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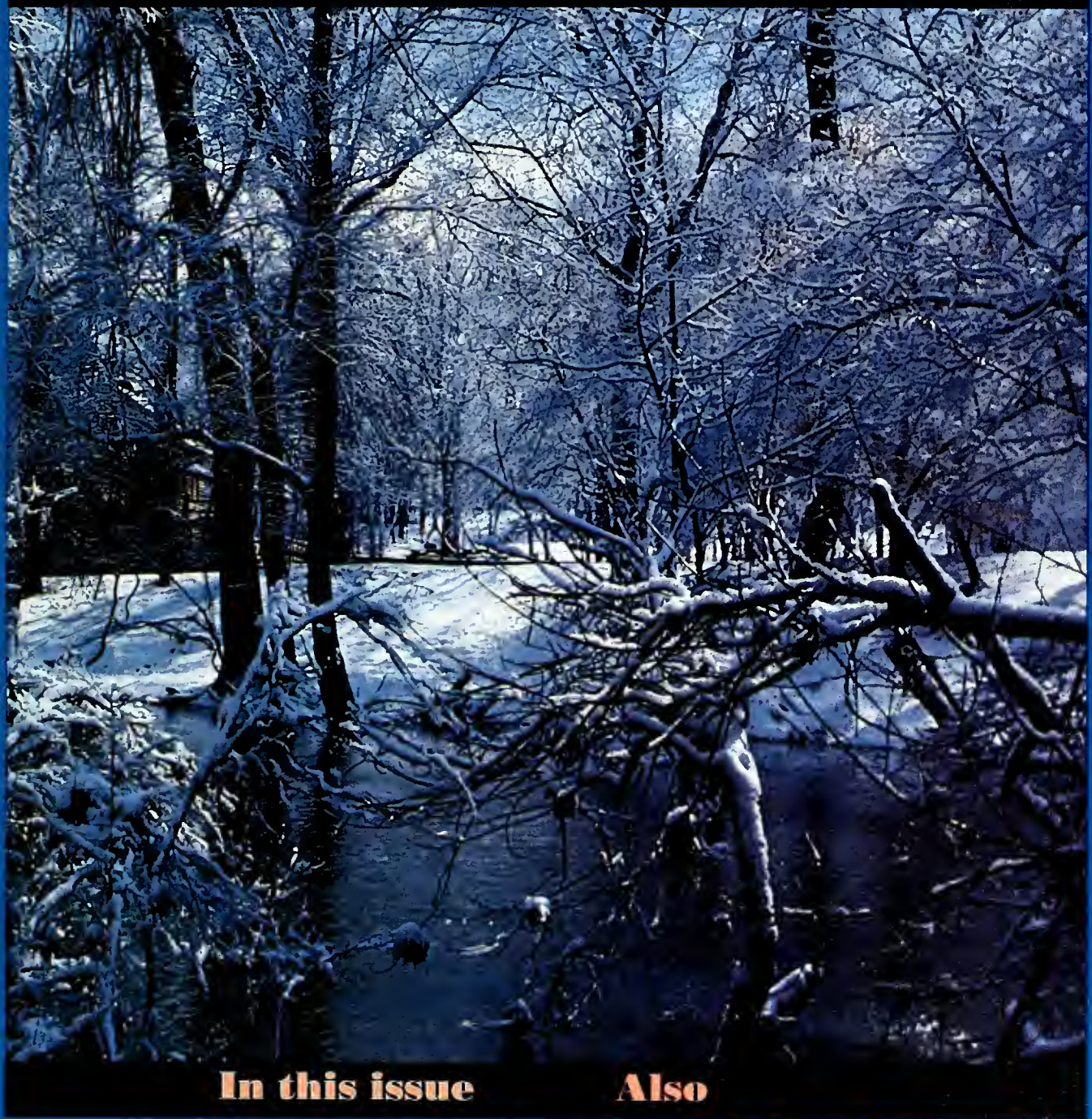

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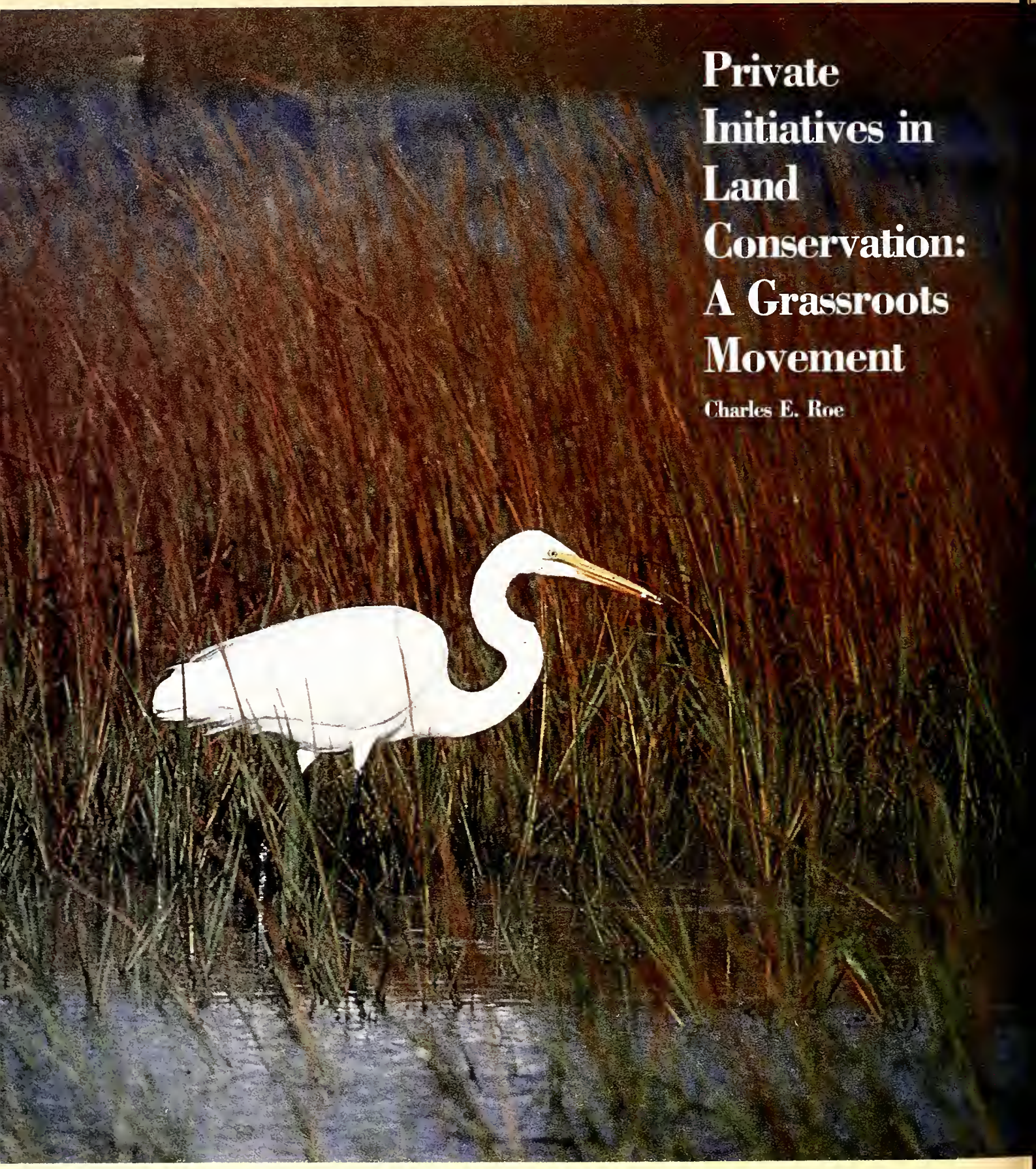
On the cover The Eno River Preservation Association has successfully championed the creation of a state park to preserve the river corridor west and north of Durham. Photograph by Duncan Heron.



Private Initiatives in Land Conservation: A Grassroots Movement

Charles E. Roe

While global environmental problems are at last attracting widespread public attention, another environmental movement is quietly, but effectively, taking place on a very different scale. Across North Carolina, as in the rest of America, people are organizing community and regional land trusts to save undeveloped lands that are important to their communities. The land trust movement allows private citizens to seize conservation opportunities and enables local governments to preserve natural resources that might otherwise be lost.

Land trusts have strictly grassroots origins. The one million volunteers in land trusts nationwide realize that governmental agencies alone are not always able or willing to preserve environmentally significant lands, many of which are in danger of development or damage. Land trusts protect land permanently and directly: they accept donations of properties, buy land, assist public agencies in acquiring land, or help landowners establish legal restrictions that limit harmful use or development. Some preserve a variety of lands, while others focus on a particular area or type of resource. By forming land trusts, private citizens protect land as nature preserves and wildlife habitats, recreational parks and greenways, watersheds, stream corridors, farmland in areas with encroaching urban development, community gardens and waterfronts, archaeological sites, and historic or scenic landscapes.

Land trusts are private, nonprofit, tax-exempt corporations. They may be local, regional, or statewide. They are not "trusts" in the legal sense, and, in fact, many prefer to call themselves conservancies, foundations, or associations. Some have hired professional staff. Some land trusts own and manage lands, while others simply monitor development restrictions they helped establish. They voluntarily follow protocols and standards of practices established by a national association of land trusts.[1]

Phenomenal Growth of Private Land Trusts

Nearly one thousand land trusts have been incorporated throughout the United States. On an average, one new land trust is formed every week. In North Carolina nearly twenty community and regional land trusts have formed, the vast majority in the last ten years. (See "Statewide Network of Land Trusts" on page 6.) Local

The author is the executive director of the Conservation Trust for North Carolina.

land trusts have been organized in the Research Triangle, the Piedmont Triad, the Charlotte area, the Sandhills region, the Blue Ridge mountains, and along the coast. Others groups either have acquired properties or have professed the intent to acquire lands for conservation: the Botanical Garden Foundation, Friends of Hatteras Island, Friends of Roanoke Island, Lumber River Conservancy, Northwest Environmental & Historic Preservation Association, Pender Watch and Conservancy, and Trust for Appalachian Trail Lands.

Over the years—before the surge in North Carolina land trusts and right up to today—national and state conservation groups have led in protecting many of the exceptional natural areas and endangered species habitats in the state. The Nature Conservancy (a private, international organization) and the Natural Heritage Program (a North Carolina state government program) have been especially active.[2]

But the challenge of saving favorite community landscapes, streamways, natural habitats, open spaces, and trailways is open to all community citizen groups, individual landowners, and local governments. Local land trusts are a quickly developing innovation in this effort.

Conservation Trust for North Carolina

The growth in land trusts has generated the need for technical assistance. The newly organized Conservation Trust for North Carolina (CTNC) meets that need. CTNC is a private, nonprofit corporation administered by a board of directors composed primarily of individuals experienced in techniques of land conservation. It is a member of the newly created national advisory council to the Land Trust Alliance, a national association of private land trusts. In turn, a North Carolina land trusts council is being organized to advise CTNC in the design of its service programs. Those programs are varied:

- CTNC offers seminars and workshops for new and forming land trusts and community groups and professional associations with interest in land conservation.
- CTNC offers training workshops, in partnership with the Institute of Government, for members of existing land trusts and for staff and officials of local governmental agencies.
- CTNC is preparing a reference manual about organizing and operating land trusts, as well as booklets with guidelines about land-protection options.
- CTNC acts as a clearinghouse for technical and informational services for land trusts.

In addition, CTNC takes an active role in property acquisition and maintenance. It has accepted responsibility for conservation easements, a creative way to guarantee long-term stewardship of land in private ownership (see below, Options for Private Owners) in several properties, a responsibility it will transfer to local land trusts when they are organized. It recently transferred, for example, conservation easements on two tracts totaling eighty-five acres near Southern Pines to the new Sandhills Area Land Trust. CTNC also acquires important lands where no local land trust exists or is likely to form soon.

CTNC provides matchmaker services between land trusts and conservation-minded property owners or other citizens. It recently has provided such services for an island owner on the coast, a longleaf woodlands owner near Southern Pines, and a farm owner near Greensboro. All worked with new local land trusts to arrange land-protection agreements.

CTNC is helping a number of counties to compile resource inventories and to plan for protection of special natural areas.

Using Creative and Nonconfrontational Conservation Methods

Most land trusts avoid taking controversial and strident stands. They prefer quiet nonconfrontational approaches in working out cooperative conservation arrangements with landowners, in buying land from willing sellers, and in using tax laws to encourage donations. They aim to build partnerships with public agencies and community organizations and with the private corporate sector. They encourage harmonious combinations of limited and well-designed development projects that incorporate conservation of natural and recreational lands.

Land trusts can acquire environmentally significant lands by purchase or donation. Increasingly they are receiving partial interests in property through conservation easements. Some trusts are recipients of lands reserved to mitigate or offset unavoidable destruction of natural lands elsewhere.

Many are building community awareness and participation in land conservation efforts. For example, the Triangle Land Conservancy—serving the Research Triangle region—has organized countywide inventories of special natural areas in its region, with cosponsorship or funding assistance from local and state agencies. These surveys and the conservancy's county protection planning committees have produced interagency cooperation

on several projects, such as the current effort to protect the New Hope Creek corridor in Durham County.

The Catawba Land Conservancy—serving the greater Charlotte region—helped promote Mecklenburg's successful bond issue in 1991 for parkland acquisition, which has already added nearly 1,000 acres to the county park on Mountain Island Lake.

The Society for the Preservation of Masonboro Island (in New Hanover County) built public support for the acquisition of privately held lands on the barrier island for creation of a state-owned estuarine reserve. It has negotiated with private landowners on behalf of the state acquisition project and has acquired purchase options for transfer to the state Division of Coastal Management.

Nationally, land trusts also work with landowners and real estate developers to encourage incorporation of open space and conservation lands into private and public land-development plans. Many development projects transfer to land trusts tracts that are dedicated to preserve attractive and sensitive natural areas. Some land trusts actually are joining with developers to cosponsor designs for limited development that permanently reserve these natural areas. Land trusts and conservation-sensitive developers can benefit mutually from cooperative arrangements that improve development designs. Local governments may increasingly require developers to reserve sensitive environmental lands permanently through transfer to private land trusts. The potential is greater than the early record of such arrangements between North Carolina land trusts and land developers.

Early North Carolina examples of cooperation with developers, however, include donations of land to Triangle Land Conservancy (TLC) by subdivision developers along Morgan Creek in Chapel Hill; donations of money to TLC for land acquisition on bluffs along Swift Creek in Cary; transfer of wetlands on Howe Creek near Wilmington by a residential developer as part of a required settlement for damages to other wetlands; and formation of a limited partnership by the National Committee for the New River and a landowner in Alleghany County to guarantee the preservation of scenic bottomlands along the New River.

Responding to Changing Land Patterns and Attitudes

Changes in landownership patterns and in public attitudes about land uses are creating both urgency and opportunity for land conservation. The state is experiencing urban and suburban development at the same time that demands for open spaces and outdoor recreational lands are increasing. Many property owners want to manage and maintain the natural, scenic, or agricultural character of their properties but need management assistance or advice for estate planning. Many corporations and real estate developers recognize that reserving sections of natural land makes good business sense. Tax laws provide incentives for land conservation. Scientific knowledge is improving about the locations of critical natural habitats and rare species—the state Natural Heritage Program's inventory, for example, has grown to more than 11,000 known sites of rare species habitats and exemplary natural ecosystems. People generally are becoming more aware and concerned about saving environmental resources, scenic vistas, and outdoor recreational amenities.

Land trusts across the state and nation are responding to these concerns and opportunities, working hand-in-hand with both private and public landowners.

Options for Private Property Owners

Many individual landowners are devoted to maintaining the natural resources and beauty of their properties. But economic and tax pressures, social demands, and surrounding land development often combine to threaten the ability of owners to preserve land even when they want to do so. Land trusts can offer advice and assistance to enable owners to be the best possible stewards of their properties and to help them understand the full range of conservation and preservation options available to them.[3]

Donating or Selling the Land

Landowners may give property to a land trust by outright donation or through a will, or they may give the land but reserve the right to use all or part of the land during their lifetimes or the lifetimes of other members of their immediate family. Alternatively, a landowner may sell land to a land trust at fair market value—in which case the land trust acts just as any other buyer in the market would—or the landowner may make a bargain sale to the land trust, giving the landowner some money but still allowing a charitable deduction for income tax purposes.

