POPULAR GOVERNMENT

FEBRUARY 1961

Governor Sanford Addresses a Joint Session of the 1961 General Assembly

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Contents

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Governor Terry Sanford is shown addressing a joint session of the 1961 General Assembly on Thursday, February 9, 1961, in the cover photograph by Charlie Kelly of the Department of Conservation and Development.

This issue of POPULAR GOVERNMENT carries summaries of the legislative programs and recommendations of various organizations which will be placed before the 1961 General Assembly. In addition, the lead article contains background information on the matter of legislative representation—sure to be one of the major problems to come before the members of the General Assembly this session.

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REPRESENTATION IN CONGRESS AND THE GENERAL ASSEMBLY

by **John L. Sanders**
Assistant Director
Institute of Government

It is now certain that the 1961 reapportionment of seats in the United States House of Representatives will reduce the North Carolina congressional delegation from 12 to 11 members. This will require the General Assembly of 1961 to revise the Congressional districts so as to eliminate one of the present 12; otherwise, under the provisions of federal law,[1] candidates for all 11 of the State's congressional seats in 1962 and thereafter must run for election from the State at large.

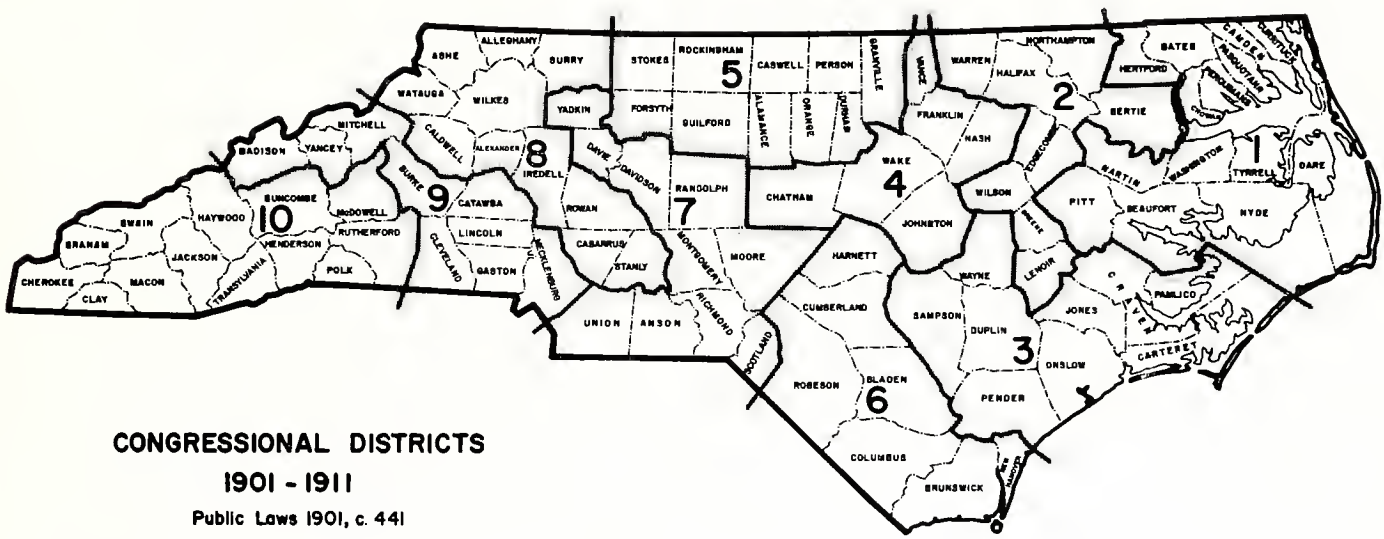
The Constitution of North Carolina directs that the State senatorial districts shall be revised by the General Assembly at its first session after each decennial federal census, and that at the same time those seats in the State House of Representatives which are allotted according to population shall be reapportioned among the more populous counties.[2] Thus it is predictable that bills will be introduced in the 1961 General Assembly to revise the State senatorial districts and reapportion House seats so as to reflect the population shifts which have taken place since 1941, when redistricting and reapportionment last occurred.

This article consists chiefly of two series of maps. One shows the North Carolina congressional districts from 1901 to date. The other shows the State senatorial districts and the apportionment of Representatives among the counties from 1901 to date. These maps have been prepared and are being published, together with related population data, for the information of legislators and of citizens interested in the subject of legislative representation in North Carolina.

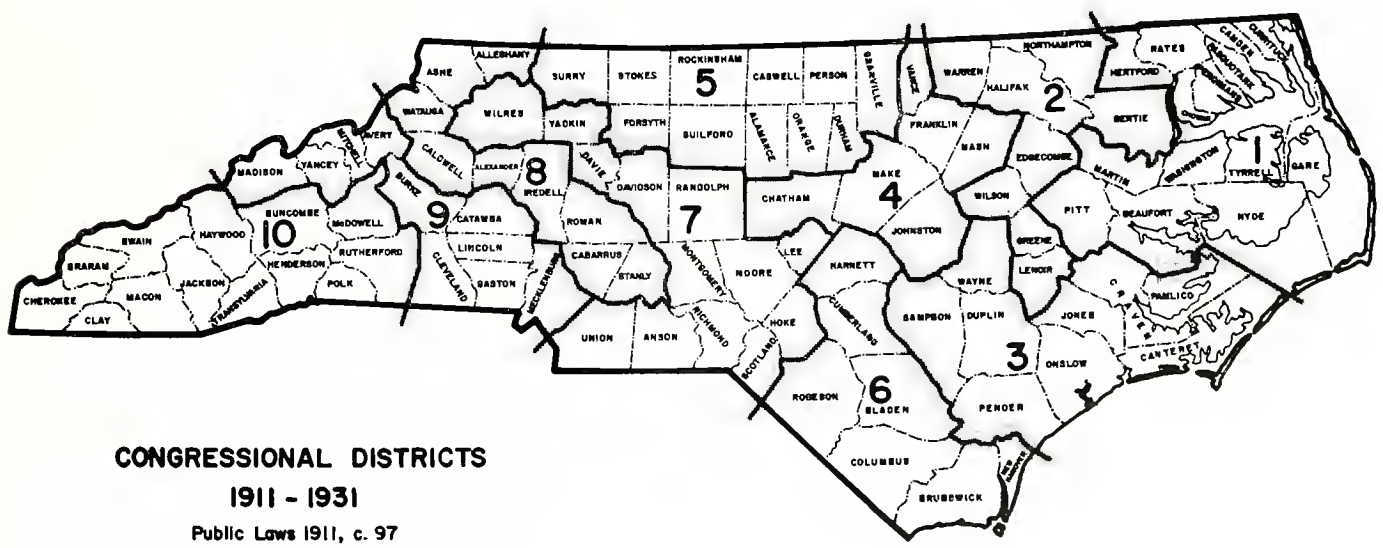
A more comprehensive collection of information on the subject of congressional and senatorial districts and House apportionment, entitled *Data on North Carolina Congressional Districts, State Senatorial Districts, and Apportionment of the State House of Representatives*, has been prepared and published by the Institute of Government.

