Dare County to a net gain of 112 per cent in Swain County. Taking into account special district property tax levies, 13 counties would have lost revenue in 1984-85 (eight by 10 per cent or more), and 19 counties would have had net gains of more than 50 per cent. Of the total statewide population, 28.3 per cent lived in counties that would have lost revenue.
>
> Most smaller counties would have gained revenue, while some of the largest counties would have lost revenue. However, six of the thirteen counties that would have lost revenue had populations below 30,000, and some counties with low per capita income would have lost revenue under the distribution method prescribed in the bill. There were substantial differences in net revenue changes among counties in the same population size class.
>
> Disparities in the effects of HB 1314 on revenue were much greater for municipalities than for counties, because per capita tax revenue of municipalities under the current system varies by population size much more than it does for counties. Smaller municipalities generally had much larger percentage gains than larger municipalities because per capita tax revenue of smaller municipalities tends to be lower than that of larger municipalities. Net changes in tax revenue ranged from losses of more than 80 per cent in some resort-based communities to net gains of more than 1,000 per cent in a few municipalities that received little or no property and sales tax revenue.
>
> Altogether, 65 municipalities (13 per cent of the total number) would have lost tax revenue under HB 1314. About 47 per cent of the state's municipal population lived in municipalities that would have lost revenue. One hundred and thirty-four municipalities (27.6 per cent) would have had net increases of 200 per cent or more, and 25 municipalities (5 per cent) would have had net increases of 500 per cent or more. About one-third of the municipalities that lost revenue were resort-based municipalities. Although the largest municipalities tended to lose revenue

and smaller municipalities tended to gain revenue, some smaller municipalities (aside from the resort-based municipalities) also lost revenue. There were substantial differences in the effects among municipalities of the same population size.

Increasing the amount of revenue that would have been available for distribution to local governments did not significantly change the overall pattern of losses and gains among units. Increasing the amount by 10 per cent would have meant that 10 counties and 50 municipalities would have lost revenue, while lowering the amount by 10 per cent would have meant that 21 counties and 81 municipalities would have lost revenue.

Use of the alternative distribution method. The effects of distributing the same amount of revenue using the alternative distribution method were also calculated for 1984-85. Under that method, counties and municipalities would have received different amounts per resident from statewide revenues, depending on the proportion of each county's population that lived in municipalities. For example, the county and municipal governments in Mecklenburg County would have received $200 per resident, while the county governments in the counties that had no municipal population would have received $369 per resident. The average amount received per resident varied from $334 in nine counties with populations less than 10,000 to $229 in five counties with populations of 200,000 or more.

The alternative distribution method tends to favor smaller counties and municipalities more than does the method prescribed in the bill. Eighty-three counties and 378 municipalities (72 per cent of the total number) would have received more revenue under the alternative method. The average population of counties that received more revenue under the alternative method was 43,314, compared with 146,272 for the counties that would have received less revenue. The average population of the municipalities that would have received more revenue under the alternative method was 2,759, compared with 14,989 for those that would have received less revenue. However, there were substantial differences in the net effects on revenue among counties and municipalities in the same population size class, and some smaller municipalities would have received less under the alternative method if they are located in counties that have relatively large municipal populations.

Use of the alternative distribution method did not make a large difference in the overall pattern of net gains and losses. Ten counties and 53 municipalities would have lost revenue under that method (compared with 13 counties and 65 municipalities under the method prescribed in the bill).

Growth in revenue under HB 1314. During the period 1968-69 to 1984-85, the total statewide property tax *base* (total valuation) increased substantially more than statewide revenue from the state sales tax, the corporate income tax, or the utility franchise tax, but total statewide property tax *levies* did not grow as much as revenues from those taxes. Because property tax levies tend to be relatively more stable than the other sources, the average annual percentage increases in property tax levies were not correspondingly lower than the annual percentage increases from the other taxes.

Under HB 1314, growth in local units' revenue would depend on (1) growth in statewide revenue from the 5 per cent statewide sales tax and the corporate income tax, (2) growth in the statewide population and the total municipal population, and (3) growth in local units' populations. Estimates were made of the growth that would have occurred in local units' per capita allocation under HB 1314 between 1975-76 and 1984-85, and that growth was compared with actual growth in property tax valuations and levies of the units. Over this period the amount distributed per resident would have increased 116 per cent, compared with an increase of 168 per cent in the statewide property tax valuation and 115 per cent in statewide property tax levies.