Creating a Conservation Easement

A conservation easement is an option for a landowner who wishes to conserve the land but not give up title entirely. It is a legal means by which a landowner can set

Continued on page 9

William Stoffel

The new Sandhills Area Land Trust is arranging conservation easements with private landowners to protect longleaf pine forests in the Southern Pines–Pinehurst area.

Network of Land Trusts

Triangle Land Conservancy volunteers lead weekend public hikes in its preserves in the Research Triangle area. Here a hike leader describes the White Pines Nature Preserve.

Triangle Land Conservancy

Of the nearly twenty private groups serving as local or regional land trusts in North Carolina, fourteen are featured here for their progress and ambitions:

Catawba Lands Conservancy

Founded in 1991 for the protection of natural and open land resources in the Catawba River basin. Worked for passage of the 1991 Mecklenburg County bond issue, which included $7.5 million for acquisition of public parklands and wildlife reserves near Mountain Island Lake and elsewhere in the Catawba basin. Cosponsored Big Sweep cleanups of three lakes for several years. Currently involved in public education projects, wildlife habitat enhancement, and initiating a natural lands inventory.

Catawba Lands Conservancy, 1614 Fountain View, Charlotte, NC 28203; (704) 332-3814.

Conservation Trust for North Carolina (CTNC)

Founded in 1983 as the Natural Heritage Foundation and reorganized in 1992 as a statewide land trust to help communities, local land trusts, landowners, and public agencies conserve and protect natural and open lands. Provides a variety of advisory and contractual services.

Holds easements and other interests in conservation lands until they can be transferred to local land trusts or public agencies. Coordinates the state council of land trusts. Cosponsors instructional workshops with the Institute of Government and other professional associations.

Conservation Trust for North Carolina, P.O. Box 33333, Raleigh, NC 27636; (919) 828-4199.

Paul Somers

Roan Mountain—a high-elevation ridge on the North Carolina–Tennessee state line—has been a joint protection project of the Southern Appalachian Highlands Conservancy and the United States Forest Service.

Eno River Association

Founded in 1966 as advocate for the preservation of the Eno River corridor west and north of Durham. Has championed and assisted with parkland acquisition of more than 2,200 acres along thirteen miles of the river and has acquired conservation easements or title to another 120 acres. Built public support and appreciation for the natural and cultural heritage of the river valley. Focuses on improving water-quality protection and land-use controls in the urban area. Sponsors an annual folk festival that attracts more than 35,000 people and dedicates proceeds to acquire more parkland. Serves as model for newer citizen groups attempting to protect other river corridors in the state.

Association for the Preservation of the Eno River Valley, 4015 Cole Mill Road, Durham, NC 27705; (919) 383-6837.

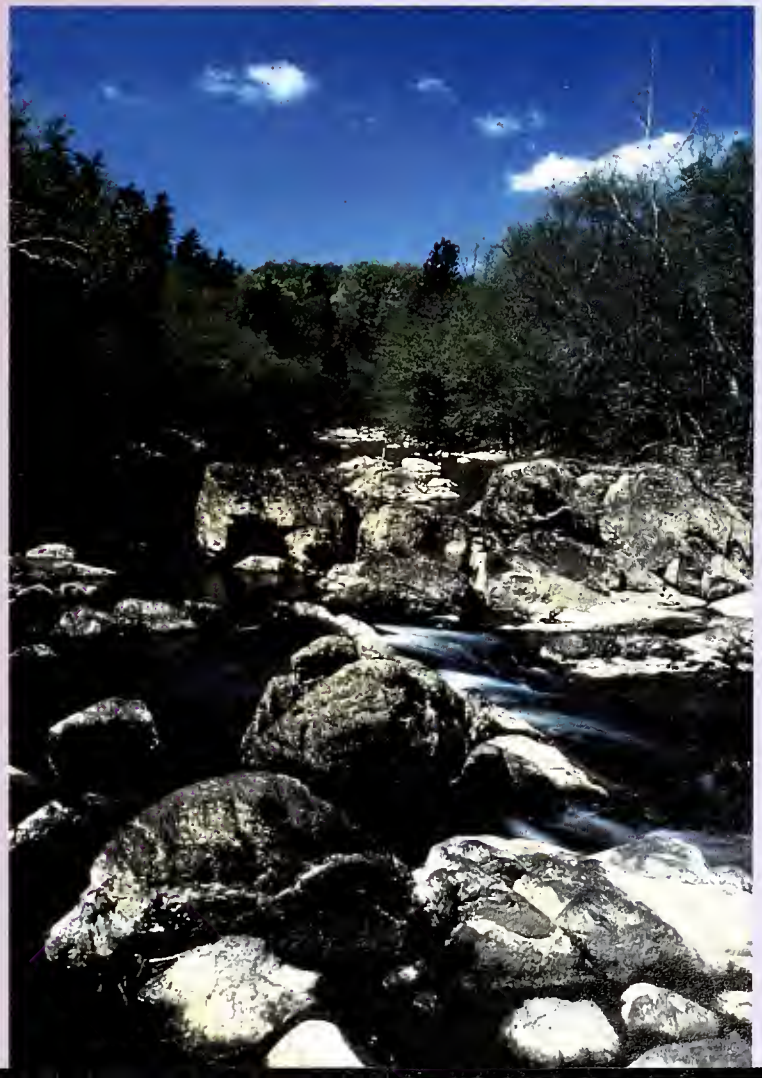
Highlands Land Trust

Founded in 1903 to protect exceptional natural areas near the town of Highlands in Macon County. Owns three sites managed as public parks. Intends to serve more completely as a local land trust.

Highlands Land Trust, P.O. Box 1703, Highlands, NC 28741; (704) 526-3259.

National Committee for the New River

Founded in 1974, dedicated to conservation and wise use of natural and cultural resources of the New River valley watershed in North Carolina, Virginia, and West Virginia. Primarily oriented to land-use planning and water-quality protection. Working on several conservation easement projects in North Carolina, which will protect more than 500 acres and nearly two miles of river



David Howells

The Rocky River cascades by the White Pines Nature Preserve, an acquisition project of the Triangle Land Conservancy.

frontage along the nationally and state-designated scenic river. Involved in a partnership project that will limit residential subdivision development and preserve the steep slopes and scenic views along the river.

National Committee for the New River, P.O. Box 1107, Jefferson, NC 28640; (919) 982-9090.

North Carolina Coastal Land Trust

Founded in 1992 to preserve and protect important natural lands in more than twenty coastal counties from the South Carolina to Virginia state lines. Will acquire lands—especially coastal wetlands and other ecologically important areas—through donations, mitigation, and purchase. Currently organizing administrative board and will soon launch membership development and conservation land acquisition.

N.C. Coastal Land Trust, The Cotton Exchange, 321 N. Front Street, Wilmington, NC 28401; (919) 763-0332.

Northeast New Hanover Conservancy

Founded in 1982 to preserve and enhance natural resources of Figure Eight Island and the coastal mainland between Howe and Futch creeks. Successfully achieved designation of Middle Sound and Howe Creek as state-regulated "outstanding resource waters." Owns about 1,000 acres of marsh and is receiving additional conservation easements over wetlands. Focus on land-use planning and water-quality control. Sponsors scientific research on maintaining natural ecosystems of the region, through financial support for and agreements with the University of North Carolina at Wilmington and North Carolina State University.

Northeast New Hanover Conservancy, 126 Beach Road South, Wilmington, NC 28405; (919) 686-0362.

Ocracoke Preservation Society

Founded in 1983 by local residents to preserve areas of environmental and cultural values on Ocracoke Island, a coastal barrier island. Helped designate the village of Ocracoke a historic district and sponsors community activities to build public appreciation of the island's natural and cultural heritage. Will operate a public visitor center near the ferry landing. Has more members than total residents of the island.

Ocracoke Preservation Society, P.O. Box 491, Ocracoke, NC 27960; (919) 928-7375.

Pacolet Area Conservancy

Founded in 1989 for the conservation, wise use, and preservation of the natural and historic resources of the Pacolet and Green River watersheds, primarily in Polk County. Has sponsored an inventory of special natural areas and acquired conservation easements over seventy-five acres in four tracts. Works to protect scenic vistas and water quality along the Blue Ridge Mountains escarpment and its streams.

Pacolet Area Conservancy, P.O. Box 310, Columbus, NC 28722; (704) 894-3018.

Piedmont Land Conservancy

Founded in 1991 to protect natural, open, scenic, and rural lands in the state's Piedmont in the Greensboro–High Point–Winston-Salem–Burlington metropolitan region. Organizing programs for natural areas acquisition, support for local government parkland and greenway programs, public education, and natural lands inventory and protection planning.

Piedmont Land Conservancy, P.O. Box 4025, Greensboro, NC 27404; (919) 299-2651.

Sandhills Area Land Trust

Founded in 1992 to preserve remnants of the longleaf pine ecosystem, historic sites, and farmlands in the Sandhills region of south-central North Carolina. Organizing for a full range of land conservation programs.

Sandhills Area Land Trust, P.O. Box 1032, Southern Pines, NC 28388; (919) 281-5271 or 695-1077.

Society for Masonboro Island

Founded in 1983 to help the state acquire title and conservation agreements to protect the 500 acres of

uplands on a much larger barrier island and wetlands complex near Wilmington. Assists with public relations and ownership investigations and negotiations. Acquires purchase options on tracts for transfer to state ownership. Most of the island is now in public ownership as a unit of the National Estuarine Research Reserve system.

Society for Masonboro Island, P.O. Box 855, Wrightsville Beach, NC 28480; (919) 256-5777.

Southern Appalachian Highlands Conservancy

Founded in 1974 to preserve critical areas of the region, and has focused on the protection of more than 30,000 acres of Roan Mountain (a nationally recognized natural area of extraordinary ecological diversity and scenic beauty, with expanses of rhododendron and seventeen miles of the Appalachian Trail). Currently expanding its programs to be truly a regional land trust with intention to undertake protection projects and assist conservation-minded landowners throughout at least a bistate section of the Southern Appalachian region.

Southern Appalachian Highlands Conservancy, Public Service Center, 34 Wall Street, Suite 802, Asheville, NC 28801; (704) 253-0095.

Triangle Land Conservancy

Founded in 1983 with support from the Triangle J Council of Governments to identify and protect natural and scenic areas in the six counties of the Raleigh–Durham–Chapel Hill metropolitan region. Has completed thirteen acquisition projects, with ownership of nearly 350 acres and conservation easements over another 190 acres. Currently working to complete inventories of natural areas in the region and to protect the New Hope Creek corridor between Eno River State Park in Durham and the Jordan Reservoir, the Richland Creek corridor between Umstead State Park and Schenck NCSU Forest, and the Neuse River corridor east of Raleigh. Increasingly involved with local governments in open space and greenway planning and preservation.

Triangle Land Conservancy, P.O. Box 13031, Research Triangle Park, NC 27709; (919) 833-3662.

Continued from page 5.

permanent limitations on the future use of the land. The owner may continue to use the land in any way that is not barred by the easement. But the land trust is granted the right to prevent—or to allow—certain uses of the land indefinitely, even if the property subsequently is sold to new private owners. Those new owners take the property subject to the restrictions.

Partnerships with Local Governments

Working as informed advocates, land trusts supplement and stimulate efforts by governmental agencies and are becoming increasingly effective partners in local public programs to conserve sensitive natural resources. Land trusts are helping state and local governmental agencies to acquire parklands and nature preserves by advocating and designing projects, raising private funds, building public support, campaigning for local park bond issues and appropriations, and informing and negotiating with private property owners. As North Carolina continues to grow—particularly on the fringes of metropolitan areas and in the coastal and mountain regions—more counties and cities will move to manage growth. Citizen land trusts can help urban and rural communities reach public consensus and adopt planning goals that balance their future growth with protection of natural resources and open lands.

There is high potential for forming partnerships among land trusts and local government agencies, such as soil and water conservation districts, to aid landowners and design conservation programs, to strengthen land-use policies and regulations, create and leverage public-private matching funding, and to improve private land stewardship and rural environmental planning.

Conclusion

Land trusts can make significant contributions to their communities. While they do not pay income tax and often qualify for exemptions from local property taxes, they can use a variety of techniques to protect valuable public parks, open space, historic sites, and natural areas at little or no public cost. Often they can succeed where no public agency has the resources, authority, or incentive to act. Even where a public agency can act, a private land trust may save money by providing an alternative to expensive wrangling or

litigation. A trust's ability to move quickly and to offer inducements for bargain sales and donations produces faster results and reduces controversy. Places protected by land trusts become amenities for the entire community. They enhance the quality of life for people who live and work near the protected sites.

Land trusts are created and operated by energetic volunteers who generally do not consider themselves "activists" but are personally willing to contribute quietly to make their communities better places to live. Their rewards come from being stewards of our common natural heritage and builders of a better future for our communities.[4]

Land trusts cannot meet all conservation needs, but they can accomplish goals not achievable by other agencies, public or private. They offer a unique means for participation and cooperation by people of all social and economic classes and political philosophies. They have adopted a strategy based on cooperative voluntary action, thus offering an alternative to conflicts and contentions over private property rights and regulations. Land trusts are a unique grassroots movement, meeting the challenge of creating livable communities in balance with the natural environment ❖

Notes

1. Statement of Land Trust Standards & Practices, 1989, published by the Land Trust Alliance, Washington, D. C.

2. For descriptions of The Nature Conservancy and the Natural Heritage Program, see Charles E. Roe, "Safeguarding North Carolina's Natural Heritage," *Popular Government* 49 (Spring 1984): 21–31.

3. Charles E. Roe, "Strategies for Protecting North Carolina's Natural Areas," *Popular Government* 51 (Winter 1986): 15–24.

4. David H. Bland, "The Local Land Trust: Formation and Operation," *Popular Government* 52 (Summer 1986): 11–16, 47.

"The Widest Possible Access": Wake County's Approach to Computerized Records, Open Government, and Privacy

Sherry L. Horton

Wake County is caught in a dilemma. To provide its wide array of services—many of them required by law—the county collects huge volumes of information about its residents. The law says most of that information is public. Many citizens, however, believe information about themselves and others should be private. To make the issue even more complex, technology is making it ever easier to get to and disseminate stored information.

Wake is not alone. All local governments collect and maintain data about their residents simply for the purpose of providing services. Yet, once governments have the data, they may be called upon to make it available for commercial purposes, to analyze it in painstaking ways, or otherwise to invest time and effort in preparing it for somebody else's purposes. Who is to have access to the information storehouses of local governments, how easily, how cheaply, and for what purposes?

Though Wake is not alone in the dilemma, it is in the lead in the solution. This article looks first at North Carolina's Public Records Act, then at the issues it poses, and finally at Wake County's new policy on public access to computerized information.

The Law

The North Carolina Public Records Act[1] is broad and sweeping.

Its whole thrust is to make government information available to the public, except for particular kinds of information that the law specifically makes private, such as elements of county employees' personnel files. A 1992 decision of the state supreme court[2] emphasized the scope of the Public Records Act by expressly holding that all records in the hands of the state or local government are public unless a specific provision of law provides otherwise.

Further, the act includes information of just about every kind, regardless of the form in which it is recorded. The law covers "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, artifacts or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina or its subdivisions."[3] A 1981 North Carolina Court of Appeals decision makes clear that records that are to be public include not only those that the government is required by law to keep, but also those "kept in carrying out lawful duties," even if not strictly required.[4]

The law's direction is unmistakable. Information that the government collects belongs to the public and is available for the public to see, copy, and use.[5]

The Huge Volume of Information: An Example

Wake, like all local governments, collects information for many different purposes. The tax assessor alone, for example, collects and maintains a mass of information in carrying out his duties. Each piece of property in the county is identified by its address, legal description, owner's name, and owner's address. All this data

The author has been on the staff of the Wake County Manager's Office since December, 1991.

is maintained simply for the purpose of identifying who is responsible for the taxes on the property. In addition, information regarding property acreage and buildings is maintained in order to assess their worth. Information about a building includes details regarding design and style, exterior walls, roof type, floor and wall finishes, heating and air-conditioning systems, plumbing fixtures, and even the types of kitchen appliances inside. All of these details aid the assessor's office in determining the proper tax value to place on the property. And, because this information is all obtained and maintained in carrying out the tax assessor's lawful duties and is not specifically exempted by statute, it is, by law, public information.