1. 2 U.S.C.A. § 2a.

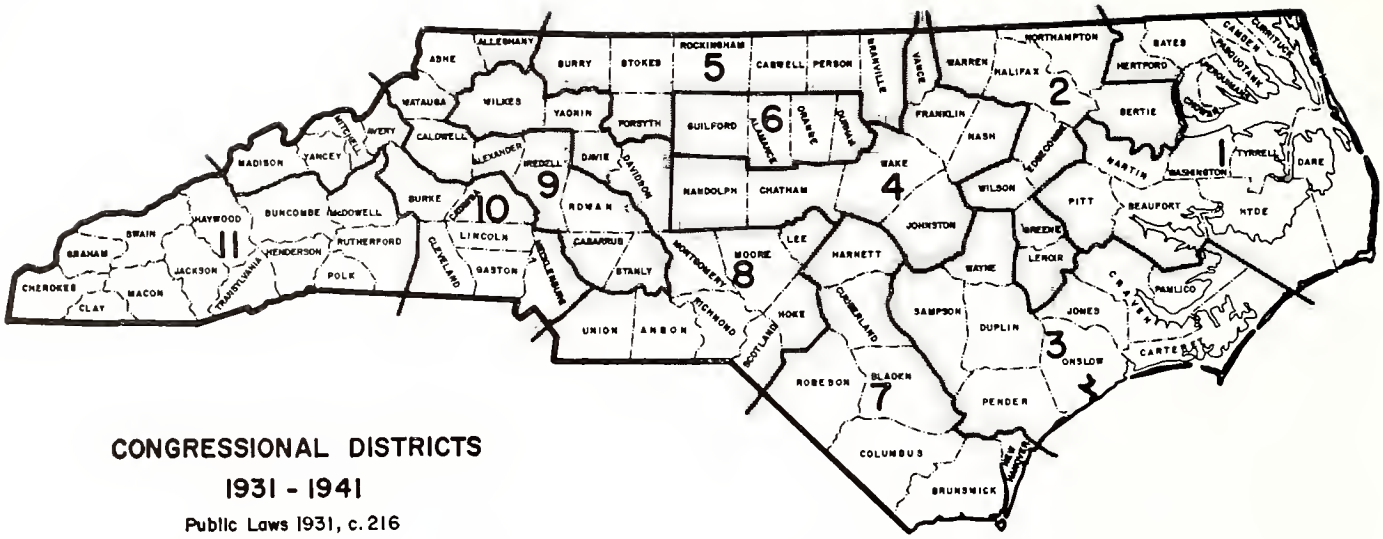
2. Constitution of North Carolina, Art. II, §§ 4, 5.



CONGRESSIONAL DISTRICTS
1901 - 1911
Public Laws 1901, c. 441



CONGRESSIONAL DISTRICTS
1911 - 1931
Public Laws 1911, c. 97



CONGRESSIONAL DISTRICTS
1931 - 1941
Public Laws 1931, c. 216

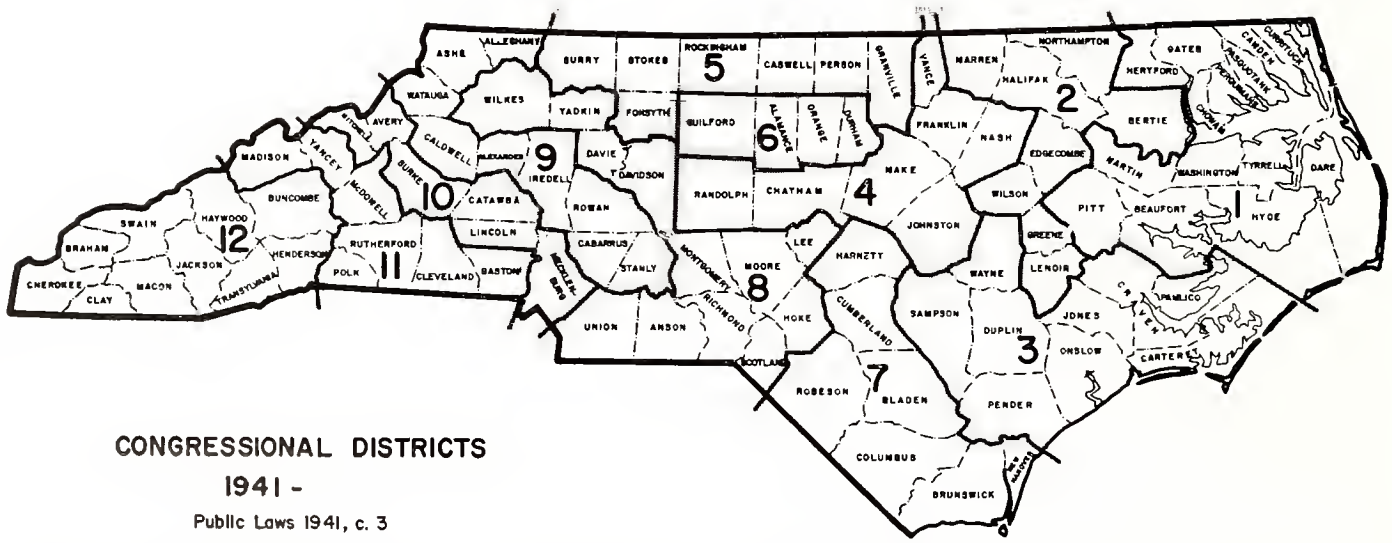
Congressional Districts

The four maps on pages one and two show the North Carolina Congressional Districts created by every congressional redistricting act from 1901 to 1960. County boundaries are shown as they existed at the time the respective acts were adopted.

The United States Constitution directs that United States Representatives shall be apportioned among the several states according to their respective populations, each state being guaranteed at least one Representative This apportionment is made automatically, according to a federal statutory procedure, after each decennial federal census.

The legislature of each state determines whether the Representatives apportioned to that state will be elected from the state at large or from districts. Where districts are employed, the legislature determines their boundaries and the number of Representatives each district shall elect. The United States Constitution and statutes prescribe no standards to guide the State legislature in creating congressional districts. Neither equality of population nor compactness or contiguity of territory are now required of these districts, although such standards were in force for many years prior to 1929, when they were repealed incident to the adoption of the automatic apportionment procedure.