In this analysis, 66 of the counties and 65 per cent of the municipalities would have had more growth in their revenue from an HB 1314 allocation than in their property tax levies. For all counties, the average gain in property tax valuations was 179 per cent, the average gain in property tax levies was 137 per cent, and the average gain that would have occurred under HB 1314 was 146 per cent. Counties and municipalities that had the highest population growth rates also tended to have the highest growth rates in their HB 1314 allocations. The two counties that lost population would have had less growth in their per capita allocations than they had in property tax valuations or levies. Of the 194 municipalities that lost population, about half would have had more growth in their HB 1314 allocations than in their property tax levies.

Stability of revenue under HB 1314. During the past decade, total statewide property tax levies have tended to be more stable during national recessions than state sales tax or corporate income tax collections. Collections from the corporate income tax were relatively unstable, but those collections would represent only about 10 per cent of the revenues that would be distributed to local governments under HB 1314. Property tax levies tend to

be relatively stable during national recessions because real property assessments remain fixed during the eight-year revaluation cycle.

Relationship of revenue under HB 1314 to functions and spending of local governments. Since HB 1314 would distribute statewide revenues equally on a per capita basis, differences in functions of counties, municipalities, and special districts were examined, and differences in per capita revenue and spending by population size were analyzed.

In North Carolina's system of government, counties act primarily as agents of the state in administering programs such as public schools and social services programs that must be provided uniformly to all people of the state. Because under the current system much of counties' revenue that is spent for statewide programs comes from the state or indirectly from the federal government, counties' per capita revenue and spending from all sources did not vary systematically with population size.

Municipalities are responsible for providing to residents of cities and towns additional services that are not provided to all people in the county, or for providing services at a higher level than provided throughout the county. Per capita revenue and spending tends be higher in larger municipalities than in smaller municipalities under the current system.

Special districts provide certain services, like fire protection, that are not provided throughout the unit. Special districts would not receive a share of revenue from statewide revenue sources under HB 1314.

General Questions Concerning the Effects of HB 1314 on Taxpayers

Since the purpose of a state and local system of taxation is to distribute the costs of government services among citizens, the report addresses several general questions concerning the effects the bill would have on different kinds of taxpayers. It is not possible to determine exactly how HB 1314 would affect different kinds of taxpayers, such as manufacturers, retailers, farmers, landlords, homeowners, and consumers (whether in North Carolina or in other states). We assume that the increases in retail sales taxes would be shifted to consumers and that farmers and current owners of residential property would benefit directly from repeal of property taxes, but it is not possible to determine whether net tax reductions for businesses would be passed on to consumers, whether in North Carolina or in other states, and whether net tax increases on some businesses would be shifted to consumers or whether they would result in lower profits for business owners and shareholders.

Information about the current makeup of the property tax base is not available. According to the most recent information (for 1981), of total assessed value of real property in the state, residential property accounted for 52 per cent, commercial and industrial property accounted for about 30 per cent, and acreage and farms accounted for 14 per cent.

One possible effect of repealing property taxes is that the property tax reductions would result in an increase in the market value of existing property, producing a one-time gain for owners of existing property. If full capitalization of property tax reductions should occur, the benefit to future property owners of not having to pay property taxes would be offset by the higher prices they would have had to pay for their property.

An important question is whether or not renters would benefit from repeal of property taxes on their housing. Although renters pay property taxes on their housing indirectly as part of their rent, they would benefit from repeal of property taxes on real property only if their landlords reduced their rents. Rents at any specific time are determined by supply and demand for rental housing, not by landlords' costs. In the short-run, the supply of rental housing would not change, and therefore there would be no reason for rents to fall. In the long-run, if repeal of property taxes caused the return on investment in rental property to increase, more rental housing might be built, causing the supply to increase and rents to fall below the level at which they would be otherwise.

The Effects of HB 1314 on Individual Taxpayers

The report presents estimates of taxes that would have been owed by representative families for the tax year 1984 under HB 1314 and compares those amounts with the taxes that would have been owed under the current tax system. The year 1984 was used for the analysis because information on effective property tax rates is available for that year.