More information is added to the public record as the revenue collector maintains files on the amount of taxes paid, due, or past due on each piece of property; on foreclosure proceedings; and on liens. These are all records "kept in carrying out lawful duties," and are public information.

The Geographic Information Services Department adds another layer to the record by maintaining maps of the entire county. This department maintains maps of property lines, administrative districts, voting precincts, townships, and topography, among others.

Then the register of deeds' information can be added to the total. Clearly, Wake County maintains a mammoth amount of tax and property information—just as do other local governments throughout North Carolina and the United States.

Concerning such information, the North Carolina Public Records Act requires the following: "Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person and he shall furnish certified copies thereof on payment of fees as prescribed by law."[6]

The Issues

Does easy public access threaten privacy? Not so long ago, prior to the information age, the tasks of collecting and maintaining these volumes of data were laborious and time consuming. However, the advent and wide use of computers within government agencies have made the job of collection and maintenance much more manageable. Also not so long ago, retrieving any particular piece of information could be equally laborious and time consuming. But now computers have made such retrieval easier than before and have made possible the analysis of information at a level impossible in earlier times. In short, computers have created an easy and efficient way to provide data to the public.

In its early stages, however, the computerization of public records could have been seen as a legitimate barrier to access. From the late 1960s, when such computerization was begun, through the late 1970s, when public-access terminals were first made available in Wake County, most people had little or no experience with the new technology and were hesitant to use it.

Now, however, computerized records can be made easier for the public to reach. Increasing numbers of people have had some degree of exposure to computers through their work or leisure activities and are more adept at using them. Many counties—including Mecklenburg, Catawba, and New Hanover—now allow the public to view computerized records in terminals in the county offices. Some new software packages allow users of these public terminals to quickly sort and analyze data on their own. Additionally, some counties—Mecklenburg and New Hanover among them—now have dial-in services which allow citizens in their homes or businesses to get access to the public information stored in government computers.

In fact so many people have personal computers, or access to them, that some groups worry that the mere existence of government data bases poses a threat to citizens' privacy. The North Carolina Technological Information Study[7] commissioned by Governor Martin, which was released in June of 1992, concluded that computer access to government data bases is quickly becoming a threat to privacy in North Carolina.[8] The study suggested enacting a Right to Privacy Law to expand and more clearly define the kinds of government records that are to be exempted from the Public Records Act and to establish a state commission to settle disputes over what is public and what is not.

Wake County Information Services Director Russ Goff says that codifying the laws relating to public records and individual privacy would be helpful. Citing statutory provisions which preserve the confidentiality of medical records, mental health records, and other records such as those relating to government employees, Goff says, "The law is generally clear regarding which government-collected and -maintained information is and is not available to the public. The problem is that the exemptions are currently spread throughout the statutes."

Does easy interagency sharing of information threaten privacy? Privacy concerns also come into play when various agencies share information. Often the information that agencies share may be necessary to their work, but it may not qualify as a public record. For

example, revenue collectors often try to obtain access to any data bases available to locate the assets of delinquent taxpayers, such as Employment Security Commission (ESC) records where they may find a trail to wages that can be garnished. Much of the information that the revenue collectors find in these ways, such as a citizen's place of employment and daytime phone number, is not in a strict sense relevant to records maintained regarding the amount of taxes paid or owed on a piece or property. But the revenue collectors obtain this information from the ESC and use it for the purpose of collecting taxes. So is it public or private?

How much should the government charge for access? Once it is determined whether information is public or private, there is the issue of cost. Should governments provide information to the general public free of charge, or should they charge a fee? What about businesses that use the information to make a profit? If there are fees, should they be based on the cost of disseminating the information or on the cost of collecting and maintaining the data base?

Many governments have discouraged public access to computerized information either through limited facilities that prevent access or through prohibitive user fees. For example, Guilford County is currently being sued for attempting to charge the *Greensboro News and Record* five cents per record for property tax listings. This amounts to $8,200 for the entire data base.

Other counties, however, have been proactive in structuring themselves to handle information requests as part of their daily routines. No matter which approach a government uses, the issue of public access to computerized public information can no longer be ignored.

One County's Response

Public Access

Wake County began providing free public-use computer terminals with access through the mainframe to data bases in the tax assessor's office and the revenue collector's office in the 1970s, and to data bases in the register of deeds' office in the early 1980s. However, even with these provisions, requests for public records increased at a rate that strained existing staff and resources.

As a result the director of Information Services, the director of Geographic Information Services, the tax assessor, and an assistant county manager began looking for ways to improve service delivery. In addition to relieving the stress on staff and resources, the group wanted to move beyond a basic level of service and actively promote

Wake County's Statement of Direction Regarding Public Access to Computerized Information

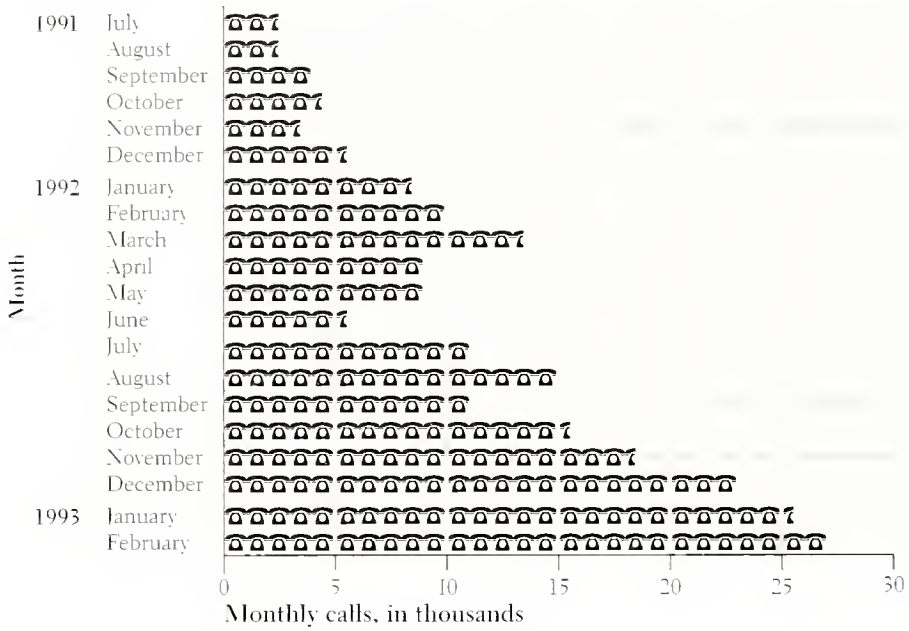
The following statement of direction is adopted by the Wake County Board of Commissioners to provide planning guidelines for future automation development and to assure full public access to public information retained or processed by computer within the County.

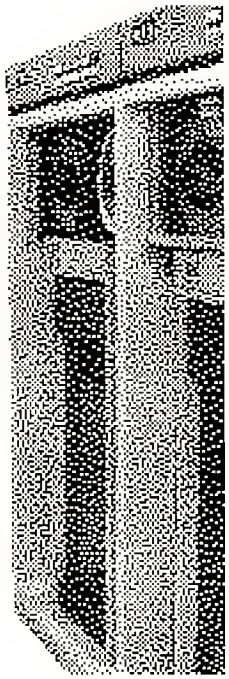
Wake County is desirous of providing the widest possible access to public records and information stored in computers and on magnetic media to a wide spectrum of the general public, regardless of the purpose or end use. Consistent with the principle of first providing resource support to those agencies and interests for whom electronic data is captured and maintained, and for whom annual operating budgets have been appropriated; and consistent with the provisions of the public record laws of North Carolina as well as personal privacy issues; it is the intention of Wake County to:

- Facilitate public access to public records contained on, or processed by, computers to the maximum extent possible, within the limits of annual operating budgets.
- Make available magnetic copies of public information contained in County computers at cost of copy, not to include recovery of development or acquisition costs.
- Proliferate, share, coordinate and support computerized data files, resources and interests among and between the municipal, local and state government agencies and functions within Wake County.
- Provide special information research, consultation, and programming on a cost recovery basis, without impact to normal service delivery to authorized County functions.
- Assure equal access and use of computerized information to both special interests, capable of paying for the additional costs associated with "customized" handling of informational requests, and the general citizenry of the County.
- Assure the confidentiality of client records, personnel records and other records mandated by state or federal law to be so protected.

Adopted by the Wake County Board of Commissioners December 16, 1991.

Figure 1
Dial-in Access to the Mainframe
Wake County's Usage July 1991–February 1993





access to county records. In the process, it wanted to create a decisive policy so that all departments would be clear on how to handle requests for information.

In December of 1991, prompted by this staff work, the Wake County Board of Commissioners approved a Statement of Direction Regarding Public Access to Computerized Information (see page 13). This policy includes provisions for facilitating access, assuring equal access, sharing information within the county and with other governmental agencies, and providing copies of information at the cost of printing it. The policy also includes provisions for ensuring the confidentiality of clients, personnel, and other records as mandated by state or federal law.

Most notably, the Wake policy encourages providing access to information "regardless of the purpose or end use" intended by the user.

Since the approval of the policy, several programs have been implemented to facilitate access to and sharing of information. The most expansive aspect moves the county beyond providing public-access terminals in county offices to providing dial-in access to the county's mainframe, available to any caller from any location. Currently, Wake has four dial-in lines so that anyone with a computer, a modem, and compatible software can access the mainframe twenty-four hours a day. Two additional general-access dial-in lines can be easily added should they be needed, and the county is looking at ways to provide access to the mainframe to more than six users at once.

Using these phone lines, people are able to get access to either the county's public data bases or the county's electronic mail and bulletin-board system. The data bases so far include the records of the tax assessor, the tax collector, and the register of deeds. They do not include information about the clients of the county's social services or public health departments, or about personnel.

To date the dial-in service has been provided on request but not actively promoted. The county currently is upgrading its computer hardware and software to ensure that demands for public information will not disrupt the daily work of county employees. In late 1993, once the county is prepared to handle an even larger load of requests, a campaign will publicize the kinds of information available and the various ways and costs of getting access to it.

Usage of the county's dial-in lines increased significantly between late 1991 and late 1992 (see Figure 1). Goff expects the usage to increase significantly again in mid-1993, when the register of deeds' records from 1974 to 1990 are added to the data base. A new Geographic Information Services property-identification system should also increase the number of citizens interested in using the public-access terminals and dial-in services.

Dial-in lines allow people to get access to public information when it is convenient for them to do so. It

eliminates the need for them to come to downtown Raleigh, pay to park, and wait to be served. It also relieves some of the demand on county employees who would have to wait on these citizens or provide the information to them over the telephone.

To illustrate: the Wake County Tax Assessor's office fields about 3,000 informational requests by phone each month. That number has held steady for the last several months, though dial-in mainframe usage has increased over the period. Had those dial-in users been calling the assessor's staff rather than the mainframe, there may have been a need for more phones and additional staff.

In an effort to provide the media with more timely knowledge of meetings and other important county news, the county invited representatives of all area media outlets to obtain passwords and take a class in order to get access to the county's electronic mail system. The service and the class are offered at no cost to the user, other than the cost of his or her own computer equipment and any phone charges.

Dial-in lines also facilitate data-sharing among Wake County departments, as well as among the county departments and agencies of other government units. Sharing data allows governments to reduce duplication of data collection, thereby reducing costs. It also facilitates joint planning and better relations among local governments.

Special Requests

As progressive as Wake's policy is, the county is still wrestling with the issue of special-service requests. A citizen (or a business) may ask the county staff to manipulate county records in order to generate information that the county itself has no need for, but that the citizen or business wants to use, perhaps for commercial purposes. It is clear that the Public Records Act does not require the county to create documents or compile information in this way—the law merely requires access to documents and compilations of information that already exist. The county, in keeping with the spirit of the Statement of Direction Regarding Public Access to Computerized Information, wants the information in its computer storage to be as useful to the public as possible, "regardless of the purpose or end use."

Still, with budgets getting tighter and the proviso in the Statement of Direction that these services fall "within the limits of annual operating budgets," it is difficult for the county to provide a high level of service in this area without compromising day-to-day operations.

The solution has been for county employees to conduct special searches on a time-available, first-come, first-served basis. But if the special request requires extensive time, or if the staff is fully engaged in pressing county business that cannot be laid aside, the person making the request is offered two choices. He or she may purchase a copy of the entire data base at just the cost of the magnetic tapes—$20.00 each for the five-tape set. Or he may be given the names of several commercial enterprises that have themselves purchased the entire data base and will manipulate it, for a fee, as the customer wants.

For the searches the county staff itself handles, the customer pays only for the materials—the paper, the computer ribbon, diskettes, etc.[9] The Wake County Board of Commissioners and County Manager Richard Stevens have chosen not to try to recover the costs of data collection, hardware, or software necessary to create or maintain the data bases. In the words of Stevens, "That data is public information. It belongs to the public, and they have a right to use it."

Data Sharing

An interconnected computer system for county municipalities is currently being implemented to facilitate the sharing of information advocated in the county policy. Raleigh and Cary already have direct leased-line connections to the county's mainframe through which they share much information with Geographic Information Services. The towns of Zebulon, Knightdale, and Fuquay-Varina have recently gained switched-dial access to the mainframe. They will use this to obtain up-to-date information on the status of building inspections in their jurisdictions. Additionally, the county recently gained access to the State Information Processing System (SIPS). The main benefit of this sharing is timelier, more efficient access to information by all parties. However, sharing this information is also saving untold amounts of money by preventing governments from collecting and maintaining data bases for information that other entities already possess.

Comparison with Other North Carolina Local Governments

Although open records are mandated by North Carolina law, few governing bodies actually have been willing to facilitate the flow of information from the government to the citizens. In fact, Wake County may be the only North Carolina local government with a formal policy of providing as much information as possible to its citizens.

"I think it is an excellent policy, very well thought out," says Hugh Stevens, an attorney who often represents

the North Carolina Press Association in public access cases. "I have commended it as a model to others studying the issue and trying to formulate their own policies. I have also had occasion to send copies of it to publishers in other states who are fighting to gain access to records which should be open to the public."

Debra Henzey, Director of Communication for the North Carolina Association of County Commissioners, also sees Wake's policy as progressive: "Wake County is the only county in North Carolina that has provided open access to this extent," she says. "I am not aware of any other policies that go this far."

Summary

Wake County's policy is bold in that it meets the issue of access head on. While taking into consideration issues both of the law and of ethics, the policy takes a proactive stance on making public information available to all citizens, regardless of their motives or ability to pay. It also attempts to promote efficiency within government. Wake County's leaders believe that this is the best approach, because providing citizens with proper access to information is the most important step toward having an informed, effective democracy. ❖

Notes

1. N. C. Gen. Stat. (G.S.) Chapter 132.

2. News & Observer Publishing Co. v. Poole, 330 N.C. 465, 412 S.E.2d 7 (1992).

3. G.S. 132-1. A bill introduced in the General Assembly February 10, 1992 (H 121, sponsored by Rep. George Miller, D-Durham), would add provisions to G.S. Chapter 132 specifying, among other things, that public records stored on computers must be made accessible through development of a register clearly explaining what information is in the computer storage and how it may be accessed; that it is the responsibility of the governmental custodian of the record to provide it in any form that the custodian is capable of producing, even if the custodian would prefer another form; and that no public agency may purchase or lease computer equipment that impairs its ability to permit access to public records. The bill would also limit the fees that could be charged for access to computerized information.

4. News & Observer Publishing Co. v. Wake County Hosp. Sys., 55 N.C. App. 1, 284 S.E.2d 542 (1981), *cert. denied*, 305 N.C. 302, 291 S.E.2d 151, *cert. denied*, 459 U.S. 803 (1982).