North Carolina has always elected its Representatives from single-member congressional districts composed of contiguous territory. District boundaries have always followed county boundaries. Approximate equality of population generally appears to have been an objective of redistricting acts, whether or not such equality was required by federal law.



CONGRESSIONAL DISTRICTS
1941 -
Public Laws 1941, c. 3

North Carolina increased its congressional representation from 11 to 12 members in 1941. The 1941 congressional redistricting act made no changes in Districts 1 through 9 as they had existed since 1931, but did make the following changes in the course of providing an additional congressional district:

(1) The new 10th District (Avery, Burke, Catawba, Lincoln, Mecklenburg, and Mitchell) was formed from part of the former 10th District;

(2) The new 11th District (Cleveland, Gaston, McDowell, Madison, Polk, Rutherford, and Yancey) was formed from the remainder of the former 10th District plus three counties (McDowell, Polk, and Rutherford) from the former 11th District;

(3) The new 12th District (Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Swain, and Transylvania) was formed from the old 11th District less McDowell, Polk, and Rutherford.

The population of existing congressional districts as shown by the 1960 Census appears in the following table.

POPULATION OF NORTH CAROLINA CONGRESSIONAL DISTRICTS

District	*Population*
1	253,511
2	313,728
3	382,124
4	442,059
5	408,992
6	487,159
7	455,630
8	396,369
9	364,561
10	452,732
11	307,575
12	291,715
Total	4,556,155

If equality of population as between districts were to be the sole legislative objective in congressional redistricting, each of the 11 new districts would contain approximately 414,196 people, or one-eleventh of the total State population.

State Senatorial Districts and Apportionment of State Representatives

The four maps on pages 3 and 4 show the State senatorial districts and the apportionment of seats in the House of Representatives among the counties under every senatorial redistricting act and House reapportionment act adopted from 1901 to 1960. County lines are shown as they existed at the time of each redistricting and reapportionment.

Senatorial Districts. From 1776 to 1835, the State Constitution allotted one Senator to every county. From 1836 to 1868, the Constitution fixed the size of the Senate at 50 members, elected from districts periodically revised by the General Assembly in proportion to taxes paid to the State from the counties composing the respective districts. Thus each Senator was supposed to represent approximately the same amount of State taxes paid.

Since 1868, the State Constitution has prescribed a Senate of 50 members, elected from senatorial districts, and has directed that

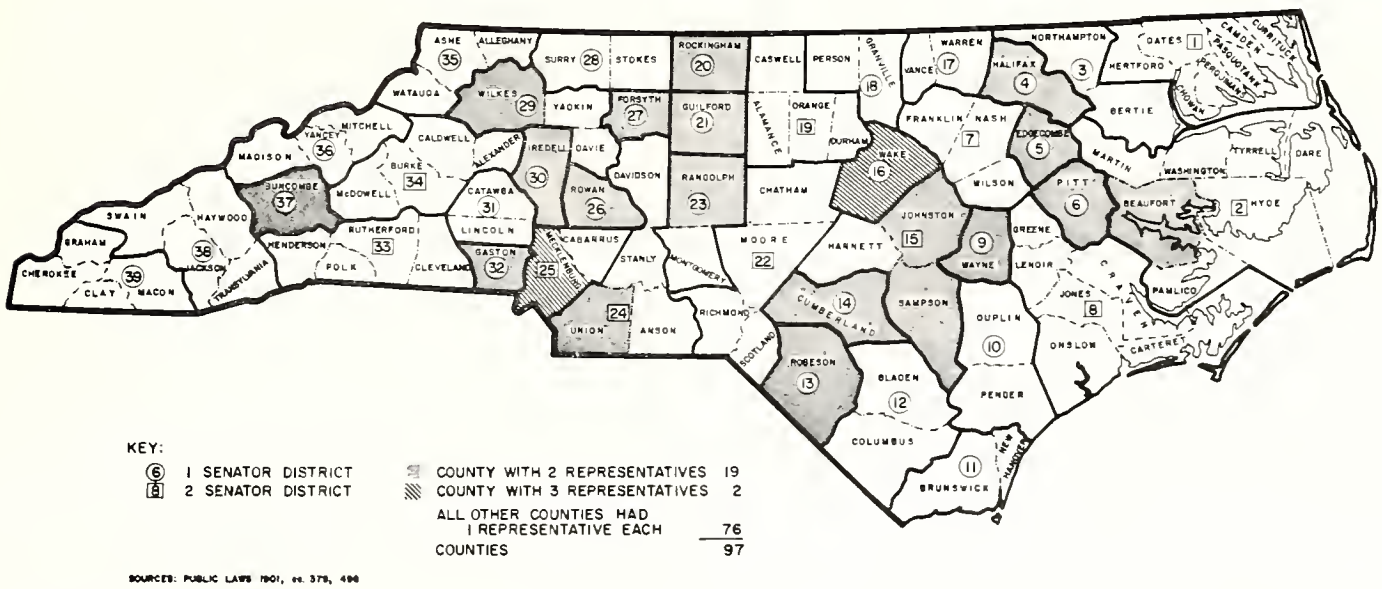
> The said Senate districts, shall be so altered by the General Assembly, at the first session after the return of every enumeration taken by order of Congress, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens

POPULATION OF NORTH CAROLINA SENATORIAL DISTRICTS—1960

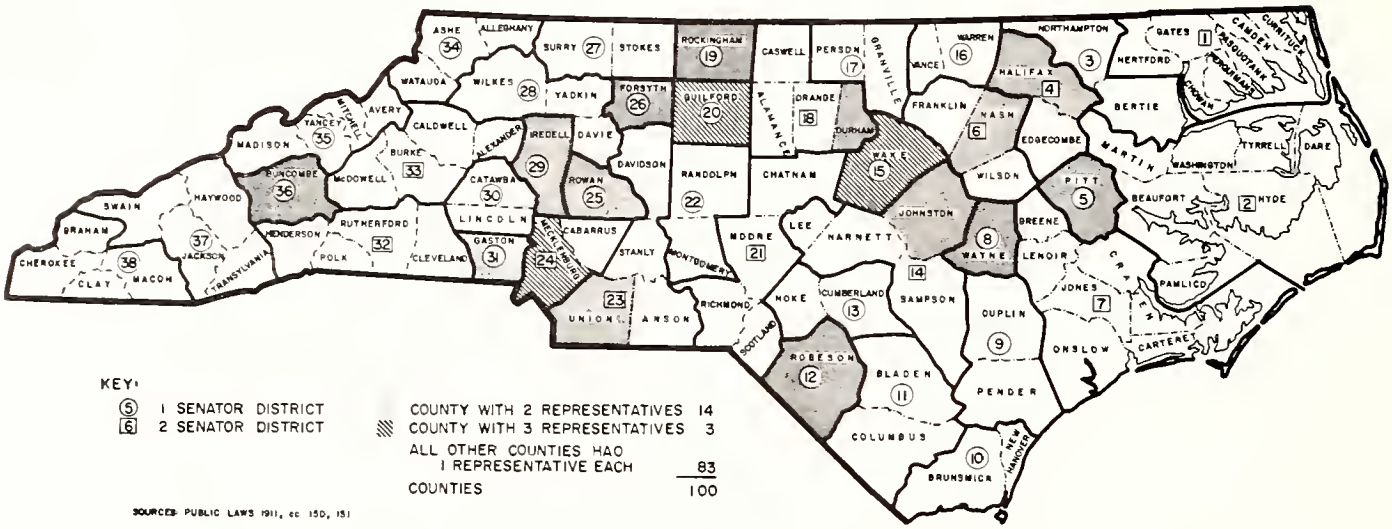
Dist.	*Pop.*	*Sen.*	*Pop. per Senator*	*Dist.*	*Pop.*	*Sen.*	*Pop. per Senator*
1	115,058	2	57,527	19	110,505	2	55,252
2	102,711	2	51,355	20	272,111	1	272,111*
3	78,465	1	78,465	21	150,954	2	75,477
4	113,182	2	56,591	22	189,428	1	189,428*
5	69,942	1	69,942	23	70,519	1	70,519
6	147,473	2	73,736	24	84,801	1	84,801
7	255,441	2	127,720	25	164,531	2	82,265
8	144,995	2	72,497	26	127,074	1	127,074*
9	178,533	2	89,266	27	137,881	2	68,940
10	246,550	2	123,275	28	117,878	1	117,878
11	89,102	1	89,102*	29	45,031	1	45,031
12	162,822	2	81,411	30	57,140	1	57,140
13	222,428	2	111,214	31	130,074	1	130,074*
14	171,499	2	85,749	32	121,421	2	60,710
15	89,541	1	89,541	33	51,615	1	51,615
16	128,644	1	128,644				
17	246,520	1	246,520*	Total	4,556,155	50	
18	162,286	2	81,143				

** Six districts consist of one county each. They are the 11th (Robeson), 17th (Guilford), 20th (Mecklenburg), 22d (Forsyth), 26th (Gaston), and 31st (Buncombe).*

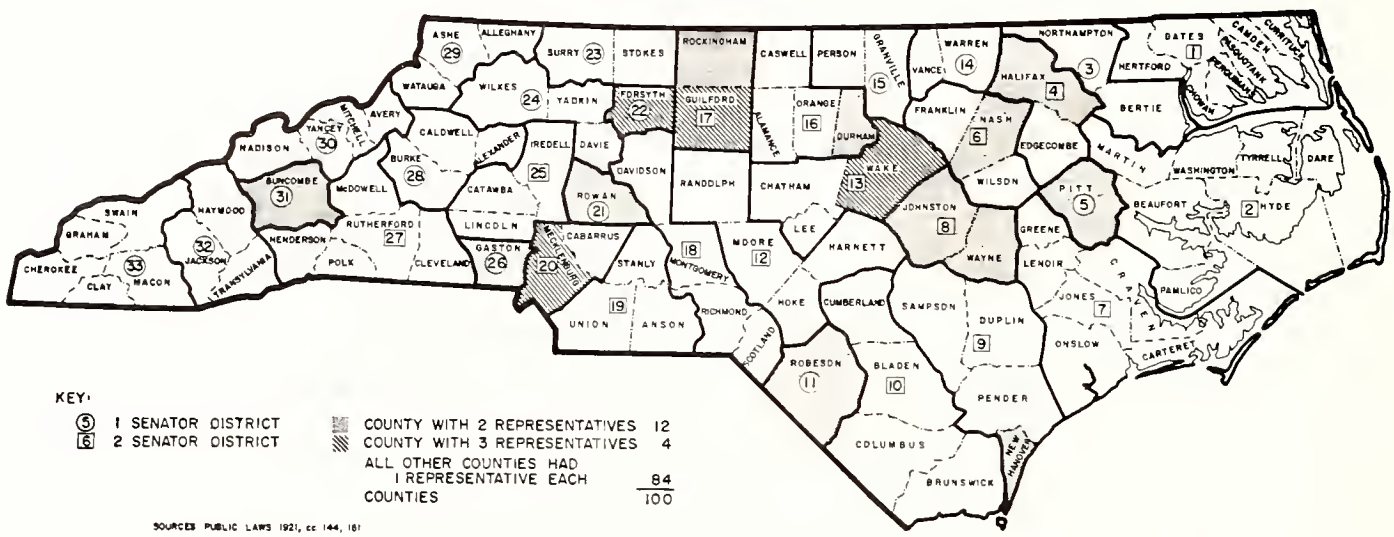
STATE SENATORIAL DISTRICTS AND APPORTIONMENT OF STATE REPRESENTATIVES: 1901-1911



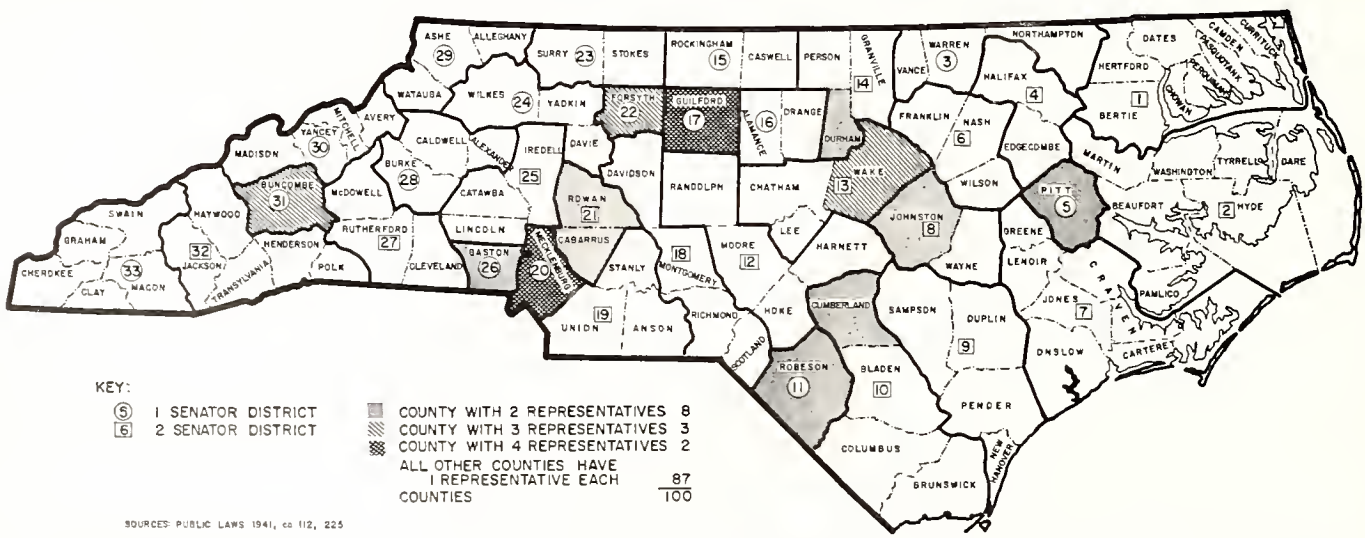
STATE SENATORIAL DISTRICTS AND APPORTIONMENT OF STATE REPRESENTATIVES: 1911-1921