Under HB 1314, all families that have the same taxable spending would pay the same amount in additional sales taxes as a result of the increase in the total sales tax rate to 8 per cent on all items (including motor vehicles). Therefore, the net effect on families' taxes of repealing property taxes and increasing the sales tax rate depends on the amount of property taxes paid under the existing system, which varies among families depending on (1)

whether they own their home or rent, (2) the value of their homes and other taxable property, (3) whether they live in a municipality, and therefore are subject to municipal property taxes in addition to county property taxes, and (4) whether their local property taxes are low or high.

Since the effects of HB 1314 would vary with the level of property taxation, the general level of property taxes was estimated for counties and municipalities. Estimates were then made of the net effect of repealing property taxes and increasing the sales tax rate on taxes paid by representative families, assuming they lived in different local government units.

The estimated net effect on the families' taxes, after taking into account the indirect effects of state and federal income taxes, varied substantially among families:

> Low-income families that were eligible for the proposed sales tax credit (or payment from the state) had net reductions in their taxes, if they did not purchase an automobile.
>
> Municipal residents fared much better than non-municipal residents because their increased sales taxes were offset by the repeal of both municipal and county property taxes, while families that lived outside municipalities benefited only from repeal of county property taxes.
>
> Renters generally had substantial net tax increases, whether or not they lived in a municipality. While renters pay property taxes on their rental property indirectly through their rent, the rents they pay would probably not be reduced when property taxes on their rental housing were repealed.
>
> Home-owning families that lived in municipalities generally had net reductions in their taxes. Home-owning families that lived outside a municipality generally had moderate tax increases, except in counties with the highest property taxes (where they had modest reductions).
>
> Residents of the larger counties and municipalities generally fared better under HB 1314 than did residents of smaller counties and municipalities, because property taxes tend to be higher in the larger units than in smaller units. However, some of the smaller counties and municipalities also had relatively high property taxes.
>
> Residents of counties with high per capita income generally fared better under HB 1314 than residents of counties with low per capita income, except in some low-income counties that had high property taxes.

Municipal residents fared better under HB 1314 than residents who lived in the same county but outside municipal boundaries because they now pay more in property taxes than non-municipal residents: county residents pay only the county property tax, while municipal residents pay the same county property tax and also pay a municipal property tax to support additional services provided by their municipal government. Under HB 1314, families with the same taxable spending would pay the same amount of sales taxes, whether or not they are municipal residents, but municipal residents would benefit more under the proposed system because the additional services provided by their municipal governments would be supported in part by sales tax revenues collected from both county and municipal taxpayers.

As a percentage of the representative families' income, current property and local sales taxes were higher for low-income and moderate-income families than for high-income families. Under HB 1314, the 5 per cent sales tax as a percentage of income was still higher for lower-income and moderate-income families than for higher-income families, but those taxes were offset for low-income families that were entitled to the proposed sales tax credit.

A local income tax rate imposed at a flat rate on net taxable income, such as the one proposed in HB 1314, increased as a percentage of income at lower levels of income; at moderate- and high-income levels, the tax as a percentage of income did not increase significantly.

Implications for the Structure and Functions of Local Governments

The shift of tax burden. State-level financing of state and local governmental functions in North Carolina is now largely in support of programs and activities of statewide interest, such as education, welfare, highways, prisons, and courts. State funds for these purposes that are distributed to local governments for expenditure are allocated on the basis of programs, not as revenue-sharing to local governmental units.

The distribution formula in HB 1314 allocates funds to cities and counties on the basis of population without regard to programs and activities, either those that are mandated by the state or those that are discretionary with the cities and counties.

Under current arrangements, all state residents are residents of some county. They receive county services and pay county taxes. State residents who are also municipal residents currently receive services from their municipality and pay municipal taxes.

Under the HB 1314 proposal, the two levels of local services—county and municipal—would continue, but these levels of services would be supported by a single level of state taxing. The result, given that an estimated

56 per cent of the state's population lives outside municipalities, is to shift a large proportion of municipal tax obligations from state citizens who live in cities and towns to state citizens who live outside municipalities. Under 1984-85 conditions, 56 per cent of the allocation to cities and towns under the formula in HB 1314 would have been raised from non-municipal residents of the state, if their income and consumption characteristics (for general sales and corporate income taxing purposes) were equivalent to those of municipal residents (if that condition held, the amount of the shift from non-municipal to municipal residents in that year would have been about $384 million).