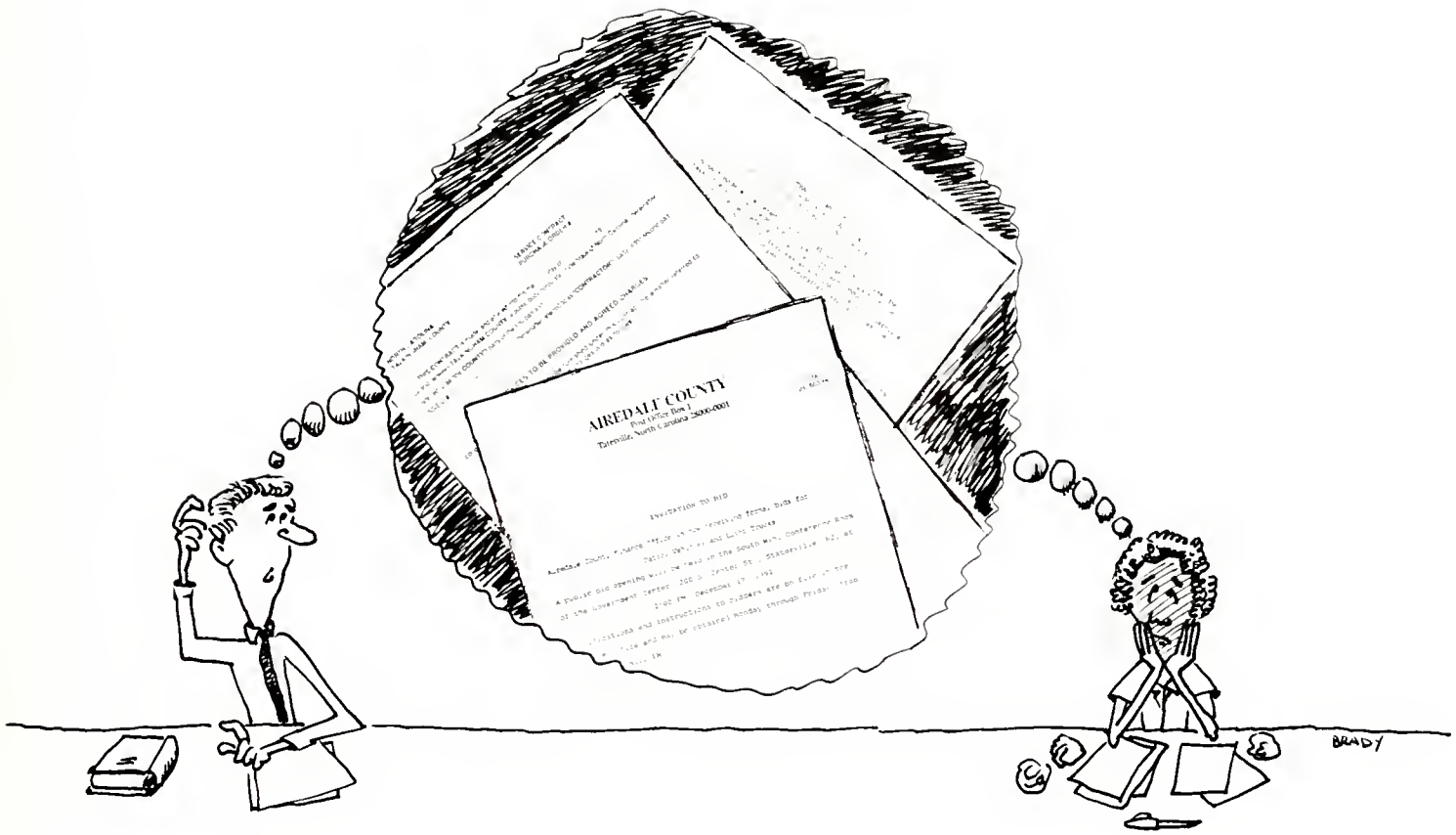
5. "Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law." G.S. 132-6.

6. G.S. 132-6.

7. Earl R. Mac Cormac and M. Jane Bolin, *North Carolina Technological Information Study* (State of North Carolina, June 1992). Prepared at the request of Governor James G. Martin.

8. "Most of us are only vaguely aware of the implications arising by our names appearing on mailing lists and dossiers being maintained by private companies and our government. The social cost of the loss of our individual privacy strikes at the very base of the freedom envisioned by our founding fathers." Mac Cormac and Bolin, N. C. *Information Study*, 1.

9. The fee schedule now used covers paper ($0.01 per page), 3.5-inch (1.44 MB) diskettes ($1.00 each), 5.25-inch (1.2 MB) diskettes ($1.00 each), labels ($0.01 per label), nine-track tapes ($20.00 each), and microfiche ($1.60 per fiche and $0.20 per duplicate).



Do We Have to Bid This?

Frayda S. Bluestein

The first question local government officials should ask once they have identified a need to contract for a service or purchase an item of equipment is: Do we have to bid this? State law requires competitive bidding for certain types of public contracts.[1] Many contracts, however, are not covered by the competitive bidding statutes, either because they are outside the scope of the statutes or because the statutes specifically exempt them.

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Where required, bidding is essential to the validity of a contract. If a contract is challenged and the court finds that the state bidding statutes apply but were not followed, the court will declare the contract void and it will be unenforceable.[2]

This article focuses on two types of contracts that are *not* subject to the competitive bidding procedures: contracts for services and contracts made under emergency circumstances. (A summary of other kinds of contracts that do not require competitive bidding is on page 20.) Finally, the article discusses how the bidding statutes apply to contracts involving "sole sources."

General Rule: Err on the Side of Bidding

The North Carolina courts have been conservative in interpreting exceptions to the bidding statutes. A local government claiming that an exception applies to a particular contract has the burden of proving that the contract comes within the exception.[3] The purposes of the bidding laws, according to the North Carolina Supreme Court, are to promote competition and prevent fraud, thereby "guarantee[ing] fair play and reasonable prices."[4] The fact that bidding is standard practice even in the private sector, where it is not required by law, underscores its value. Thus, if it is unclear whether a particular contract falls within an exception to the bidding statutes, it is better to comply with the bidding procedures—and secure the benefits the bidding system is designed to promote—than to risk a challenge to the legality of the contract or to the integrity of the process.

Of course, in situations where a legitimate argument can be made that an exception applies, substantial savings may be realized through negotiating rather than soliciting formal bids on a contract. If a local government wishes to take advantage of these situations, it should first carefully analyze the anticipated benefits of avoiding bidding and the legal arguments supporting the exception with the unit's attorney and the employees responsible for purchasing and contracting.

Purchase Contracts vs. Service Contracts

The bidding statutes apply to contracts for *construction or repair*, and for *purchase of apparatus, supplies, materials, and equipment*,[5] but they do not apply to contracts for *services* other than construction or repair services. Sometimes it is difficult to determine what constitutes a service as opposed to a purchase contract; contracts may involve elements of both. To resolve questions about whether a particular contract requires bidding, it is helpful first to examine what kinds of purchase contracts are covered by the statute and then to identify some key characteristics that separate service contracts from purchase contracts.

What Is a Purchase Contract?

The terms *apparatus, supplies, materials*, and *equipment*, which describe the purchase contracts requiring bidding, are not defined in the statutes, but in most cases it is easy to determine whether a particular contract falls within the scope of the statutes. Indeed, the courts interpret these terms very broadly to cover just about any tangible item that can be bought.

The North Carolina Supreme Court has held that the terms "apparatus, materials and equipment," as used in the bidding statutes, "denote particular types of tangible personal property."[6] But it noted that the term "supplies" could be read more broadly to encompass "the quantity or amount of a commodity at hand, needed or desired," and that the terms must be interpreted in light of the legislative intent underlying the statute.[7]

The court's characterization of the bidding statutes as covering tangible personal property, or commodities bought and sold in an open market, suggests several analogies to other statutes that may be useful in understanding the scope of the bidding laws. For example, Article 2 of the Uniform Commercial Code (UCC), adopted in North Carolina as Chapter 25 of the General Statutes, applies to transactions in "goods."[8] The definition of "goods" under the code includes "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale."[9] This definition encompasses essentially the same types of property as are covered by the bidding statutes.

The definition of tangible personal property in the state sales tax law is also useful as further guidance in understanding what kinds of contracts must be competitively bid. Property that is subject to sales tax "includes personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses."[10]

It is hard to imagine a type of apparatus, supplies, materials, or equipment that would not fit within these definitions of personal property.

What Is a Service Contract?

In contrast to contracts involving tangible property, service contracts, which are not covered by the bidding statutes, generally call for personal performance of work. *State and Local Government Purchasing*, a publication summarizing public purchasing procedures across the country, defines service as "work performed to meet a demand, especially work that is not connected with manufacturing a product."[11] A service contract is "[a] contract that calls for a contractor's time and effort rather than for a concrete end product."[12] The Model Procurement Code defines services as "the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are incidental to the required performance."[13]

Examples of common service contracts include insurance, janitorial services, solid waste collection, legal services, accounting, auditing, and appraisal services. These are all contracts that do not require bidding under North Carolina's bidding laws. Certain services are governed by other statutes. For example, special rules govern procurement of architectural, engineering, and surveying services.[14]

It is perhaps the unique performance of the individual contractor, and the lack of comparable concrete end product, that causes services typically to be excluded from competitive bidding statutes. Even though some services *can* be compared on objective factors, and some equipment and materials are *not* so easily compared, the North Carolina statutes nonetheless draw a line that leaves services outside of the bidding requirements.[15]

Mixed Purchase and Service Contracts: The Predominant-Aspect Approach

What happens when a contract involves both an item of tangible property and a service? For example, consider a contract for aerial mapping that involves aerial photography (a service) but has a tangible result (a map); a contract with a lawyer to prepare a written agreement, a contract to replace and rebuild the engine of a major piece of equipment (a service) where much of the cost is for parts, or a computer consulting contract that includes the development and installation of computer software. The North Carolina bidding statutes do not specifically address these types of contracts.

How can you tell which of these contracts require bidding? Based on cases from other jurisdictions and analogies to the tax laws and the UCC, the best approach is to try to determine which is the predominant aspect of the contract. This inquiry is sometimes stated in slightly different ways: Are the services merely "incidental" to the purchase of supplies or equipment? Is the tangible item just the end product of a service?[16]

A North Carolina case involving disposal rather than acquisition of public property used this "predominance" approach. In *Plant Food Co. v. Charlotte*,[17] the city contracted for the removal of sludge from its waste treatment system. A lawsuit challenging the contract raised the question of whether the sale of sludge was subject to the public auction requirement for disposal of public property—the flip side of bidding. The court held that "[i]n the contract between these parties the removal of the sludge is the prevailing consideration and is sufficiently predominant to characterize the contract as one of service, not of sale."[18] The court's notion of "prevailing consideration" appears to focus on the value to the city, that is, what the city is primarily paying for.

The courts have used a similar approach in determining who is considered a "merchant" dealing in the sale of "goods" under the UCC. For instance, is a physician who prescribes drugs a merchant under the UCC? To answer this question, the North Carolina Court of Appeals focused on the "essence" of the transaction between the parties. The court concluded that with a physician and her patient, it is the professional services, not the sale of goods, that is the essence of the relationship and for which the physician is paid. Therefore, the court held that the physician's contract involves a service rather than a sale of goods.[19]

Obviously, determining the predominant aspect of a contract is a case-by-case process and there may be no clearly correct answer. A contract for legal services, like the contract for medical services, is predominantly a service contract, even though it may have a tangible end product. Similarly, with aerial mapping it would seem that the predominant expense derives from the service aspect of the contract and that the map is the end product of that effort. For the reasons noted above, however, even when a contract can arguably be considered a service contract outside the mandatory bidding requirements, it may be beneficial to solicit competition.

Examples of contracts that have been held to be service contracts and thus not subject to competitive bidding statutes in other states include contracts for solid waste collection,[20] banking and insurance,[21] preparation of tax maps,[22] job testing, and telephone-line monitoring.[23]

Computers and software: a special case. The tax law definition of tangible personal property, summarized above, is particularly useful in analyzing contracts involving computers and computer software. Clearly, computer *hardware* is equipment and thus is subject to the bidding laws. As for computer software, the tax law includes "canned or prewritten" computer programs within the definition of tangible personal property for tax purposes but excludes "custom computer programs." The tax statute further defines *custom computer program* as "a computer program prepared to the special order of the customer," including situations in which the vendor provides analysis of particular program needs or adaptation to particular equipment.[24]

Again, applying the predominance rule and drawing from the tax law definition, a computer program that already has been developed and merely is to be installed can be characterized as materials or supplies, with installation being incidental to the purchase of an already existing product. However, if the unit is paying primarily

Other Exceptions and Exclusions

Contracts below the Minimum Dollar Amount The competitive bidding statutes come into play only where contracts involve the expenditure of $5,000 or more of public funds. Contracts for less than that amount may be let in any manner the governing body chooses. Many local governments have adopted policies that establish procedures for small contracts.

Contracts may not be divided for the purpose of evading the competitive bidding requirements (G.S. 143-133). There may be valid reasons to divide contracts—for example, to spread costs over the budget year, to reduce inventory costs, to minimize disruption caused by construction on facilities in use, or to meet an immediate need. The fact that division of contracts has the effect of reducing the amounts to below the threshold requiring bidding does not invalidate the contract unless there is no valid purpose supporting the division.

Leases The competitive bidding requirements apply to purchase and lease-purchase contracts (G.S. 160A-19, 153A-165). Pure lease contracts are not subject to the competitive bidding requirements. Even an option to purchase, no matter how it may be described or where in the term of the contract it may fall, will bring a contract within the scope of the bidding statutes. Specific limitations on and procedures for lease-purchase contracts are contained in G.S. 160A-20. [See "Installment Financing under G.S. 160A-20: New Opportunities and Procedures," A. Fleming Bell, II, *Popular Government* 56 (Summer 1990): 16–21.]

State Contracts Under state law, the Department of Administration is authorized to let cities, counties, and other local government agencies (as well as certain nonprofit corporations) purchase under state contracts awarded by the department's Division of Purchase and Contract [G.S. 143-49(6)]. Before receiving bids for state contracts, the division sends out to local governments a list of items to be included in the contract and gives them an opportunity, in advance of receiving bids, to become a party to the contract. Although there is no explicit exception in the bidding statutes for state contract purchases by local governments, the statute that authorizes the state to allow local governments to participate in state contracts presumably authorizes local governments to participate in those contracts and must be read as an implicit exemption from local government bidding requirements. The bidding process undertaken by the division replaces the bidding that the local government otherwise would undertake itself.

Once a contract is awarded by the division, a local government that became a party to that contract is obligated to purchase all items covered by that contract from the contractor to whom the state awards the contract (G.S. 143-55). A contract entered into in violation of this requirement is void, and the executive officer responsible for the contract is personally liable for any costs incurred by the invalid transaction (G.S. 143-58).

A local government is exempted from bidding items covered by a state contract only if it is a party to that contract. Sometimes a supplier to whom a state contract has been awarded will offer to sell to a local government at the state contract price, suggesting that the unit need not follow the applicable bidding requirements because the supplier is on state contract. But if the *unit* is not a party to that state contract, it cannot purchase directly from that supplier without following the applicable local government bidding requirements. If the supplier wishes to submit the state contract price as a bid (or quote, if informal bidding is required) to the local unit and comply with the applicable bidding procedure, the unit can accept the bid as it would any other bid as part of the normal bidding process.

Force Account Work Another exception to the bidding requirement is a statute that allows, or, more accurately, limits the amount of, work done with the unit's own forces. Work can be done "in-house" without bidding only where the total amount of the project does not exceed $75,000 (G.S. 143-135).

The statute requires that in computing the amount of the project, the unit must include all direct and indirect costs of labor, services, materials, supplies, and equipment. In addition, the labor must consist of qualified, permanent employees of the unit invoking the exception. Complete and accurate documentation of the cost of the work must be maintained and retained for the general public upon completion of the project. Finally, projects cannot be divided for the sole purpose of bringing them below the $75,000 limit established in the force account statute. A unit of government using its own forces still must comply with all applicable bidding requirements for the purchase of *materials* and *supplies* to be used in the project.