STATE SENATORIAL DISTRICTS AND APPORTIONMENT OF STATE REPRESENTATIVES: 1921-1941



STATE SENATORIAL DISTRICTS AND APPORTIONMENT OF STATE REPRESENTATIVES: 1941-



Reapportionment of the House of Representatives by applying to the 1960 Census figures the mathematical formula set out in the State Constitution, Art. II, §§ 5 and 6, would produce the following changes in the existing apportionment: Buncombe, Cabarrus, Johnston, and Pitt would each lose one Representative, while Alamance, Cumberland, Mecklenburg, and Onslow would each gain one Representative.

and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory . . . .

The above-quoted provision appears to contemplate an equality of population as between senatorial districts. Since the adoption of that provision in 1868, however, there have never been 50 senatorial districts, one for each Senator. Instead, the Constitution of 1868 in the temporary districting which it established, and all subsequent redistricting acts of the General Assembly, have assigned one Senator to some districts and two Senators to others. Equality of representation has been sought in terms of the average population per Senator in each district, rather than in terms of the whole population of each district. The State-wide average population per Senator would be 91,123 persons, or one-fiftieth of the whole State population in 1960.

In the table of population by senatorial districts on page three, the whole 1960 population has been used, despite the constitutional provision that "aliens and Indians not taxed" shall be excluded for this purpose. The 1960 Census did not distinguish aliens from citizens, but counted all together; thus the 1960 Census does not provide the data necessary for excluding aliens from the whole population. (The 1950 Census showed the alien population of North Carolina then to be only 4,805 or one-tenth of one per cent of the total.) Indians have not been excluded because there are now no Indians in the State who are not legally subject to taxation.

Apportionment of Representatives. From 1776 to 1835, the Constitution allotted two members of the House of Commons to every county, irrespective of population, and one member to each of seven towns, designated "boroughs." From 1836 to 1868, the Constitution fixed House membership at 120, guaranteeing one member to every county irrespective of population and requiring the General Assembly periodically to reapportion the remaining members among the more populous counties in proportion to federal population (counting slaves at three-fifths), under a constitutionally prescribed formula.

Since 1868, the Constitution has prescribed a House of Representatives of 120 members, has guaranteed one member to every county without regard to population, and has directed the General Assembly, at its first session after each decennial federal census, to reapportion the remaining Representatives among the more populous counties in proportion to population, according to a formula set out in the Constitution.

When the original of this formula took effect in 1836, there were only 65 counties, leaving 55 surplus Representatives to be apportioned according to population. With 100 counties today, the automatic assignment of one Representative to every county leaves only 20 Representatives for apportionment according to population. Thus the House is now essentially a chamber representative of counties as governmental units, with only one-sixth of the 120 Representatives being apportioned to represent population as such.

POPULATION OF NORTH CAROLINA BY COUNTIES—1960

Alamance	85,374
Alexander	15,625
Alleghany	7,734
Anson	24,962
Ashe	19,768
Avery	12,009
Beaufort	36,014
Bertie	24,350
Bladen	28,881
Brunswick	20,278
Buncombe	130,074
Burke	52,701
Cabarrus	68,137
Caldwell	49,552
Camden	5,598
Carteret	30,340
Caswell	19,912
Catawba	73,191
Chatham	26,785
Cherokee	16,335
Chowan	11,729
Clay	5,526
Cleveland	66,048
Columbus	48,973
Craven	58,773
Cumberland	148,418
Currituck	6,601
Dare	5,935
Davidson	79,495
Davie	16,728
Duplin	40,270
Durham	111,995
Edgecombe	54,226
Forsyth	189,428
Franklin	28,755
Gaston	127,074
Gates	9,254
Graham	6,432
Granville	33,110
Greene	16,741
Guilford	246,520
Halifax	58,956
Harnett	48,236
Haywood	39,711
Henderson	36,163
Hertford	22,713
Hoke	16,356
Hyde	5,765
Iredell	62,526
Jackson	17,780
Johnston	62,926
Jones	11,905
Lee	26,561
Lenoir	55,278
Lincoln	28,814
McDowell	26,742
Macon	14,935
Madison	17,217
Martin	27,139
Mecklenburg	272,111
Mitchell	13,906
Montgomery	18,408
Moore	36,733
Nash	61,002
New Hanover	71,742
Northampton	26,811
Onslow	82,706
Orange	42,970
Pamlico	9,850
Pasquotank	25,630
Pender	18,508
Perquimans	9,178
Person	26,394
Pitt	69,942
Polk	11,395
Randolph	61,497
Richmond	39,202
Robeson	89,102
Rockingham	69,629
Rowan	82,817
Rutherford	45,691
Sampson	48,013
Scotland	25,183
Stanly	40,873
Stokes	22,314
Surry	48,205
Swain	8,387
Transylvania	16,372
Tyrrell	4,520
Union	44,670
Vance	32,002
Wake	169,082
Warren	19,652
Washington	13,488
Watauga	17,529
Wayne	82,059
Wilkes	45,269
Wilson	57,716
Yadkin	22,864
Yancey	14,008
State total	4,556,155

LEGISLATIVE PROGRAM OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES

The 1961 legislative program of the North Carolina League of Municipalities, adopted at its 51st Annual Convention in Charlotte on October 10, includes proposed acts affecting eight different aspects of municipal government and a resolution expressing general views on other matters of legislative policy. The specific acts recommended by the League are:

Subdivision Control. An act to provide for the orderly growth and development of urban areas by authorizing municipalities to require street improvements and installation of utility mains as a condition of approval of subdivision plats.

Street Rights-of-Way. (a) An act to minimize the cost of acquisition of rights-of-way for streets and highways by authorizing municipalities and the State Highway Commission to adopt ordinances and regulations for the protection against encroachment on rights-of-way of proposed streets and highways.