Municipal annexation. HB 1314, if adopted, would appear to encourage municipal annexation. Homeowners would probably seek annexation. Their taxes would not increase by annexation (except in the cities that levy a local income surtax), but they would receive the higher level of services offered by a city. Owners of commercial and industrial property might also be expected to seek annexation except where local license taxes were high enough to offset the advantages of receiving municipal services.

City officials and residents would probably continue to view annexation as they do now: they would favor annexations when the added costs of providing services to the new areas would be less than the additional revenues the city would receive as a result of the annexations. But adoption of HB 1314 would tend to change municipal views of what areas are desirable for annexation. Currently, cities often favor annexing commercial and industrial properties because of their high property tax values. Under the HB 1314 proposal, the annexing of these properties would not increase a city's allocation—only the addition of population would do that. Thus cities would tend to look more favorably on the annexation of residential properties and less favorably on the annexation of other types of property.

Since each municipal annexation lowers the per capita allocation to all other cities and counties, county governments could be expected to oppose municipal annexations. (Other cities might also oppose annexations, but usually they would not be in a position to make their opposition as effective.)

Municipal incorporation. Currently, the incorporation of a community is often opposed by citizens of the community who do not want to pay additional property taxes. HB 1314 would remove that objection. It would bring substantial revenues to new communities without increasing taxes for their residents. In 1984-85, the allocation would have been about $256 per resident, a sum large enough to provide a significant level of services to a community.

New incorporations, like annexations, would tend to lower the per capita distributions available to other units, including both counties and municipalities. As a result, it could be expected that counties and existing cities would often oppose new incorporation proposals in the General Assembly.

Special districts. Special district governments and taxing areas have been created to provide services (or higher levels of service) not provided throughout a county or city. In 1985 there were more than 700 of these districts, which levied a total of more than $62 million in property taxes. There were 619 rural fire districts, 35 sanitary districts, 41 school districts, and some 40 other districts. HB 1314 makes no provision for the loss of revenue for these districts. If the residents of these districts wished to continue to maintain their services, five possible approaches appear to deserve consideration. They might (1) seek to finance the services with fees and contributions; (2) seek to make the services city- or county-wide, with financing from the city's or county's allocation; (3) seek to finance the services under a city or county, using any unrestricted taxing powers remaining with the local governments; (4) seek annexation to a city if one is nearby; or (5) seek incorporation.

Not all these approaches would be possible for every service under the state's current statutory authorizations, but one of the approaches could be used with almost all the current special districts.

HB 1314 also makes no provision for handling the indebtedness of the special districts.

Functions. Adoption of the HB 1314 proposal appears likely to lead to some changes in functions and how they are financed. County governments may take over activities previously performed by special districts in some cases. In other cases, county governments may try to lower their financial contribution to joint activities with cities because, in general, the areas served by municipal governments will benefit more from the proposal than non-municipal areas. Governments that lose revenues under the plan will probably try to increase their revenue from fees and charges.

Local autonomy. Some observers have noted that adoption of the HB 1314 proposal will substantially increase county and municipal reliance on state-raised revenues, and have concluded that this could lead to reduced local autonomy.

It is not possible to establish to what extent this possibility might be realized. Local governments are

creatures of the state. Under the state's Constitution, there is no "right" of local autonomy. The General Assembly has broad discretion in determining what local governments may do, how they do what the legislature authorizes, and the means of financing their operations. The constitutional amendment proposed by HB 1314 sets a minimum sales tax rate that the General Assembly must levy for distribution to cities and counties, but otherwise it leaves unchanged the legislature's general power over the affairs of local government. Whether the additional state-level financing for local governments will bring increased direction from the General Assembly for cities and counties is a matter of speculation. The degree of autonomy over city and county affairs that the legislature should vest in local governments is a matter of personal political philosophy.

Local Land Trust *(continued from page 16)*

lot of time and commitment. Any land trust will have to develop a system of management, whereby each property can be checked on a regular basis to ascertain that none of the illegal activities mentioned above is being carried on.