Intergovernmental Contracts Local governments do not have to comply with the bidding statutes when they contract for the purchase of any apparatus, supplies, materials, or equipment from any federal agency or any other governmental unit within the United States (G.S. 143-129). G.S. 160A-274 specifically authorizes the sale, lease, and exchange of property between state and local governmental units.

for the skill and expertise of a computer expert to develop a program tailored to a specific need, the contract is properly characterized as calling for a service.

Courts in other jurisdictions facing this question under similar purchasing statutes have used the "predominance" approach in distinguishing between service contracts and contracts for the purchase of computer equipment.[25] Indeed, in one such case the court, having concluded that the service component was insufficient to bring the contract outside of the bidding laws, suggested that the contract could be divided so that bids could be received on the equipment, and the service component could be handled as a separate contract.[26] Where neither component clearly predominates, and if it is practical to separate the equipment and service components, this may be the best approach.

Certainly the line between a service and a purchase can be blurry. If in doubt, it is best to attempt to comply with the bidding laws. On the other hand, if a specific need is so unique that it is impossible to develop specifications for proposals that can be compared fairly and objectively, this may be good evidence that the contract is properly characterized as involving a service.

What Is a Construction and Repair Contract?

Finally, remember that there is one large category of service contracts that *is* covered by the bidding statutes: contracts for *construction* or *repair* work. Although the terms *construction* and *repair* are not defined, their meaning is so generally accepted that there are few close questions. Clearly, construction includes both construction of buildings (or "vertical" construction) and "horizontal" construction, such as roads, underground lines, grading, and other types of construction activity that do not involve buildings.[27]

But even within the realm of construction work, there are a few types of contracts that arguably fall outside the scope of the bidding requirements. Contracts calling for demolition only, under a strict reading of the bidding statutes, are neither construction nor repair and therefore do not require competitive bidding. (Of course, demolition may be included in a construction contract, especially where it is part of the site preparation for new construction.)

It also can be argued that maintenance work is different from construction or repair work and therefore is not within the scope of the bidding statutes. For example, while painting a newly constructed building is clearly part of the construction project, the repainting of rooms within an existing building or periodic repainting of a structure like a water tower could be considered part of the structure's regular maintenance. Under this argument, "repair" work, within the meaning of the competitive bidding statutes, would cover only repair of discrete damage rather than regular maintenance. Although this argument has some merit, the distinction between "repair" and "maintenance" is difficult to define and apply, and there is no North Carolina case that sheds light on it. The better route is to follow the bidding statutes on maintenance work, especially if some repair may be involved. This avoids the risk of having the contract invalidated for failure to comply with bidding requirements.

A Special Bidding Exemption: Emergencies

The basic bidding statute (G.S. 143-129) provides that bidding is not required "in cases of special emergency involving the health and safety of the people or their property."[28] The North Carolina Supreme Court has interpreted this exception very narrowly, so the exception will be available legitimately only in rare circumstances.

That narrow interpretation came in *Raynor v. Town of Louisburg*.[29] The town contracted without receiving bids for installation and repair of equipment in its power plant. A major part of the contract also included the purchase of several new diesel engines. The contract was clearly within the scope of the bidding statute. When challenged, the town relied on the emergency exception to justify its failure to bid the contract. The court summarized the town's explanation this way:

> The town was operating its water, sewage and power system with four engines, some of which were old and needed replacement. . . . Some of this machinery was said to have passed the age at which replacements are ordinarily made. . . . [T]he town was growing . . . demands upon the power plant would increase. . . . [I]f there should be a breakdown of one or more engines in the plant, sufficient protection would not be afforded the citizens in the furnishing of water for consumption and sewage and against fires. . . . [B]ecause of the national emergency existing with respect to the public defense, not only were these conditions accentuated, but it was becoming, and would become more difficult to secure proper machinery or material for repair and replacement."[30]

The court held that these facts did not add up to a sufficient "emergency" to justify the failure to comply with the bidding procedures. The court established several essential elements of an emergency within the meaning of the statute. The emergency must be present, immediate, and existing. It may not be a condition that

is merely anticipated and may never actually occur. If the condition can be foreseen in time to take action to prevent harm to the public (or if the required bidding procedure can be completed before any harm would occur), the emergency exception cannot be invoked. The court noted that the advertisement for bids would have required only one week and the contractor could have been required to "proceed with dispatch in making the desired replacements." This suggests that if harm to the public can be averted through temporary measures while proper bidding is being conducted, the emergency exception cannot be used to avoid bidding.

The court emphasized that the failure to take proper precautions to prevent the need for an expedited contract will not be accepted as a justification for exemption from the bidding requirements. The court's hostility to such a situation is demonstrated in the following quotation from the Louisburg case:

> It is not to be supposed that [the legislature] intended to make it possible for municipal officers to avoid advertising for bids for public work by merely delaying to take action to meet conditions which they can foresee until danger to public health and safety has become so great that the slight further delay caused by advertising will entail public calamity.[31]

Under this interpretation, the emergency exception is most likely to apply only in situations of natural disaster or other sudden and unforeseeable damage to property.

Where an emergency does exist, the governing board should pass a resolution setting out the facts constituting the emergency. As the court made clear in the Louisburg case, however, the board's resolution is not binding on a court. The court can review all of the information available about the situation (not just the facts in the board's resolution) and determine if, in the view of the court, the emergency exception legitimately justifies the failure to comply with the bidding requirements.

Do We Have to Bid "Sole Sources"?

Occasionally it may be argued that the bidding procedures should be ignored because a particular product can be obtained from only one source, usually a manufacturer. This is often described as a "sole source" purchase. Except for hospitals,[32] there is no specific exemption in the local government bidding statutes for sole-source purchases. Although one type of contract (electricity) has been judged by the North Carolina Supreme Court to be outside the scope of the bidding statute in part because there is only one provider, the courts are unlikely to extend this ruling to more common "sole source" situations.

In *Mullen v. Town of Louisburg*,[33] the North Carolina Supreme Court held that the purchase of electricity is not subject to the competitive bidding statutes because government regulation of utilities prohibits competition in the sale of electricity. There is language in the case that could apply to other situations in which there is no competition, including sole-source purchases. The court states:

> Where in the very nature of things competition would be impossible, it could not be supposed with any degree of justification that the legislative purpose was to compel the municipality to go through the useless form of letting to the lowest bidder when in fact there could be but one bidder who could name only the rate or price fixed by an agency of the very government that prescribed the procedure. . . . It does not apply when competition would be impossible or unavailing, or as to a monopoly.[34]

Although this language describes the sole-source situation and would seem to suggest that the bidding statutes do not apply, the result in the *Mullen* case may have been most influenced by the fact that suppliers of electricity "do not have the right to name the price for which they are willing to furnish [the supplies]," due to government control of utility prices.[35] It is not clear whether the court would expand this ruling and apply the rationale to a situation in which there is free competition in pricing but only one source for the supply.

In considering whether the legislature intended to exclude sole-source purchases from the bidding requirements, it is instructive to note that there is an explicit exemption for hospitals (noted earlier) and for materials used in public construction contracts.[36] If the legislature intended to exempt purchase contracts for which there is no competition, it could have enacted a comparable provision covering all purchase contracts. Furthermore, since there is no minimum number of bids required for purchase contracts (the three-bid requirement applies to construction and repair contracts over $50,000),[37] the competitive bidding requirements can be satisfied and a contract can be awarded even if there is only one bidder. Indeed, even the possibility of competition may elicit a more reasonable price from a sole source. Thus, seeking competition on a contract for which there is only one known source is not a futile act.

The most important issue in a purported sole-source situation is whether there truly is only one source. Specifications should be prepared as broadly as possible to promote competition. Sometimes specifications will suggest a sole source when, in fact, there are other sources of competition that simply have been excluded by narrowly drawn specifications. Furthermore, even if a particular

brand is specified, there may be more than one supplier of that brand.

It is better to comply with the bidding requirements than rely on the possibility that a court will recognize an exception to the bidding requirements in a particular case. By announcing the items to be purchased and soliciting competition, the unit may uncover additional sources of supply and obtain more reasonable prices. Assuming that specifications are not unreasonably narrow, complying with the bidding requirements in a sole-source purchase also preserves the integrity of the process and protects the local government from possible criticism of favoritism.

Conclusion

The bidding statutes are designed to promote two sometimes competing goals: allowing fair competition for public contracts and conserving public funds. These goals apply equally to many kinds of contracts that do not require bidding, and local governments often solicit competition on contracts, as do private businesses, even when not required to do so by law. The public often expects that all public contracts must be let following some sort of competitive procedure. The first question to be asked is: "Do we have to bid this?" If the answer is "no," the next question may be: "Should we bid it anyway?" ❖

Notes

1. For more information on the laws that govern public contracts in North Carolina, see, Warren Jake Wicker, *An Outline of Statutory Provisions Controlling Purchasing*, December 1990 ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1991); A. Fleming Bell, II, *Construction Contracts with North Carolina Local Governments*, 2d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1991); and, Frayda S. Bluestein, "North Carolina's 'Lowest Responsible Bidder' Standard for Awarding Public Contracts," *Popular Government* 57 (Winter 1992): 10–16.

2. Raynor v. Town of Louisburg, 220 N.C. 348, 17 S.E.2d 495 (1941).

3. Moore v. Lambeth, 207 N.C. 23, 26 175 S.E. 714 (1934).

4. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E. 2d 484 (1945).

5. N.C. Gen. Stat. (hereinafter G.S) § 143-129, 131.

6. *Mullen*, 225 N.C. at 58, 33 S.E.2d at 487.

7. The court concluded that electricity is not within the scope of the statute, because the statute is intended to apply only to commodities for which bidders are free to name the price, and prices of utilities are set through governmental regulation, not in an open marketplace.

8. G.S. 25-2-102.

9. G.S. 25-2-105. The code excludes from the definition of goods the money in which the price is paid, investment securities and things in action, and also distinguishes between goods and "future" goods; that is, goods that are not both existing and identified.

10. G.S. 105-164.3(20).

11. The Council of State Governments, *State and Local Government Purchasing*, 3d ed. (Lexington, Ky.: CSG, 1988), app. D, 15.

12. Council of State Governments, *State and Local Government Purchasing*, app. D, 15.

13. The Model Procurement Code for State and Local Governments, American Bar Association (1979), § 1-301 (19).

14. G.S. 143-64.31–34 (Article 3D of Chapter 143) establish a procedure for procuring architectural, engineering, and surveying services that does not involve traditional bidding. Instead, proposals are evaluated on the basis of "demonstrated competence and qualification for the type of professional services required" and the fee is negotiated with the best-qualified firm. Units of local government may *in writing* exempt themselves from this procedure and may then use traditional bidding or any other procedure, including individual negotiation, to procure these services.

15. Some competitive bidding statutes in other states specifically exempt contracts for services or for "professional" services. *See* McCloud v. Cadiz, 548 S.W.2d 158 (Ky. Ct. App. 1977); Autotote Ltd. v. N.J. Sports & Exposition Authority, 427 A.2d 55 (N.J. 1981). In other cases, courts have implied such an exception. See 15 A.L.R. 3d 733, § 2.

16. Arizona Security Center, Inc. v. State, 689 P.2d 185 (Ariz. Ct. App. 1984) (court held that maintenance of security system equipment was incidental to lease of equipment and did not make the contract one for services).

17. Plant Food Co. v. Charlotte, 214 N.C. 518, 199 S.E. 712 (1938).

18. *Plant Food*, 214 N.C. at 522, 199 S.E. at 715.

19. Batiste v. American Home Products Corporation, 32 N.C. App. 1, 6, 231 S.E.2d 269, 272, *disc. rev. denied*, 292 N.C. 466, 233 S.E.2d 921 (1977).

20. SCA Services of Georgia, Inc. v. Fulton County, 231 S.E.2d 774 (Ga. 1977); American Waste and Pollution Control Company v. Madison Parish Police Jury, 488 So. 2d 940 (La. 1986).

21. McCloud v. Cadiz, 548 S.W.2d 158 (Ky. Ct. App. 1977).

22. Andover Consultants, Inc. v. City of Lawrence, 406 N.E.2d 711 (Mass. App. Ct. 1980).

23. *In re* 1983 Audit Report of Beharry, 544 A.2d 514 (Pa. Commw. Ct. 1988).

24. G.S. 105-164.3(20)(c).

25. *Compare* Datatrol Inc. v. State Purchasing Agent et al., 400 N.E.2d 1218 (Mass. 1980) (Contract for computer equipment, software, operation, and maintenance not exempt from bidding since operation and maintenance were considered incidental to purchase of equipment), *and* Autotote Ltd. v. N.J. Sports & Exposition Authority, 427 A.2d 55 (N.J. 1981) (Contract for "totalisator" system for Meadowlands racetrack included staff of technicians, operators, and on-call backup

engineers considered essential to contract and within "professional services" exception to bidding statute).

26. *Datatrol, Inc.*, 400 N.E.2d at 1227–1228, n. 14.

27. Note that, in addition to bidding requirements, buildings costing more than $100,000 are governed by a number of separate requirements as set forth in G.S. 143-128 and other statutes. See Bell, *Construction Contracts with North Carolina Local Governments*, note 1.

28. There is no comparable exception in the informal bidding statute, G.S. 143-131, although that statute can be easily complied with even in the case of emergency, because it requires no advertisement or formal action on the part of the governing body, no minimum number of bids, and no waiting period before a contract can be awarded.

29. Raynor v. Town of Louisburg, 220 N.C. 348, 17 S.E.2d 495 (1941).

30. *Raynor*, 220 N.C. at 353, 17 S.E.2d at 499.

31. *Raynor*, 220 N.C. at 354, 17 S.E.2d at 499 [quoting Safford v. City of Lowell, 151 N.E. 111 (Mass. 1926)].

32. G.S. 143-129 provides that bidding is not required for "purchases of apparatus, supplies, materials, or equipment by hospitals when performance or price competition for a product are not available; when a needed product is available from only one source of supply; when standardization or compatibility is the overriding consideration" and lists a number of other similar grounds for purchasing particular items without competitive bidding.

33. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

34. *Mullen*, 225 N.C. at 59, 33 S.E.2d at 488 (citing 2 Dillon, Municipal Corporations (5th), 1199) (emphasis added).

35. *Mullen*, 225 N.C. at 59, 33 S.E.2d at 488.

36. According to G.S. 133-3, specifications for public works must include "at least three items of equal design or their equivalent design." The statute provides that if three items cannot be specified due to lack of competition, the specifications may contain as many items as are available.

37. G.S. 143-132.

How North Carolina's Cities and Counties Budget for Community Agencies

Charles K. Coe and A. John Vogt

Cities and counties seldom provide all of the local public services that their communities want or need. A great variety of private service agencies—such as the downtown soup kitchen or the historical society—serve people in ways that the city or county might, but doesn't. These community service agencies, almost always nonprofit, look for funding from businesses, foundations, individuals, the United Way, fees for services, and any other source. When they look to government for funding, they are in effect asking government to help pay for services or levels of service that government itself, for whatever reason, has chosen not to provide. This article looks at how cities and counties go about making decisions on providing funds to private community agencies.

The Difficult Fiscal World of Community Service Agencies

In some jurisdictions there are sharp philosophical differences among city and county governing board members about whether local governments should provide funds for social programs administered by community agencies. Some board members argue that such funding is not the responsibility of local government, and that state governments, the federal government, and private sources should carry this load. Other board members believe that local government support is necessary to address local social problems and, further, that community agency programs are likely to be more cost effective than governmental ones.

Such philosophical differences aside, it is clear that with the federal government's reductions in spending for domestic programs, community agencies are being called on increasingly to help deal with some of our most severe social problems. One such problem is the need for additional and special health-care arrangements for persons afflicted with AIDs. Another is homelessness, which has grown progressively worse in many communities. While the demands on community agencies are growing, resources to meet the demands are not. Current economic conditions are causing many local governments to cut or hold the line on funding for community agencies.

For the agencies, then, acquiring resources in the local government budget process can be a zero-sum game. That is, a relatively fixed amount of money may be available, and the dollars one agency receives from a city or county are dollars that another agency does *not* receive. Thus competition among community agencies can be intense, and many of them try to gain an edge in securing funding. Some, for example, place influential community leaders on their boards of directors. Such leaders are often persuasive in lobbying county commissioners and city or town governing board members for funds. Other agencies bypass the city's or county's normal budget process and appeal for funds directly to the governing board.