(b) An act to implement comprehensive street plans adopted jointly by municipalities and the State Highway Commission pursuant to Article 3A, Chapter 136 of the General Statutes of North Carolina, by authorizing municipalities to acquire street rights-of-way both in and around the municipality as may be required by such plans.

Zoning. (a) An act to repeal the mandatory "two-corner" zoning provision of G.S. 160-173.

(b) An act to amend G.S. 160-181.2, concerning extra-territorial zoning jurisdiction, so as to repeal the 2,500 population limitation and to authorize the municipality to appoint outside residents upon failure of the county to make such appointments.

Urban Redevelopment. An act to amend the urban redevelopment law to prescribe the procedure for rehabilitation of sub-standard areas; to provide for redevelopment of sub-standard business areas; and to clarify procedural provisions relative to notices, hearings and administrative matters.

Annexation and Incorporation. (a) An act to continue in force the 1947 annexation procedure until June 30, 1963.

(b) An act to prohibit "paper" incorporations under the General Statutes, within three miles of incorporated cities and towns.

Housing. An act to repeal the 5,000 population limitation of G.S. 160-183 (a), so as to make Article 15, Chapter 160 of the General Statutes entitled "Repair, Closing and Demolition of Unfit Dwellings" applicable to all cities and towns.

Revenue. (a) An act to provide for the more equitable allocation, as between the State and municipalities, of the proceeds of the franchise tax levied upon the gross receipts of public utilities from sales within municipalities.

(b) An act to provide permissive authority, for municipalities of 10,600 population and over, to submit to the qualified voters therein the question of the levy of a municipal individual occupation tax.

Ad Valorem Taxation—Assessment Procedure. (a) An act to provide for the inclusion of leased wire mileage in the statutory formula for allocation of corporate excess values of public service corporations by the State Board of Assessment.

(b) An act to permit municipalities located in more than one county to fix the assessment ratio for municipal ad valorem taxation.

Resolution on Legislative Policy

The resolution adopted was entitled, "A Resolution of Petition to the General Assembly of North Carolina urging Affirmative Action on Matters of Legislative Policy of Concern to Municipal Government" and reads as follows:

BE IT RESOLVED by the North Carolina League of Municipalities in annual convention assembled this 10th day of October, 1960:

Section 1. That the General Assembly of North Carolina is hereby urged to take affirmative action on the following matters of legislative policy of concern to municipal government—

(a) "The property tax base should be stable, uniform, broad and inclusive." This statement of policy, enunciated by the 1958 State Tax Study Commission, was implemented in its first essential by enactment of a mandatory schedule of periodic revaluation, now G.S. 105-278. Adherence to this schedule is vital to the stability, equity and adequacy of the property tax, the major source of local governmental revenue. The General Assembly should act vigorously and unanimously to prevent any postponement of revaluation.

(b) The sovereign immunity of the State from property taxation and assessment for improvements results in inequality of burden upon the taxpayers of certain municipalities which provide services and make improvements of benefit to State property. The General Assembly should investigate this problem to the end that appropriate action may be taken to equate the burden with the benefits.

(c) Privilege license taxes are levied by State, county and municipal government under a system that is inherently inequitable. The General Assembly, which alone can remedy this inequity, is urged to devote serious attention to this problem.

(d) Deficiencies in the present administration of justice are matters of public knowledge and municipal officials share the public concern for improvement in the system. In the interest of good government, municipal officials urge the General Assembly to resolve the differences as to means, in order to attain the goal of a fair and effective system of administering justice.

(e) Special, local legislation provides necessary flexibility in the delegation of powers to municipalities and is an essential part of the legislative process. If criticism of the volume of special legislation enacted is justified, such criticism may best be met by the cooperative efforts of municipal officials and legislators. Enactment of broad and general enabling laws, without the exclusion of municipalities in certain counties, serves to minimize the need for special legislation. Discretion on the part of municipal officials in determining their special needs, and timely presentation of requests for special acts would expedite the work of the legislators. The League of Municipalities pledges its cooperation to the General Assembly in affirmative action to meet this problem.

Section 2. That this resolution be presented before the appropriate committees of the 1961 General Assembly.

RECOMMENDATIONS OF THE GENERAL STATUTES COMMISSION

by **Giles R. Clark**
Revisor of Statutes

The General Statutes Commission is currently composed of: Robert F. Moseley, Chairman and an attorney of Greensboro who has served the Commission as its chairman since its beginning; Frank W. Hanft, Vice-Chairman and Professor of Law of the University of North Carolina; E. C. Bryson, Professor of Law at Duke University School of Law; Dr. Hugh W. Divine, Professor of Law of the Wake Forest College School of Law; W. Lunsford Crew, attorney of Roanoke Rapids; David M. Britt, attorney of Fairmont; Carl V. Venters, attorney of Jacksonville; Fred W. Bynum, Jr., attorney of Rockingham; and H. Gardner Hudson, attorney of Winston-Salem. Giles R. Clark, Revisor of Statutes and a member of the staff of the Attorney General, serves the Commission as ex officio secretary.

During the biennium, the General Statutes Commission has approved approximately twenty bills for submission to the 1961 General Assembly, and is still considering the possibility of submitting several other matters which have not been approved as yet. Some of the approved bills, with a brief explanatory note regarding the intended purpose and effect of each, are noted here.

An Act Relating to Acts of Misconduct Barring Rights of Intestate Succession. North Carolina has long been in need of a modernization and clarification of its law dealing with the property rights of spouses upon the occurrence of divorce, annulment, or certain misconduct which terminates, either temporarily or permanently, the marital relationship. With enactment of the new Intestate Succession Act by the 1959 General Assembly, certain provisions of the former law concerning acts of misconduct barring rights of intestate succession were repealed. The Legislature was cognizant of this and requested the General Statutes Commission to prepare new legislation setting forth procedures and remedies which would prevent an heir from profiting by his own wrongdoing. The Commission appointed a committee of experts in the field of inheritance and intestate laws to make a study of the inadequacies and inequities in the present statute, and to draft legislation to cure the defects found. Appointed to this committee were Professors of Law Frederick B. McCall of the University of North Carolina School of Law, who served as its chairman; W. Bryan Bolich of the Duke University School of Law, and Norman A. Wiggins of the Wake Forest College School of Law.

The Commission, working closely with the Committee, has prepared a carefully worded bill which collects in one chapter of the General Statutes statutory provisions relating to the subject of acts barring property rights. A special report of this bill, complete with comments of what the bill is designed to effect, has been prepared, and will be submitted to the General Assembly with the bill when it is introduced.