This brings us back to record-keeping. In order for someone to check a piece of propety and know that it has not been damaged since the time of the last visit, records must be kept documenting what each person found when he or she visited the property. When a property is first acquired, scientific evidence, photographs, and as many kinds of information as possible should be gathered to document the condition of the property at the time of acquisition. This record should also include a scientific survey of the types of plants and animals found. In some instances prescribed burning or other management measures may be necessary to prevent an area from being overgrown by the succession of plant communities.

Before a land trust acquires a property, it should decide to what purpose the land will be managed. This will depend on the land itself and the wishes of donors. For example, one piece of land may be very susceptible to damage from foot traffic and be reserved for research. Another tract of land may be less easily damaged and thus be able to support hiking trips. In another situation, an individual may donate a farm and want the trust to continue to use the property as an operating farm. The final consideration is what the trust can afford. An extensive system of hiking trails with informational signs should not be installed unless the land trust has the resources to maintain that system and has committed itself to do so.

Summary

The formation and operation of a land trust is a slow and frustrating process. Nevertheless, the first time members walk out onto a piece of property that their organization has acquired and is managing, they will know that it has all been worthwhile. The time to form a land trust is now. If you feel you need a land trust in your area, then you probably have a "long row to hoe." The Triangle Land Conservancy was not formed until a large number of people saw the need. Land prices in the Triangle reach up to and over $100,000 an acre, and the high level of development has made achieving the goals of the Triangle Land Conservancy even more difficult. If you don't think your area needs a land trust, then it is probably in the right position to start one.

INFRACTIONS: A New Class of Non-Criminal Offenses in North Carolina

James C. Drennan

Running a red light is dangerous and can be catastrophic. Driving a car that has not been inspected in the last year does not treat the people who may share the streets with the unsafe car with the kind of respect due them. But are the people who engage in this kind of conduct criminals? Is it necessary that they be treated the same way as people charged with crimes, with all the special procedures and protections that must accompany a criminal charge? Since all motor vehicle violations have historically been crimes (mostly misdemeanors), the answer to both questions has been "yes."

Nevertheless, questions like this have been asked in North Carolina periodically for over thirty years. In response to some of the concerns reflected in those questions, the 1985 General Assembly established a non-criminal class of offenses called *infractions*.

Infractions are non-criminal violations of law, punishable only by payment of a fine; conviction will not result in a criminal record. Since most of the violations classified as infractions have very rarely resulted in jail sentences, the definition more nearly describes the existing practices than does current law. With two exceptions, only minor traffic offenses are classified as infractions. In some respects the changes made by this legislation are simply changes in philosophy, but there are also some significant changes in the practical manner in which the cases are disposed of, as this article will discuss.

History of the Infraction in North Carolina

In 1954, a commentator in the *North Carolina Law Review* suggested reform of the traffic courts then in existence.[1] He suggested that the minor cases be heard outside the courts by administrative hearing officers using expedited procedures. Some of his suggestions were adopted in the 1960s when the new unified General Court of Justice was established. Minor traffic offenses remained misdemeanors, and they remained as court matters, but court officials other than judges were allowed to accept designated fines from motorists in lieu of court appearances. Motorists were also allowed to admit their guilt and pay their fines by mail. Nearly two-thirds of all motor vehicle charges have been disposed of in this fashion since 1966.

The remaining one-third, however, has continued to comprise a significant (and usually the most disliked) portion of the district court's workload. As a result, several study commissions in the '70s and '80s continued to study the problems created for the court system by minor traffic cases. The North Carolina Courts Commission was the most recent body to study the issue. Its 1983 report contained a recommendation that, with some modifications, became the infraction legislation of 1985.

That report recommended that infractions be created as a new class of offenses against the state, classified most minor traffic offenses as infractions, and established a procedure to be used in disposing of infractions.

The recommended procedure largely followed the procedure used

The author is an Institute of Government faculty member who specializes in judicial administration.

1. Comment, *A Plan for The Hearing and Deciding of Traffic Cases*, 33 N.C. LAW REV. 1 (1954).

in district court to dispose of misdemeanors, with two major exceptions. It eliminated the right to jury trial in cases appealed to the superior court. It also allowed specially-trained magistrates to hear contested infractions if, in a particular county, the Director of the Administrative Office of the Courts, the Chief District Court Judge, and the Clerk of Superior Court agreed that assigning the cases to magistrates would assist in the administration of justice in the courts in that county.