A Survey of Budget Requests by Community Service Agencies

To understand how North Carolina cities and counties go about making their decisions about providing funds for services of community agencies, the authors

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Table 1
Budget Requests from Community Agencies to Selected North Carolina Cities and Counties
1990–1991

Selected Units		Units Receiving Requests from Community Agencies				Procedures in Making Requests (percentage**)			
Population	Total number in survey	Number receiving requests	% receiving requests	Average* number of requests per unit	Average* $ total of requests per unit	On forms prescribed by city or county	At same time as city or county depart-ments	Reviewed by manager or budget staff	Reviewed by citizen or staff advisory or policy committee
Cities									
Less than 1,000	10	4	40	2	1,400	0	25	25	0
1,000 to 4,999	16	8	50	3	15,800	25	38	50	38
5,000 to 9,999	16	16	100	5	26,100	14	56	56	19
10,000 to 24,999	11	9	82	9	127,000	22	66	56	11
25,000 to 49,999	11	9	82	13	178,500	33	78	89	33
50,000 to 99,999	5	5	100	14	706,900	60	40	60	40
100,000 or more	5	5	100	29	1,494,000	100	40	100	40
Counties									
Less than 25,000	8	7	88	10	143,100	14	57	86	43
25,000 to 49,999	10	7	70	13	192,000	14	71	71	14
50,000 to 99,999	14	14	100	22	646,800	43	79	71	43
100,000 to 199,99	10	10	100	26	704,500	40	70	70	50
More than 200,000	5	5	100	32	2,022,600	100	80	80	40
All cities and counties	121	99	82	14	$ 421,700	34	62	68	31

* These averages reflect only the data from units that received requests.
** The percentages are calculated in terms of the number of units receiving requests (not the number surveyed) in each category.

conducted a survey in late 1990. A total of seventy-four cities and forty-seven counties responded, 73 percent and 87 percent, respectively, of those contacted (see Table 1). The survey asked about the number and size of funding requests from community agencies, about whether the agencies follow the request procedures the city's or county's departments must follow, and about efforts to ensure that the money given to community agencies is spent for approved purposes.

Overall, 99 of the 121 cities and counties received budget requests from private community agencies; these 99 received an average of fourteen requests each. All the counties but four received requests, as did all but four of the forty-eight cities with populations greater than 5,000. The smallest units were least likely to receive requests. Relatively more community agencies asked for funds from counties than from cities. The cities with populations of more than 100,000 received about as many requests as did the counties with populations of more than 200,000.

Not surprisingly, both the average number of requests and their average total dollar amount rose with the population category of a city or county. In those towns with fewer than 1,000 people that received requests from community agencies, the average total of requests from the agencies was $1,400. In counties with more than 200,000 people, the average total was $2,022,600.

In general, community agencies do not seem to look to governments for funding for major capital expenditures. Of the fifty-one cities and counties surveyed that were found to have capital improvement programs (CIPs) to plan future building and other major capital needs, only eight reported receiving capital requests for their CIPs from community agencies.

Adherence to City or County Budget Process

The 1990 survey also examined the procedures that cities and counties used in allocating funds to community agencies, comparing these procedures to those that they used in budgeting for their own city and county departments. A city or county might, for good reasons,

require all budget requests, regardless of their sources, to go through the same budget process. One good reason is to maintain a perception of fairness; each request can be treated formally and on the same basis. Another good reason is to require all requests to be reviewed for consistency, merit, and legality. A third reason relates to the wise allocation of resources: the requests can be reviewed from the perspective of total budget requirements. To what extent are community service agencies in North Carolina required to go through the same budget processes as the city's or county's own departments?

Use of Forms

When a county's or city's own departments submit budget requests, they typically must do so on standard request forms. The cities with populations of 100,000 or more and the counties with populations of 200,000 or more all required community agencies to submit requests for funds via standard forms. The use of such forms dropped off dramatically in smaller jurisdictions. For example, in counties with fewer than 50,000 people, only 14 percent of the units receiving requests from community agencies required the agencies to use the county's standard forms.

Adherence to Budget Timetable

Counties on the whole were more apt than cities to require community agencies to submit budget requests at or about the same time that the units' own departments submitted their budget requests. In twenty-six of thirty-four cities and counties where budget requests from community agencies were *not* submitted according to the department timetable, the agency requests generally came in after the departmental requests.

The cities with fewer than 5,000 people and those with more than 50,000 were least inclined to require the community agencies to follow the unit's usual timetable for budget requests. No doubt there are not many community agencies in most of the smaller towns; moreover, budget procedures there tend to be informal.

Why larger cities were less inclined to have community agencies follow the normal timetable is more puzzling. Perhaps a delay in submitting requests does not create a problem. That is, if requests are only a little delayed, they can still be incorporated into the budget the city or county manager recommends to the governing board. On the other hand, if high-priority requests are delayed so that they must be added to an already balanced budget, the board members might look to unappropriated fund balance or to cuts in other programs.

Manager or Staff Review

A city or county manager or budget staff typically reviews budget requests from the government's own departments before passing them or revised versions of them to the governing board. Sometimes the manager or staff also reviews budget requests from community agencies; this can signal that decisions about those requests reflect an assessment of such things as measurable benefits and costs, the likelihood of a program's success, and alternative ways of providing the program.

Sometimes, however, requests from community agencies are *not* subject to executive or staff review, a practice that may indicate that decisions about the requests are based more on political than other criteria. In the funding game, bypassing such review can give an edge to the more politically powerful community agencies.

In North Carolina cities with populations greater than 100,000, all requests from community agencies did undergo formal review by the manager or the budget staff. In 68 percent of all cities and counties receiving requests, the manager or budget staff reviewed the requests before they went to the governing board. In three of four towns with fewer than 1,000 people, all requests went directly to the board. Many of these units do not have managers or administrators.

Review by Advisory Committees

Local governments often have advisory committees or boards that participate in certain public decision-making processes. Such groups may consist of public officials only, or of both public officials and other citizens, or of only citizens who are not public officials. Such committees or boards are formed to broaden public participation in decisions, to secure expert advice about complex issues or decisions, to deflect criticism when tough decisions must be made, to mobilize public opinion for a particular outcome, and for other reasons. Some of these advisory committees or boards become very influential in their own right, making it difficult for a unit's governing board to go against advice they give.

State statutes give county boards of health, mental health, and social services a formal role in the preparation of their agencies' budget requests. In cities, however, the role of advisory or policy committees in budgeting is defined by local practice and exists much more informally. Therefore, it is somewhat surprising

Table 2
Monitoring City or County Funds Allocated to Community Agencies

Population	Received requests from community agencies	Received audited financial statements covering expenditure of units' funds (%)	Preapproved general expenditure plans for units' funds (%)	Received unaudited year-end reports of expenditure of units' funds (%)	Exercised no specific controls over expenditure of units' funds (%)	Preaudited specific expenditures of units' funds (%)
Cities						
Less than 1,000	4	0	50	0	0	25
1,000 to 4,999	8	13	13	25	13	38
5,000 to 9,999	16	19	25	0	7	38
10,000 to 24,999	9	44	22	44	22	33
25,000 to 49,999	9	56	44	44	11	33
50,000 to 99,999	5	100	40	60	20	0
100,000 or more	5	60	0	40	20	0
Counties						
Less than 25,000	7	14	43	0	0	14
25,000 to 49,999	7	43	71	0	0	14
50,000 to 99,999	14	79	36	36	0	7
100,000 to 199,999	10	60	50	40	0	0
More than 200,000	5	80	60	60	0	20
All cities and counties	99	47	36	27	7	20

Note: Eight units receiving requests from community agencies did not respond on this variable.

that cities used such advisory or policy committees to review requests from community agencies almost as much as did counties. Of the thirty-one units that had such committee reviews, fourteen were cities and seventeen were counties.

Monitoring Community Agency Spending of City or County Funds

Contributions made by North Carolina's cities and counties to community agencies or to any outside organization or person may be spent only for public purposes that the cities or counties themselves may undertake. To what extent do cities and counties that fund or help fund community agencies make sure that the public contributions are spent only for the appropriate public purposes?

North Carolina cities and counties can use a variety of techniques to monitor and control the expenditure of funds they contribute to community agencies (see Table 2). They can require the agencies to submit audited statements of how the agencies spent funds, including funds contributed by the city or county; they can receive unaudited financial statements of how city or county contributions were spent; they can preapprove the agencies' *general* plans for spending city or county contributions, before any such expenditures are made; and they can preapprove or preaudit *specific* expenditures of funds. Of course, cities and counties may choose to exercise no formal controls over expenditure of their contributions to community agencies. The North Carolina Supreme Court decision in Dennis v. Raleigh, 253 N.C. 400 (1960), however, suggests that cities and counties maintain some controls or monitoring of the use of public funds by private agencies.

Most commonly, North Carolina cities and counties require an audited financial statement from community agencies receiving city or county money; 47 percent of the units allocating funds to community agencies required audited statements from at least some agencies. Larger cities and counties were most likely to require these statements. Next in frequency as a monitoring technique was city or county preapproval of the agencies' general expenditure plans; 36 percent of the units allocating funds to community agencies used this control technique for at least some of the agencies. There was no correlation between this sort of monitoring

and a city's or county's size. Twenty-seven percent of the units, mostly larger ones, received unaudited statements of how community agencies spent city or county money. Only 7 percent of the units preapproved or preaudited specific spending of the units' funds. Twenty percent of the cities and counties exercised no formal controls over expenditures of their moneys by community agencies.

Summary

While most city and county revenues are raised to support services provided by a city's or county's own departments, some local revenues support programs provided by private community agencies. The authors' survey found that most North Carolina cities and counties receive budget requests from such agencies; that the state's largest cities and counties receive requests from numerous such agencies and for substantial amounts of money; and that in only a few cities and counties do community agencies make capital project or acquisition requests in the units' capital improvement programs.

The survey also found that many North Carolina cities and counties use different procedures when considering budget requests from community agencies than they use when considering requests from their own departments. Many do not require private agencies to use standard budget request forms, to adhere to the regular timetable for submitting budget requests, or to submit requests for review by the manager or budget staff. Some cities and counties have advisory committees composed of public officials and/or citizens that review and make recommendations about budget requests from community agencies.

Finally, the survey found that North Carolina's cities and counties use a variety of formal methods to monitor the spending of public contributions to community service agencies. The most common method is to require the agencies to submit audited financial statements encompassing expenditures of city and county contributions. ❖

North Carolina's Community Service Program: Putting Criminal Offenders to Work for the Public Good

Anita L. Harrison

A teenage offender performs his regular work assignment at the Orange County Animal Shelter, operated by the Animal Protection Society, in Chapel Hill, N.C. On any given day, as many as four Community Service Work Program participants can be found at the shelter, providing

This year more than a third of a million North Carolinians are expected to be doing unpaid work for public and nonprofit community agencies, not from the goodness of their hearts, but to stay out—or get out—of prison or jail. These unpaid workers include individuals convicted and placed on probation or released from prison on parole and those who avoid conviction by having their prosecution deferred—with the condition that they perform community service. This article looks at the history of the program that puts them to work for the public good, at the program's purposes and structure, and at its effectiveness.

In North Carolina's community service program, offenders are assigned to perform a specified number of hours of unpaid work for a striking variety of agencies such as the American Red Cross, the Animal Protection Society, Hanging Rock State Park, Head Start, Goodwill Industries, Dorothea Dix Hospital, the American Children's Home, and many others. In fiscal 1990–91, participants in the program, supervised by state community service case coordinators, performed 2.5 million hours of work and contributed $4.33 million in fees to the North Carolina General Fund.[1]

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History of the Program

For a century North Carolina courts probably have had the *inherent* authority to require criminal offenders to perform work that benefits the public,[2] but specific statutory authority was granted only recently. In 1977 the first

Dan Sears / Carolina News Services

essential services: cleaning cages, bathing the animals, sometimes working at the computer. "It really helps us stretch our budget," says shelter manager Barbara Long.

On the Job

The first task is the worst: scouring the dog cages. The cat cages are next and better since cats are neater. Sweeping and mopping the floors follows. The work is hard and much of it is unpleasant, but it is essential to the operation of the Orange County Animal Shelter. At the end of the day, the young man leaves, his last stint in the Community Service Work Program over. He promises to return to the shelter as a volunteer. What began as a punishment has evolved into a positive interaction with a community organization, and everyone has gained.

On the Monday after her court date and her conviction for driving while impaired, a young woman shows up at the Chatham County Council on Aging. After the staff assesses her skills, she is assigned to the front desk. It seems at first that the clerical duties she has been given can be completed quickly. But that's before the first of the day's string of inquisitive and talkative elderly folks arrives. Before long the reception area is filled with elderly people of all backgrounds. This is their gathering place, and the Community Service Work Program worker begins to get a feel for what the council on aging is all about. For twenty-four hours of community service, she has become a part of the team that will do its best to meet the diverse needs of this growing segment of the population. By five o'clock Wednesday she has completed her punishment, and she too has benefited.

On a humid morning in August, the Jordan Lake Park Ranger passes the clipboard around the group of men waiting for their assignments. He detects the unmistakable odor of alcohol. He singles out the guilty party, who has not had anything to drink since the night before but still has enough alcohol in his body to be impaired; the ranger instructs him to call for a ride home. The remaining men are divided into small groups, some to keep the garbage cans empty on this busy summer day, some to clean the rest rooms and bath houses, others to pick up litter. One man is a building contractor. Before the day is over, he has made significant repairs to one shelter and installed a sink in the park office. Placed by the Community Service Work Program, none of these men is there voluntarily, but all make the park a better place for weekend visitors.

—Shelton Edmondson

community service statute authorized courts to impose "reparation"—defined as "the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation"[3]—as a condition of probation.[4] Later the courts were empowered to make community service also a condition of deferred prosecution or a "prayer for judgment continued" (PJC). Deferred prosecution is a disposition for a defendant *charged with* (not convicted of) a criminal offense. It involves an agreement between the defendant and the prosecution, approved by the court, "for the purpose of allowing the defendant to demonstrate his good conduct"—for example, by performing community service or participating in treatment; if the defendant successfully discharges his or her obligation, the charges are dismissed.[5] A PJC is a suspended *imposition* of a sentence—not a conviction—which may be accompanied by conditions such as performing community service.[6]

The first big push for use of community service as a substitute for other punishment came in the 1980s, when state supervision became available, beginning in 1981 with five local programs supported by federal grants. In 1983 the Safe Roads Act provided the next impetus. It made community service work an alternative to incarceration for impaired drivers and required the Department of Crime Control and Public Safety (hereinafter the Department of Crime Control) to conduct a program for such offenders.[7] Two more steps followed in 1984. First, legislation established the Community Service Work Program supervised by the Department of Crime Control without limiting it to impaired drivers.[8] And second, the General Assembly established community service parole, in which parolees exchange such work hours for reductions in their prison time,[9] which became part of the department's program.

Community service parole was used little for the first few years after its enactment. But prison "cap" legislation in 1987, requiring quicker parole when the prison population reaches the legislatively set "cap" (limit), increased the use of community service parole, as did amendments that removed some of the original restrictions on eligibility. This form of parole is now allowed for nearly all offenders, although the Parole Commission has tended to favor less serious offenders.[10]

Structure of the Program

There are several ways in which a person may be required to perform community service: a court may make it a condition of probation, deferred prosecution, or a PJC; or the Parole Commission may make it a condition of parole. In any case, the service is supervised by case coordinators, who are state employees in the Victim and Justice Services (VJS) Division of the Department of Crime Control. The case coordinators place program participants in both governmental and private nonprofit agencies, monitor the participants' performance, and report any violations of community service orders to the courts or Parole Commission. Each coordinator is responsible for a sizable number of participants. In the 1990–91 fiscal year, 104 case coordinators handled an average total caseload of 28,083: 270 participants per coordinator.

In addition to the case coordinator, a probation or parole officer also supervises the community service participant if he or she is on parole, on supervised probation,[11] or on deferred prosecution or a PJC and the court has ordered supervision by a probation officer. These officers concentrate on enforcing conditions of probation or parole other than community service.