Although a complete explanation of this bill is not attempted by this article, it may be said generally that various sections of the bill will concern acts berring intestate succession rights of spouses; acts barring parents from intestate succession rights in property of their children; the effect of a willful and unlawful killing of the decedent by one entitled to succession rights, either as heir, as owner of entirety property, or as joint tenant with right of survivorship; or as one hold-

ing reversionary or vested remainder interest. Powers of appointment and revocation, and interest of the beneficiary in insurance benefits are included in the other sections of this bill. It is believed that the enactment of this bill will place in the statutes a clear and concise treatment of the laws and rules which have arisen from the long established policy of this State that no person shall be allowed to profit by his own wrongful acts and misconduct.

An Act Relating to Release of the Mortgagor by Unauthorized Dealings Between the Mortgagee and the Mortgagor's Assuming Grantee. In North Carolina today, contrary to the law in a majority of other jurisdictions, a person who has given a mortgage on real property, and who thereafter sells the property to a grantee who assumes the mortgage obligation, may be held liable on the mortgage debt even after the mortgagee has released the property to the mortgagor's assuming grantee. The mortgagor may also be looked to for payment after the mortgagee has given the assuming grantee a binding extension of time without consent of the mortgagor. Results of the same nature occur in cases where the mortgagor's grantee purchases subject to the mortgage and the mortgagee subsequently releases the security or grants an extension of time. The obvious inequity of these principles stems from the well established theory that as between the parties the assuming grantee is the principal debtor and the mortgagor becomes the surety, but, in the foregoing situations, the surety who has paid the obligation loses benefit of the security and is assigned only an unsecured debt. In an effort to prevent inequitable and unfair prejudice to the mortgagor, this bill would provide that where his consent had not been obtained a mortgagor or grantor under a deed of trust would be released: (a) of all liability, when his assuming grantee is given a binding extension of time, or is released from liability on the obligation; (b) to the extent of the value of the property released, when the property securing the mortgage is released after his grantee has assumed the debt; (c) to the extent of the value of the property, when his grantee takes subject to the mortgage and a binding extension of time is given by the mortgagee; and, (d) to the extent of the value of the property released when his grantee takes subject to the mortgage and all or part of the property securing the debt is released.

An Act to Amand Chapter 39 of the General Statutes Relative to Construction of Conveyances Where Clauses in Such Conveyances are Inconsistant. Generally a liberal rule for construction of conveyances is applied by the courts of this State, which looks to the instrument as a whole without reference to the formal divisions, and which seeks to ascertain the intention of the parties rather than permitting antiquated technicalities to override the plainly expressed intention of the grantor. However, the broad general rule which seeks the intent of the grantor from the "four corners" of the instrument, has been subjected to many technicalities which frequently defeat the obvious and clear intention of the parties. Most technical rules of construction are vestiges of the common law, and have universally been renounced as having only historical importance. By this Act the Commission attempts to embody in the statutes an equitable rule for construction of conveyances which will give effect to the manifest intention of the parties, without giving undue preference to the language of the various clauses or their location in the instrument. The bill expressly provides that it shall not prevent application of the Rule in Shelley's Case.

An Act to Amend G.S. 13-18.1 Relating to the Manner of Probate of Written Attested Wills so as to Provide for Acknowledgment of a Testator's Signature Before the Clerk of Superior Court. Before an attested written will may be admitted to probate, G.S. 13-18.1 presently requires either testimony of the attesting witnesses, or proof of the handwriting of such witness and of the testator, along with proof of such other circumstances as will satisfy the clerk of superior court as to the genuineness and due execution of the will. Compliance with these statutory requirements is mandatory. In many cases locating an attesting witness, or determining that such witness is deceased, out of the State, or not to be found within the State, incurs considerable expense, inconvenience, and loss of time before the will is admitted to probate. If enacted into law, this bill would allow a testator during his lifetime to appear before any clerk or assistant clerk of the superior court and acknowledge his signature, which would then be certified by the clerk. Such acknowledgment and certification would then permit the will to be admitted to probate without the testimony of attesting witnesses. The procedure allowed by this bill is alternative to existing procedures, and would be followed only in those cases where the testator so elected.

An Act to Provide That the Allegation of Grounds for Divorce from Bed and Board, Alimony Without Divorce and Alimony Pendente Lite Shall be Sufficient if Couched in the Language of the Statute. Presently in North Carolina in actions of divorce from bed and board, alimony without divorce and alimony pendente lite, under G.S. 50-7, G.S. 15-15 or G.S. 15-16, respectively, it is necessary that the plaintiff set out with particularity the acts of cruelty upon the part of the other spouse on which the cause of action is based. The requirement of such detailed pleading of scandalous conduct provides ready material for adverse and embarrassing publicity directed toward the parties and their children, and in many cases attaches a stigma which exists for years. The addition of this bill to the general statutes would permit the complaint to set forth the grounds for divorce substantially in the language of the statute in the instances specified, without detailed fact pleading of the scandalous acts complained of, and thereby save some of the dignity and respect of the parties and their families from embarrassing adverse publicity and notarity. The simpler allegations, allowed by this bill, of the scandalous conduct complained of would still inform the defendant of what he must defend against, and, in those cases where it is necessary, a defendant is entitled to a bill of particulars setting forth in detail the facts upon which the prayer of relief is grounded.

An Act to Provide for the Appointment of an Attorney in Fact Which Shall Continue to be Effective Notwithstanding the Incapacity or Incompetence of the Principal Therein. Under present law the authority of the attorney in fact terminates upon the incapacity, incompetence, or death of the principal, as the capacity to act by agent depends in general on the capacity of the principal to do the act himself if he were present. Many persons desire that their attorney in fact continue to act for them even after they become incapacitated, but presently an attorney in fact cannot be so authorized unless his power is coupled with an interest. This bill would make available a procedure whereby a person may execute a power of attorney which will continue in effect notwithstanding any incapacity or mental incompetence of the principal. The power of attorney must be signed by the principal under seal, must contain a statement clearly indicating the

principal's intention that it shall continue in effect after he becomes incapable of acting for himself,, and is valid only upon its being filed in the office of the register of deeds. As a safeguard when no provisions are made for an accounting, the attorney in fact must file inventories and accounts with the clerk of superior court for auditing. The power of attorney is revoked by the death of the principal, the appointment of a guardian or trustee of the principal's property, or by a written revocation executed by the principal while he is not incompetent.