Both of these features generated significant opposition in the 1983 General Assembly. Critics argued that assigning such cases to magistrates was a step back toward the Justice of the Peace system of the 1950s and 1960s. Elimination of a right to jury trial was unpopular as well, primarily for philosophical reasons. Very few people charged with minor infraction-type offenses demand jury trials, and even fewer receive one, but the possibility of a jury trial remains important to many legislators. As a result, the legislation was not enacted in 1983. The 1985 Courts Commission dealt with this problem by deleting the offending provisions.

The 1985 version was also aided by an unlikely ally—the federal government. Before it considered the Courts Commission's bill, the North Carolina legislature had considered bills on two subjects that many legislators found offensive. Both became legislative issues primarily because of federal regulations. One was the mandatory seat belt law. Auto manufacturers wanted this law and lobbied aggressively for its enactment because if enough states pass such laws, manufacturers can avoid having to equip vehicles with air bags.

Manufacturers were enthusiastically joined by highway safety advocates, who had wanted such a law for a long time, but

---

I. Motor Vehicle Infractions:

1. All equipment violations
2. Handicapped parking violations
3. Inspection violations
4. Rules of Road violations
   - —overloaded vehicle
   - —special interstate highway violations
   - —special motorcycle provisions (helmets)
   - —speeding cases (other than over 75 mph or eluding arrest)
   - —railroad crossing violations
   - —driving on wrong side of road; driving in left lane of multi-lane highway
   - —improper passing
   - —following too closely
   - —turning at intersections
   - —turn signals
   - —right-of-way violations
   - —driving in safety zone
   - —parking or stopping
   - —coasting
   - —one-way traffic
   - —bicycle racing
   - —pedestrian duties
5. Ordinance violations of city, county, or state regulating traffic or parking

II. Non-Motor Vehicle Infractions:

1. Purchase or possession of beer and wine by 19- or 20-year-old
2. Violation of Marital and Family Therapy Certification Act

III. Motor Vehicle Misdemeanors in Rules of Road Article of Chapter 20:

1. Impaired driving
2. Provisional licensee driving after drinking
3. Reckless driving
4. Driving over 75 mph
5. Racing
6. Death by vehicle
7. Speeding to elude arrest
8. Failure to stop for blue light (but not failure to yield right-of-way to emergency vehicles)
9. Hit and run
10. Illegal transportation of spent nuclear fuel

IV. Motor Vehicle Misdemeanors in Other Sections of Chapter 20:

1. All title and registration violations
2. All insurance violations
3. All driver's license violations
4. All anti-theft provisions
5. Exceeding school bus speed limit
6. Passing school bus

---

never felt that they had the strength to get one enacted.

The other issue was raising the legal drinking age for beer and wine. States were required by 1986 to have a 21-year age requirement for legal consumption of all alcohol or risk loss of some federal highway funds. Laws on both subjects were enacted, but as part of the legislative process, opponents succeeded in having violations of the laws declared infractions (and thus non-criminal).[2] Neither bill made any significant attempt to prescribe a procedure for handling infractions. Thus, when the Courts Commission's bill reached the floor for debate, the legislators had become accustomed to the infractions concept, saw a need for it, and needed a procedure to handle the new kind of case. The combination of factors made passage of the bill relatively easy.

Effects on Local Government Ordinances

The infractions legislation of 1985 will have an effect on local governments' ordinance powers. Under current law, ordinance violations are misdemeanors punishable by a maximum fine of $50 or a maximum jail term of 30 days. But, if the ordinance specifically says so, the governing body may provide for civil enforcement of ordinances, either in addition to or in lieu of criminal enforcement. A regular civil action must be filed to use that procedure, although the prescribed penalty may be paid voluntarily without the need for a civil action. Ordinances may also be made enforceable by an injunction and similar remedies in appropriate cases.

The infractions legislation slightly changes the above rules as they apply to ordinances regulating the operation or parking of vehicles. For those violations, the local government may continue to use the traditional civil remedies, or it may classify the ordinance as an infraction. If the ordinance does not specify, the violation is automatically an infraction rather than a misdemeanor, which was the case under the former law and remains true for ordinances not affecting parking or trafffic. For all other ordinances, the infractions legislation makes no changes in the local government's authority.