The community service program generates a substantial part of its own operating costs, with each offender paying a mandatory fee of $100 to participate in the program. The clerk of court collects the fee and deposits it in the state's General Fund.[12]

Objectives of the Program

The three objectives commonly cited for the community service program are compensation, rehabilitation, and punishment.

The program *compensates society* for the harm done by crime in that it provides unpaid service for a public purpose.[13] The program *rehabilitates offenders*, some advocates of the program believe, in that it helps them to refrain from committing crimes by giving them a satisfying work experience and teaching them new work habits. (Recent research in North Carolina lends support to this view, as will be explained later in this article.) Finally, community service *punishes offenders*, or at least it is intended to do so. How punitive it is depends on the offender's point of view. Probationers may consider it more punitive than regular probation supervision, because it involves more work than simply complying with regular conditions of probation. Parolees, on the other hand, may see community service as less punitive than continued imprisonment.

Participants: Their Offenses and Correctional Status

For purposes of this article, community service participants will be divided into six groups according to their correctional status:

1. Parolees
2. Impaired drivers (DWI) on probation
3. Supervised probationers (excluding impaired drivers)
4. Participants on deferred prosecution
5. Participants on a PJC
6. Other participants (primarily on unsupervised probation)

To analyze the contribution to the program of the various groups of participants, VJS data were used on 43,948 offenders who began participation in the program in 1989.[14] Almost half (49.5 percent) of these participants were on probation for impaired driving; this reflects the fact that the state-supervised program initially was for impaired drivers only (see Figure 1). Another 18.3 percent were on supervised probation (not counting impaired

drivers), 8.5 percent were on deferred prosecution, and 1.9 percent had received PJCs. Only 2.1 percent of those who began the program in 1989 were parolees. (Parolees constitute a much greater proportion of the current active caseload of the program, as will be explained later in this article.) The other 19.7 percent not counted in the previous categories were for the most part on unsupervised probation.

Besides impaired driving, the current offense[15] of participants placed in the program in 1989 were as follows. (The following data exclude participants sentenced for DWI, sentenced to unsupervised probation, or given deferred prosecution or a PJC.) Of 7,871 supervised probationers (excluding impaired drivers) placed on the program in 1989, 66 percent had been convicted of misdemeanors, mostly misdemeanors against property, such as larceny or shoplifting. Thirty-four percent had been convicted of felonies, mostly crimes against property and drug offenses. Of 1,890 parolees placed in the program in 1989, almost all (99 percent) had been convicted of felonies, primarily felonies against property, such as larceny and breaking or entering, or felonies involving drugs.

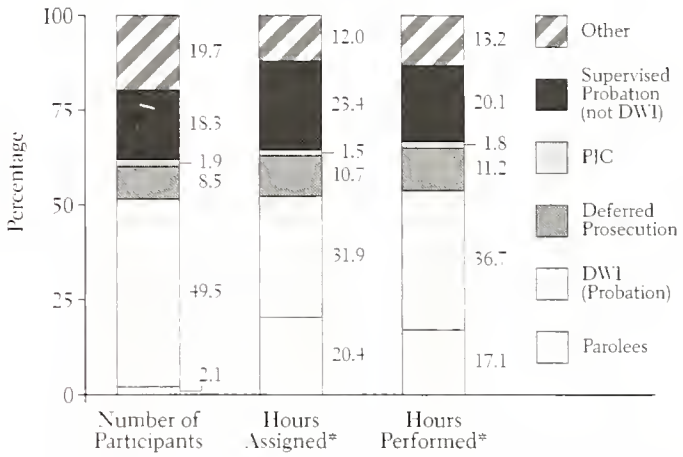
Participants Who Began the Program in 1989: Work Assigned and Work Performed

For the 43,948 offenders who began the program in 1989, the number of assigned hours of community service ranged from 1 to 4,064; the *average* number of assigned hours was 58, and the *median*, that is, the value above and below which half of the hours fell, was 24. The average number of hours assigned per person varied among types of participants (see Figure 2). Parolees had by far the most, with an average of 556 hours assigned. Supervised probationers (not including impaired drivers) had an average of 74 hours, participants on deferred prosecution had 73 hours, those on a PJC 47 hours, impaired drivers 37 hours, and others 35 hours.[16]

How many hours actually were worked? Of the 43,948 participants who began the program in 1989, 23,952 completed the program by August 1991, when VJS provided the data used in this article.[17] These 23,952 actually performed an overall average of 42.5 hours each, according to VJS records. This was two-thirds (66 percent) of the average hours assigned to members of the group.[18] The *average percentage performed* (computed by averaging the percentages performed for each of the participants) was 84 percent, reflecting the fact that most participants were assigned relatively few hours but managed to perform most of them. Completing the program means that VJS considered their cases closed, either because, as was usually the case, they had successfully completed probation, parole, deferred prosecution, or a PJC; or because their probation, parole, or other correctional status was revoked because they violated conditions.

The principle of diminishing returns may apply here: as the number of assigned hours increases, the percentage performed decreases, whether the participant is on parole, PJC, or deferred prosecution. Figure 3 shows the relationship between hours assigned and hours performed

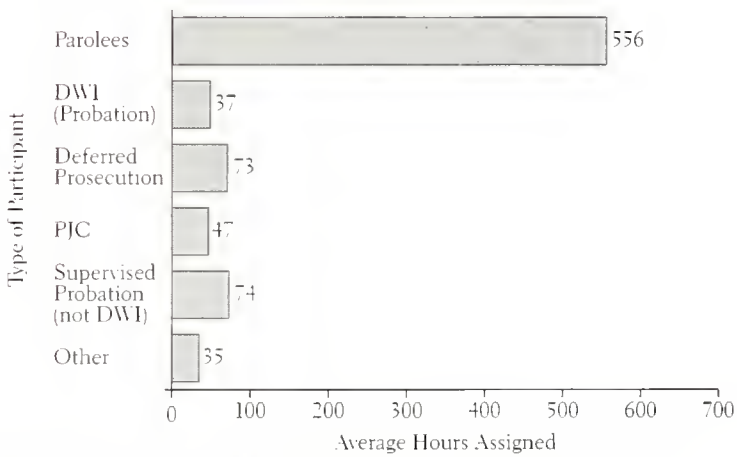
Figure 1
Community Service: Percentage of Persons, Hours Assigned, and Performed, by Type of Participant



Note: Figures refer to the 43,948 participants who began program in 1989.

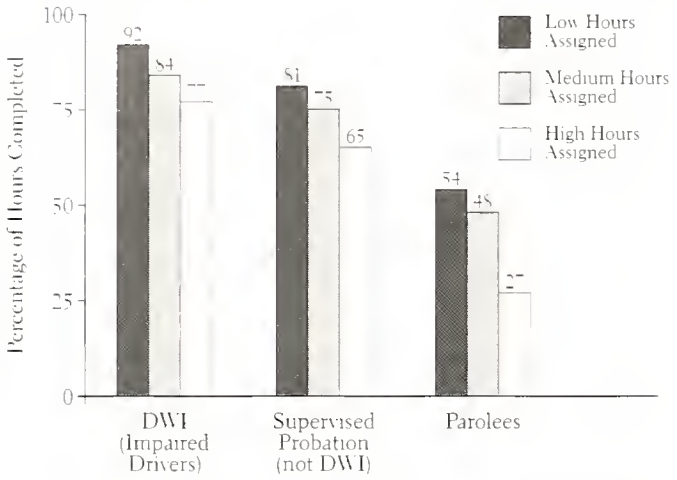
*Hours assigned and performed do not total 100% because of a 0.1% round-off error.

Figure 2
Average Community Service Hours Assigned by Person, by Type of Participant



Note: Figures refer to the 43,948 participants who began program in 1989.

Figure 3
Percentage of Hours Completed by Level of Hours Assigned, for Impaired Drivers, Supervised Probationers, and Parolees



Level of Hours Assigned: DWI: low 1–24, medium 25–48, high 49+; Supervised Probation: low 1–48, medium 49–72, high 73+; Parolees: low 1–400, medium 401–550, high 551+.

Note: Figures refer to the 43,948 participants who began program in 1989.

separately for impaired drivers, supervised probationers (excluding impaired drivers), and parolees. In each of the graphs, the groups have been divided roughly into thirds,[19] creating "low," "medium," and "high" levels of hours assigned relative to each group.[20] For impaired drivers, the average percentage of assigned hours performed was 92 for low hours, 84 for medium, and 77 for high hours. For supervised probationers (excluding impaired drivers), the average percentage performed was 81 for low hours, 75 for medium, and 65 for high hours. For parolees, the average percentage performed was 54 for low hours, 48 for medium, and 27 for high hours. In each group, some participants performed very few hours or none at all.[21]

What constitutes "success" in the program? VJS considers participants successful simply if they complete probation, parole, deferred prosecution, or PJC without having their correctional statuses revoked; and if they pay their fees for participation in the program. Success does not necessarily mean that all hours were completed. In any particular case, the courts or the Parole Commission may reduce the number of assigned hours or decide not to revoke despite failure to perform hours. Conversely, failure from VJS's point of view could be the result of revocation on grounds other than failure to perform assigned hours.[22]

The overall success rate was 81 percent for the 23,952 participants who began the program in 1989 and completed it by August 1991. Parolees had the lowest success rate, with 42 percent; impaired drivers, 86 percent; supervised probationers (excluding impaired drivers), 70 percent; participants on deferred prosecution, 83 percent; participants with a PJC, 91 percent; and other participants, 82 percent.

The Special Case of Parolees

Primarily because of pressure to control the growth in the prison population due to the 1987 prison "cap" law, and also because of legislation liberalizing the requirements for community service parole,[23] both the number of parolees assigned to the community service program and the number of hours assigned have increased in recent years. The average number of parolees participating in the program each month has increased nearly tenfold in three years: from 534 in 1988–89 to 4,554 in 1991–92. By December 1992 parolees constituted 20.7 percent of the active caseload. (Their contribution to the active caseload is considerably greater than their contribution to the number who begin the program each year, because they remain under supervision by the program longer than other groups of participants due to their larger numbers of assigned hours.)

Parolees did not do as well as other groups in the community service program in two respects: their performance of assigned hours was considerably lower, and so was their success rate. Why? The following are some possible explanations for parolees' lower work-performance rate and lower success rate:

1. Parolees were assigned large numbers of work hours compared to other program participants;
2. The Parole Commission may not have strictly enforced the performance of hours, either to grant incentives for partial performance or to comply with pressure to control the prison population;
3. It may have been more difficult for program staff to find work placements for parolees than for other program participants;
4. Parolees as a group may be inherently less reliable or responsible than other participants;
5. Parolees as a group may be inherently more likely than other participants to become recidivists (be rearrested for a new crime after release)—and thus have their parole revoked and complete the program unsuccessfully.

The inverse relationship noted earlier between the number of work hours assigned and the proportion completed holds true for all participants in the program.

Thus, one obvious reason why parolees' performance rate was lower than that of other participants was that they were assigned many more hours. But this may not be the only reason. Even when VJS considered parolees to have completed the program successfully, their average percentage of hours performed was lower than that of other participants (73 percent, compared with almost 100 percent for successful participants in the other five groups); this probably reflects the Parole Commission's reducing initially assigned hours in some cases or excusing failure to perform them. The Parole Commission has sought to offer incentives for partial completion of parolees' community service. Since December 1991 the commission's policy has been that if parolees successfully complete half of their assigned hours in the first year, the commission will cut the remaining hours by 50 to 100 percent.[24]

There is reason to believe that the average number of hours assigned to community service parolees has been increasing. Offenders currently being placed on community service parole probably are receiving a greater percentage reduction in their sentences than was received by offenders placed on the program in the past.[25] Greater sentence reduction means increased hours assigned, which may reduce the work-performance rate still further.

Conversations with some program staff suggest that it is sometimes difficult to find placements so that parolees can perform their assigned hours. Potential work recipients sometimes are more reluctant to accept parolees than other offenders who are not coming out of prison. This helps to explain parolees' low work-performance rate.

Another factor in parolees' low success rate may be failure to comply with conditions of parole other than the community service requirement. Parolees as a group simply may be more likely than other participants to commit new crimes or otherwise violate parole than other program participants are to commit new crimes or violate other conditions of supervision.[26]

Some things can be said in defense of parolees' participation in the community service program. Despite their lower performance percentage, community service parolees who began the program in 1989 and finished by August 1991 did much more work individually than other groups of participants did, and contributed substantially to the total hours performed by all participants. Although parolees constituted only 2.1 percent of the 43,948 participants who began the program in 1989, they accounted for 20.4 percent of the total assigned hours, and contributed 17.1 percent of the total hours actually worked by the 23,952 participants who completed the program by August 1991. Thus, parolees as a group contributed almost as many hours assigned and performed as did supervised probationers (excluding impaired drivers) and contributed more hours than the "other" participants (primarily unsupervised probationers). Impaired drivers, although they amounted to half the participants, contributed only about a third of the hours.

Another important point in favor of parolees' participation is that *the program may reduce their recidivism as much as it reduces probationers' recidivism.* A recent study of recidivism (discussed below) suggests that participation in the program lowers the probability of rearrest for new crimes, regardless of whether the participant is a parolee or a supervised probationer.

Costs of the Community Service Program

Community service work actually performed in 1990–91 had a direct cost of $ .71 per hour. (This cost is obtained by dividing a net direct cost of $1,776,338 by 2,504,867 hours of work performed.) The direct cost of the program is the cost of the state supervision, including the salaries and travel expenses of case coordinators, which was $6.10 million in 1990–91.[27] Subtracting the $4.33 million in fees[28] collected from participants in that year yields a net cost of $1.78 million.[29] This figure does not include the time spent by work-site supervisors, which in effect is donated to the program, although it benefits the recipient agencies. It also does not reflect the time spent by probation and parole officers who supervise community service participants. These officers' time is not included for two reasons. First, where probation is concerned, approximately the same amount of time would be required to handle the caseloads if community service were not involved. And second, where parole is concerned, more parole officers' time is required when offenders are released early from prison on community service parole, but this cost is more than offset by reduction in prison costs.

There also may be indirect costs connected with the community service program. One is the costs of crimes that could have been prevented if the Parole Commission had kept offenders in prison longer instead of giving them community service parole, or the courts had incarcerated them instead of granting probation with community service as a condition. This cost obviously is difficult to quantify. The number of preventable crimes depends on how frequently community service is used in lieu of prison, the rate of recidivism, and how much prison time would have been served without the

community service program. A recent study discusses evidence that the Parole Commission favors low-risk offenders in granting this form of early release,[30] which suggests that it may have little effect on crime. Also, the effect of releasing offenders early may be offset partly by the reduction of the damaging effects of imprisonment. Another recent study suggests that keeping offenders in prison longer does not reduce their likelihood of becoming recidivists; in fact, it may increase their probability of committing new offenses against property, such as larceny or burglary.[31] Finally, keep in mind that in the program's average caseload, only about a fifth of the participants are parolees.

Benefits of the Program

The main benefit of the community service program is the service provided to the community. This is best measured by calculating the number of hours of community service worked by these participants during 1990–91 and multiplying it by a dollar value. Putting a precise dollar value on this labor is difficult, because it is performed outside of a free market. However, it is fair to estimate that its value is no lower than the minimum wage. At $4.25 an hour, the minimum wage at the time, the dollar value of the work performed during fiscal year 1990–91 by community service participants was $10.70 million.

A second benefit is cost savings to the state. A criminal offender doing community service costs the state less than one doing prison or jail time. Savings occur when the Parole Commission shortens prison stays and places parolees in the considerably cheaper community service program,[32] and savings occur when courts impose probation or deferred prosecution with community service in lieu of imprisonment. Avoiding prison costs is a real concern at present when the prisons' population exceeds their capacity and a substantial expansion is under way. If the growth of the inmate population can be reduced, less new space will need to be built and operated.

A third benefit is that the program may reduce offenders' probability of being rearrested for a new crime. Research published recently in this magazine indicates that participation in the program is associated with a modest reduction in the likelihood of recidivism, regardless of whether the offender is a probationer or parolee, and regardless of the offender's criminal history, type of current offense, or other characteristics.[33] This finding suggests that community service has a rehabilitative effect on offenders, perhaps by giving them what may be their first positive experience with socially desirable work. Also, the program may reduce recidivism by shortening prison time—for example, when it is used to parole offenders early. The recent recidivism study argues that prolonging imprisonment may increase the probability of recidivism, especially of offenses against property, such as larceny or burglary.

Conclusion

The data reviewed here indicate that the community service program provides a public service at seventy-one cents an hour, reduces imprisonment and related costs, and may help to rehabilitate offenders. These results are encouraging; they suggest that the program has greater potential than is currently being realized. Perhaps the program could be even more effective if more attention were given to its goals and its effectiveness were carefully evaluated.

The following recommendations may help to improve the program:

- **Develop a clear statement of the goals of the community service program and their relative importance.** This will help to determine the future direction of the program. For example: if getting a certain number of hours of work done is seen as less important than rehabilitating offenders, it may be possible to supervise a larger number of offenders with the same budget and have a greater rehabilitative impact. Or, if getting the assigned hours done is the primary purpose, it may be advisable to reassign case coordinators to concentrate on participants with the most hours, especially parolees, or to find other incentives for completion of work.
- **Define and describe the various groups of offenders to be included in the program, and relate the program goals to these groups.** It may well be that different goals or priorities will pertain to different types of offenders. For example, rehabilitation may be more important with parolees than it is with regard to other offenders.
- **"Know the customer"—study the recipients of community service, their assessment of the program, and their needs.** There are many anecdotal examples, of course, of the gratitude of recipients for the community service they receive. But perhaps a systematic, objective survey is needed of recipients across the state to determine who they are, what services they need, and how well they think the program is working.
- **Evaluate the program more rigorously.** The recent recidivism study suggests that the community service

program has a modest effect on recidivism, but the program needs an evaluation designed to determine which arrangements yield the best performance and quality of service in terms of the recipients' needs. ❖

Notes

1. Arthur C. Zeidman, *Community Service Work Program Statistical Report to the North Carolina General Assembly*, 1992 Session (Raleigh, N.C.: Division of Victim and Justice Services, Dept. of Crime Control and Public Safety, 1992). The average caseload is the average end-of-the-month number of participants who have not yet completed the program. This is not the same as the number of offenders newly placed on the program that year, which was 65,716.

2. See Stevens H. Clarke, *Law of Sentencing, Probation, and Parole in North Carolina* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1991), 1 and n. 1.

3. N.C. Gen. Stat. (hereinafter G.S.) § 15A-1343(d).

4. Probation is a sentence for a criminal conviction involving a prison or jail term that is suspended on conditions set by the court. G.S. 15A-1341 through 15A-1347.

5. G.S. 15A-1341(a).

6. See Clarke, *Law of Sentencing*, 2–3 and n. 9.

7. G.S. 20-179, 20-179.4. The minimum amounts of community service required for impaired drivers as an alternative to imprisonment are 24 hours for Level Five offenders, 48 for Level Four, and 72 for Level Three. The alternative is not available for Level One and Two impaired drivers; they may be given community service after they complete their mandatory imprisonment, but the amount and time limit of service is left to the judge's discretion.

8. 1983 N.C. Sess. Laws, 1984 Reg. Sess., ch. 1034, § 102, codified in G.S. 143B-475.1.

9. For eligible offenders, the Parole Commission may require that up to 32 hours of community service be performed for each 30 days' reduction in prison time. G.S. 15A-1380.2(h), 15A-1371(h). A prisoner is eligible for community service parole if (1) his/her sentence is at least six months; (2) he/she was not convicted of a sex offense, kidnapping, abduction of children, felonious restraint, or drug trafficking; (3) the Parole Commission believes that he/she will refrain from committing a new crime; (4) he/she agrees to complete the remaining portion of the sentence by performing the required community service in a specified time; and (5) he/she already has served the amount of prison time required by the statute. This amount of time may be as little as one-eighth of the sentence for an eligible felon.

10. Regarding the cap, see Stevens H. Clarke, "North Carolina's Prison Population Cap: How Has It Affected Prisons and Crime Rates?" *Popular Government* 58 (Fall 1992): 11–22.

11. Supervised probation involves supervision by a probation officer, while unsupervised probation does not.

12. G.S. 143B-475.1(b), 20-179.4(c). If an impaired driver is ordered to attend an Alcohol and Drug Education Traffic School, the fee for community service is only $50.00; G.S. 20-179(c). Judges, at the request of case coordinators, sometimes reduce or waive the fee for offenders who have difficulty paying, although the statutes do not specifically authorize them to do so.

13. Community service can be compared with *restitution*, another frequently used sanction: restitution involves payment of money to the individual crime victim, while community service benefits society as a whole.

14. This is the number of offenders, according to VJS, who began participating in the community service program in 1989 and for whom VJS records showed at least one hour of work assigned.

15. The current offense is the one for which the offender either received a probation sentence in 1989 or received a prison sentence from which he/she was released in 1989. The data presented here concerning current offenses for community service participants on supervised probation and parole were taken from records of the Department of Correction (DOC) rather than VJS, because DOC data were more reliable. If there was more than one current offense, the "principal offense"—the one with the longest prison term (suspended or active)—was chosen.

16. For these same groups, the *median* hours assigned was as follows: parolees, 480; supervised probationers (excluding impaired drivers), 50; deferred prosecution, 50; PJC, 32; impaired drivers, 24; and others, 24.

17. In effect, these 23,952 participants were followed from sometime in 1989 until August 1991, or for an average of more than two years (about 25 months). Were the 23,952 participants who began the program in 1989 and completed it by 1991 different from the rest, who began in 1989 but did not finish by 1991? In terms of assigned hours, they were not substantially different. The entire group of 43,948, as explained earlier, averaged 58 assigned hours; the 23,952 who completed the program by August 1991 averaged 64 hours. However, a longer follow-up of the entire 43,948 until all had completed the program might show different results from those reported here.

18. For the participants who had completed the program, the average number of hours assigned was 64.1.

19. This was not possible in the case of impaired drivers, because so many (about 40 percent) were assigned 24 hours (due to the fact that 24 hours of community service is a popular alternative to imprisonment for Level Five of DWI). The impaired drivers group was divided approximately in the ratio 40:30:30.

20. For impaired drivers, "low" denotes 1 to 24 assigned hours; "medium," 25 to 48; and "high," 49 and over. For supervised probationers, "low" denotes 1 to 48 hours; "medium," 49 to 72; and "high," 73 and over. For parolees, "low" denotes 1 to 400 hours; "medium," 401 to 550; and "high," 551 and over.

21. The following are the percentages of participants in each group who performed no more than six hours' work: parolees, 18 percent; impaired drivers, 11 percent; supervised probationers (excluding impaired drivers), 21 percent; participants on deferred prosecution, 10 percent; participants on a PJC, 6 percent; and other participants (primarily on unsupervised probation), 14 percent. These data are limited to cases considered "completed" by VJS for which VJS records indicate at least one hour was assigned.

22. The average percentage of assigned hours performed was 99 percent for 19,356 participants who completed the program successfully, and 17 percent for 4,596 who completed

it unsuccessfully. For the various groups of participants, the average percentages performed for the successful and unsuccessful, respectively, are parolees, 73 and 21; impaired drivers, 99 and 15; supervised probationers (excluding impaired drivers), 100 and 16; participants on deferred prosecution, 101 and 22 (evidently a few participants worked more hours than they were assigned); participants on a PJC, 100 and 17; and other participants (primarily unsupervised probationers), 101 and 19.

23. See Clarke, "North Carolina's Prison Population Cap."

24. Telephone interview with Sam Boyd, executive director, N.C. Parole Commission, February 23, 1993.

25. For example, according to unpublished data provided by Kenneth L. Parker of the N. C. Department of Correction, the average percentage of the sentence served for offenders released each year, which ranged from 39 to 42 percent in the years 1980–86, declined steadily after 1986 to reach 22 percent in 1991. (These data exclude time served by offenders admitted for a probation revocation and time served after revocation of parole.)

26. For example, community service parolees, on average, have a higher risk of becoming recidivists (being rearrested for a new crime) than do probationers on the community service program. This is shown by their number of prior fingerprinted arrests (one of the best predictors of recidivism). For 1,890 offenders given community service parole in 1989, the average number of prior fingerprinted arrests was 4.0; for 7,871 supervised probationers on the program (excluding impaired drivers), the average was only 1.6. Stevens H. Clarke and Anita L. Harrison, *Recidivism of Criminal Offenders Assigned to Community Correctional Programs or Released from Prison in North Carolina in 1989* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1992), 49–50.

27. This cost was obtained from the Department of Crime Control and Public Safety and verified by a telephone conversation with Theresa Morris, deputy director of the Victim and Justice Services Division, February 23, 1993.

28. Zeidman, *Community Service Work Program Statistical Report*.

29. The sum of 4.33 and 1.78 is slightly more than 6.10 due to round-off error. More precisely, the net cost was $1,776,338 as mentioned.

30. Clarke, "North Carolina's Prison Population Cap."

31. Stevens H Clarke and Anita L. Harrison, "Criminal Recidivism: How Is It Affected by Community Correctional Programs and Imprisonment?" *Popular Government* 58 (Summer 1992): 19–28.

32. According to the staff of the General Assembly's Government Performance Audit Committee (GPAC), the average annual operating cost of prison space per inmate is $20,000. Compared with this, community sanctions are much cheaper; the GPAC staff estimates annual operating costs per offender at $600 for parole, $400 for probation, and $3,200 for intensive supervision (probation or parole) and electronically monitored house arrest. State of North Carolina, Government Performance Audit Committee, *Retreat Presentation: Criminal Justice, Corrections* (Raleigh, N.C., Oct. 1992, unpublished).

33. Clarke and Harrison, "Criminal Recidivism: How Is It Affected by Community Correctional Programs?" For example, for 7,895 supervised probationers and parolees at a moderate level of recidivism risk, as predicted from prior arrests, current offense, age, race, and sex, those on the program had a rearrest rate of 24.2 percent, compared to 29.8 percent for those not on the program. The same kind of relationship is seen when parolees are considered separately.

At the Institute

Dan Sears/Carolina News Services

The staff and faculty of the Principals' Executive Program at their regular Tuesday staff meeting. Program director Robert Phay is seated fifth from the left.

Principals' Executive Program Graduates

From the first, it was imagined that the Principals' Executive Program (PEP), meeting the needs of the state's 2,000 school principals and hundreds of other administrators, would outgrow the Institute of Government. That time would come, the 1984 planning document anticipated, "if this program is to grow to the scale projected for it." Now the time has come. Effective January 1993 PEP has become a separate unit of The University of North Carolina at Chapel Hill, no longer a part of the Institute.

When C. D. Spangler became chairman of the State Board of Education in 1982, he was concerned that new principals, and teachers on their way to becoming principals, received no management training.

"So," Spangler, now president of The University of North Carolina, later recalled, "I modeled the Principals' Executive Program on the Harvard Business School program called the Advanced Management Institute, where vice-presidents for marketing or vice-presidents for finance, and so on, who may not see the big picture clearly, can get an overall view, suiting them for senior management. That's what we needed to do for school teachers who become principals."

Spangler told William C. Friday, then UNC president, that he wanted the university to do this training, initially through the Institute of Government.

During PEP's nine years with the Institute, 1,200 principals and superintendents, from all of the state's 132 school units, have graduated from PEP and its companion Superintendents' Executive Program. In late 1992 PEP launched a new initiative to train assistant principals, in classrooms in Asheville and Wilmington.

"I am proud of the role of the Institute of Government in developing this magnificent program," said Michael R. Smith, director of the Institute. "And I am pleased that Robert Phay will continue to lead PEP in this new era. He stepped forward from our faculty all those years ago to take on what was sure to be—and has been—a monumental task. His drive and enthusiasm have largely shaped the rigorous training program we see today. I am confident the program he leads will provide management training of the highest level as it has done here at the Institute. The program leaves with our best wishes and a pledge of continued cooperation."

Faculty members from the Institute of Government will continue to teach in PEP, students in PEP will continue their residency in the Institute's dormitory, and PEP classes will continue to be held at the Institute for a couple of years. Professor Phay says he is hopeful that PEP will eventually have a facility designed specifically for its needs.

—Editors

Upcoming in

Popular Government

Zoning Hearings

Should Prosecutors Control the Court Calendar?

Affirmative Action in Employment

Municipal and County Administration Alumni Form Association

For the first time, Institute of Government course graduates have formed an official alumni association. Graduates of the Institute's Municipal and County Administration courses, after nine years of informal alumni sessions, decided to become official at the March 1992 seminar meeting and recently held their second official seminar February 24 to 26, 1993.

The informal sessions were coordinated by 1982 course graduate Sylvia Butterworth, finance director for the city of Southport, until the group decided that the high interest level merited forming an official alumni association.

The association elected Butterworth as its first president when it was chartered at the March 1992 meeting.

Butterworth, together with Institute faculty members A. John Vogt and W. Jake Wicker, established a program committee to plan the early seminars; they covered a variety of subjects pertaining to local government, including budgeting, new management approaches, downtown redevelopment, law enforcement and police accreditation, human services, health issues, and media relations.

Approximately 135 graduates from the class of 1982 to the present attended the yearly seminars. Since the association's chartering, earlier course graduates have been recruited, and the group's membership has grown to include approximately 450 course graduates. The Municipal and County Administration courses have been functioning since 1954 and 1964, respectively; together they have graduated more than 2,200 participants.

Mary Ann Hinshaw, a 1989 course graduate from Guilford County and second vice-president, said that both the group and the Institute benefit from the formation of the alumni association. Members will keep current about local problems, and the Institute will have some feedback from the seminars on what types of programming Municipal and County Administration graduates need.

—*Melissa Dewey*

Members of section I of the 1982 Municipal Administration course. Alumni association president Sylvia Butterworth is fourth from the left in the second row.

UNC Photo Lab

UNC Photo Lab

Warren Jake Wicker

UNC Photo Lab

A. John Vogt

Milton S. Heath, Jr.

Heath is Honored By Soil and Water Conservation Group

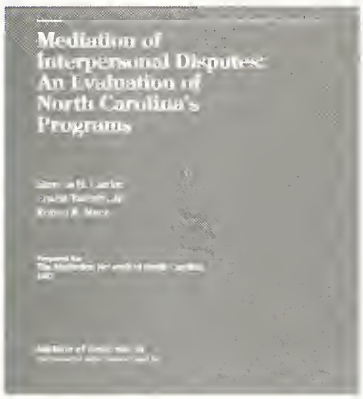
Institute of Government faculty member Milton S. Heath, Jr., was honored recently with the Distinguished Service Award for outstanding work with the N.C. Association of Soil and Water Conservation Supervisors.

Heath was given one of only three such awards this year at the annual association meeting in Asheville in January. The award honors Heath's long involvement with the group.

Heath began advising the district supervisors on environmental legislation in 1959, and he has been working with the group ever since. In 1984 he helped establish an annual two-day training session for district supervisors. The training session is designed to give both legal and management training to district supervisors on legal powers, responsibilities, and obligations of the districts as units of local government. The training session also provides an opportunity for the participants to learn about current environmental issues.

This year's training session, again coordinated by Heath, was held at the Institute March 1 and 2. —*Melissa Dewey*

Off the Press



Mediation of Interpersonal Disputes: An Evaluation of North Carolina's Programs

Stevens H. Clarke, Ernest Valente, Jr., and Robyn R. Mace

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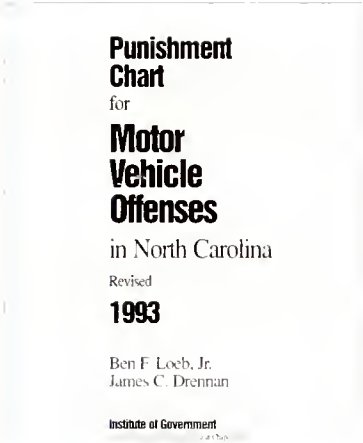

Punishment Chart for Motor Vehicle Offenses in North Carolina Revised 1993

Ben F. Loeb, Jr., and James C. Drennan

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