Procedure[3]

The basic statement of the procedure applicable to infractions is found in G.S. Chapter 15A, Article 66. Under the procedure, district court judges will continue to hear these cases, and in court there will be no practical differences between an infraction hearing and a misdemeanor trial. But the philosophy of infractions requires that a few changes be made at other stages of the procedure. Arrest is not allowed, and persons charged must be given a citation or summons. Appearance bonds may be required in motor vehicle cases only if the person charged is from a state that does not subscribe to a reciprocal arrangement with North Carolina by which the person failing to dispense with the charge in North Carolina loses his license in his home state until he does so (a similar rule applies to North Carolina residents charged in other states). Failure to appear for the initial hearing cannot result in arrest. Court costs are the same as in misdemeanors, except for the two infractions (adult seat belts and underage drinking of beer and wine) that specifically prohibit the assessment of court costs.

For motor vehicle offenses there is another significant change. Current law provides that failure to appear in court for 90 days after a scheduled appearance results in a "conviction" of the offense for driver's license purposes. Generally that means driver's license points are assessed against the driver. The infractions law contains a new provision, applicable to all traffic offenses, that imposes an additional, tougher sanction. It provides that failure to appear will result in a license revocation that lasts until the person appears. It is structured to give the defendant plenty of time to appear before the revocation becomes effective (generally 80-100 days). A similar revocation applies for failure to pay fines, penalties, or costs for motor vehicle offenses, whether they are infractions or crimes.

Conclusion

Although the infraction legislation enacted in 1985 was originally conceived as a way to relieve district and superior courts of the necessity of dealing with routine, minor traffic cases, it has evolved into something much different. It does not relieve those courts of any function they now perform, but it does give the legislature an additional option when it attempts to regulate conduct and to punish violations of those regulations. In the future, if the procedure established by this law works as expected, it is likely that more minor criminal offenses will be reclassified as infractions.

2. N.C. GEN. STAT. § 20-135.2A, 1985 N.C. SESS. LAWS, ch. 222; N.C. GEN. STAT. § 18B-302(b),(i), 1985 N.C. SESS. LAWS, ch. 141.

3. As *Popular Government* went to press, the procedure described in this article was scheduled to become effective July 1, 1986; however, legislation was pending to delay the effective date to September 1, 1986.

Purchase or Possession of Beer and Wine by Nineteen- or Twenty-Year-Olds

ALE Age-Change Information Campaign

Donald M. Murray

As of September 1, 1986, the minimum lawful age for purchase, possession, or consumption of alcoholic beverages in North Carolina will be 21 years. This legislation was prompted by a 1984 amendment to the Surface Transportation Act by the United States Congress. That act mandated that any state not adopting a minimum drinking age of 21 by federal fiscal year 1987 would lose 5 per cent of its federal highway funds and an additional 10 per cent in fiscal year 1988. Many other states are following suit by raising drinking ages on or before October 1986, while some states already have the minimum age for drinking set at 21.

The Alcohol Law Enforcement Division (ALE) of the North Carolina Department of Crime Control and Public Safety is the agency charged with enforcing alcoholic beverage control laws and regulations. Methods and philosophy of enforcement in ALE will not be changed by the new legislation, but a provision of the North Carolina Act will make treatment of certain violators and the resultant penalty somewhat different. Purchasing, attempting to purchase, or possession of malt beverages or unfortified wine by a person who is 19 or 20 years of age will be an infraction, punishable by a penalty of not more than 25 dollars. A person found responsible for this infraction may not be assessed court costs and will not have a criminal record.The person charged with this infraction will be given a citation and may go to district court for trial; or the person may choose to pay the fine and not go to court (unless he or she has been convicted of an ABC offense within the last two years).

Almost all other alcoholic beverage control law violations are misdemeanors, including the sale of an alcoholic beverage to a person aged 19 to 20. A person may be punished with up to two years in jail and a fine for a misdemeanor. This means a 19- to 20-year-old purchaser may be charged with an infraction, while the person selling the beverage may be charged with a misdemeanor.

The new law also amends Division of Motor Vehicle (DMW) requirements regarding color coded driver's licenses and special identification cards. Beginning September 1, 1986, the DMV must color code licenses and special IDs in two groups, i.e. those persons who have not reached age 21 and those who have reached age 21. This will eliminate the three-color system, which currently designates persons between ages 19 and 21. The two-color system will simplify identification checking at alcohol outlets when the old color code system is eliminated through license and ID card renewals. The two-color system would not be fully implemented until all persons currently in the 16 to 21 age range have their licenses and ID cards renewed, and this will take several years. There is no word yet from DMV regarding the two-color system to be used.

Valid identification is important to alcoholic beverage retailers and young people. The ID often makes the difference between a purchase or refusal. Asking for and carefully examining proper identification presented by youthful persons, combined with observation of the persons, is a good business practice. Failure to act prudently may result in arrest, civil liability, loss of employment, and the loss of the privilege to sell alcohol.

ALE provides public information programs that include instruction concerning acceptable IDs. Acceptable IDs are driver's license, DMV special ID card, military ID card, or passport. Further, ALE agents remind affected persons that any ID must also bear a physical description of the person named on the card, and dates of validity or expiration must be current. This information is important for law enforcement officers who may come in contact with young persons purchasing or possessing alcoholic beverages. En-

The author is Director of Alcohol Law Enforcement, the North Carolina Department of Crime Control and Public Safety.

forcement contacts of this nature may require the examination of a second identification should doubt exist concerning validity or identity of the bearer. While the new statute has a reduced penalty for 19- to 20-year-old persons possessing, attempting to purchase, or purchasing alcoholic beverages, the use of a fraudulent driver's license or ID, or one issued to another person, in obtaining or attempting to obtain alcoholic beverages is still a misdemeanor.

A conviction of this provision may result in a criminal record, the assessment of a fine and/or court costs, and loss of driver's license for one year. Additionally, 19- to 20-year-old persons are subject to misdemeanor criminal charges and a one-year driver's license revocation for allowing another to use their license or identification documents and for assisting another underage person in the sale, purchase, attempt to purchase, or possession of alcoholic beverages.

Questions regarding the age change or requests for public information programs should be addressed to: Director, North Carolina Alcohol Law Enforcement, P.O. Box 27687, Raleigh, NC 27611.

Recent Publications of the Institute of Government

The Precinct Manual 1986. By Robert P. Joyce. $2.50.

1985-86 Update to Abuse and Neglect of Children and Disabled Adults: North Carolina's Mandatory Reporting Laws. By Janet Mason. $1.00 ($.50 each for 100 or more).

Chart of Revocations and Points Assessed for Motor Vehicle Convictions. By James C. Drennan. $2.00.

Planning Legislation in North Carolina—1986 Replacement Pages. By Philip P. Green, Jr. $6.00.

The Use of Contempt to Enforce Child-Support Orders in North Carolina. *Special Series Paper No. 1.* By Janet Mason. $2.50 ($1.50 each for 100 or more).

Construction Contracts with North Carolina Local Governments. By A. Fleming Bell, II. $5.00.

Analysis of HB1314—A Report Prepared for the State Treasurer. By Charles D. Liner. $5.00.

North Carolina Crimes: A Guidebook on the Elements of Crime. Third edition. Edited by Benjamin B. Sendor. $10.00.

North Carolina Legislation 1985: A Summary of Legislation in the 1985 General Assembly of Interest to North Carolina Public Officials. Edited by Robert P. Joyce. $12.50.

Orders and inquiries should be sent to the Publications Office, Institute of Government, Knapp Building 059A, The University of North Carolina at Chapel Hill, Chapel Hill, N.C. 27514. Please include a check or purchase order for the amount of the order, plus 3 per cent sales tax (4½ per cent for Orange County residents). A complete publications catalog is available from the Publications Office on request.

Popular Government (ISSN 0032-4515)
Institute of Government
Knapp Building 059A
The University of North Carolina at Chapel Hill
Chapel Hill, North Carolina 27514

THE INSTITUTE OF GOVERNMENT, an integral part of The University of North Carolina at Chapel Hill, is devoted to research, teaching, and consultation in state and local government.

Since 1931 the Institute has conducted schools and short courses for city, county, and state officials. Through guidebooks, special bulletins, and a magazine, the research findings of the Institute are made available to public officials throughout the state.

Each day that the General Assembly is in session, the Institute's Legislative Reporting Service reports on its activities for both members of the legislature and other state and local officials who need to follow the course of legislation.

Over the years the Institute has served as the research agency for numerous study commissions of the state and local governments.