An Act to Amend Article I of Chapter 45 of the General Statutes so as to Establish the Right of Installment Buyers Under Conditional Sales and Purchase Money Chattel Mortgages to Possession Before Default. Contrary to popular conception, the law in this State is that where a chattel is bought and sold and all or part of the purchase price is to be paid by installments, secured by conditional sale or purchase money chattel mortgage, the seller by virtue of the security instrument holds the title to the goods and along with it the right to possession both before and after default. This is entirely out of accord with the understanding and practice of the business economy. This bill brings the law into accord with the business practice and common understanding by providing that where an installment sale is secured by a conditional sale, purchase money chattel mortgage, or similar security, and possession is by consent placed in the buyer, it shall be deemed to be the intention of the parties, in the absence of express agreement to the contrary, that the buyer shall be entitled to retain possession until default. The bill in no way interferes with the security of the vendor.

An Act to Make the Statute of Limitations on Judgments Rendered by a Justice of the Peace Ten Years. When docketed in the superior court, a judgment rendered by a justice of the peace becomes a judgment of the superior court for the purposes of imposing a lien on the real estate of the defendant and for having execution issue from that court to enforce its payment, and for these purposes a ten-year statute of limitations is provided. But no civil action can be brought on it as a judgment of the superior court, and such actions must be brought on the original judgment in the justice's court where a seven-year statute of limitations is applicable. By this bill the statutes would be amended so as to provide a uniform ten-year statute of limitations for all actions arising on a judgment of a justice of the peace, whether for lien, execution, or suit on the judgment.

An Act to Amend G.S. 1-315 Relating to Property Liable to Sale Under Execution so as to Enlarge the Kinds of Property Subject to Such Sale. This bill rewrites G.S. 1-315 to enlarge the kinds of property and interest therein of a judgment debtor which are subject to sale under execution, by including the following: equitable and legal rights of redemption in real and personal property of the debtor transferred to a trustee for security by him; choses in action represented by instruments which are indispensable to the chose in action; choses in action represented by indispensable instruments, which are secured by an interest in property, together with the security interest in the property; and, interest of the debtor as vendee under conditional sales contracts of personal property. The bill also provides more specific provisions relating to the giving of notice when a third party has some interest in the property which is to be sold or executed upon.

An Act to Require that Life Tenants Who are Parties to Partition Proceedings Allege Their Date of Birth. In cases where it appears that an actual partition of jointly owned real property cannot be made without injury to the parties, the court may order a sale of the property. If, in such proceedings, a life estate exists in the property, the life tenant may join in the proceedings and have the life interest sold. The statutes do not require that the birthdate of the life tenant be alleged in the petition although this issue is of significance in determining the value of his interest. The method and *quantum* of proof of this question is presently a matter of uncertainty. This bill constitutes the birthdate of the life tenant a material allegation of the petition, thereby giving the respondents direct notice and affording them an opportuniyt to admit or deny this allegation which vitally concerns the value of the property.

An Act to Remove the Exemption of Women and Sunday Arrest from G.S. 1-410 Relating to Arrest and Bail. The present restrictions which protect women from civil arrest except in a few specific instances, and which prohibit Sunday arrest, afford a method whereby many debtors may thwart the processes of justice. In today's business world, women have achieved a status equal with men and incur much the same obligations and liabilities, but this antiquated provision affords them a method for evasion of their debts which is not available to their male counterparts. The prohibition against civil arrest on Sunday is frequently used to the advantage of a debtor who wishes to avoid execution of judgments against him. It is felt that no valid reason presently exists for these provisions which would be repealed by this bill.

An Act to Repeal G.S. 39-3 Relating to Conveyance to Slaves. Prior to the Civil War a slave could not be the owner of property, money, or any material thing, except in a very qualified way. The General Assembly of 1869-70 enacted the present provisions of G.S. 39-3 validating gifts or conveyances made to former slaves, and declared such conveyances shall have the effect of transferring title to property. For many years conveyances to former slaves have been recognized as valid even in the absence of such statutory provisions. It is believed this statute has served its purpose and is no longed of useful value. Under modern concepts, it is felt that the need for this legislation vanished many years ago.

An Act to Amend Chapter 29 of the General Statutes. Since enactment of the Intestate Succession Act by the 1959 General Assembly, a few minor amendments of the Act have been proposed which seek to improve its operation. Recognizing that such an extensive item of legislation must of necessity contain some minor flaws and ambiguities, and that the experience of attorneys practicing under the Act would provide a valuable source of information, the Commission took all such suggestions under advisement. The Commission, working closely with its Committee which originaally drafted the new intestate succession laws, has studied the proposed amendments and prepared legislation to affect the changes considered worthwhile. The amendments proposed are generally of a clarifying nature and seek to more forcefully express the original intent of the Act. The amendments recommended for enactment include those concerning the effect, time, and method of renunciation of intestate succession rights; the effect, time, and method of an election by a surviving spouse to take a life interest in the estate in lieu of the intestate share provided; and, clarification of provisions relating to advancements made by the intestate. As a related project, certain amendments will be recommended which relate to the effect and manner of dissent from a will.

PROPOSALS OF THE COMMISSION ON REORGANIZATION OF STATE GOVERNMENT

The fourth Commission on Reorganization of State Government submitted to the Governor and the General Assembly of 1961 eleven reports containing a total of 33 recommendations, most of which call for legislative action.

Included are proposals for the establishment of a State cultural center to be called "Heritage Square," for better planning of State governmental building development in Raleigh, for improved legislative staff services, for reconstitution of the governing board of the North Carolina Museum of Art, for improved agricultural marketing facilities, and for discontinuation of certain State farming operations. These and other recommendations are discussed in more detail later in this article.

Membership of Commission. The legislative resolution creating the Reorganization Commission directed the Governor to appoint all nine members. Governor Luther H. Hodges selected Rep. David M. Britt of Fairmont, Sen. Claude Currie of Durham, Rep. H. Cloyd Philpott of Lexington, Rep. Dwight W. Quinn of Kannapolis, Dr. David J. Rose of Goldsboro, Rep. Frank W. Snepp of Charlotte, Rep. H. P. Taylor, Jr., of Wadesboro, Rep. George R. Uzzell of Salisbury, and Mr. Fred H. Weaver of Chapel Hill. The Commission chose Mr. Uzzell as its Chairman, Dr. Rose as its Vice-Chairman, and Mr. Britt as its Secretary. Mr. Philpott resigned from the Commission in February to make a successful race for the lieutenant-governorship of North Carolina.

Objectives of Commission. The legislative resolution establishing the Commission on Reorganization of State Government stated its duty to be

> to make a detailed and thorough study of all agencies . . . of State government with the view of determining whether or not there shall be a consolidation, separation, change or abolition of one or more of these several agencies . . . in the interest of more efficient and economical administration.

Working Methods. The fourth in a series of legislatively-authorized study commissions of the same name and purpose active since 1953, the Commission on Reorganization of State Government generally followed the pattern of its predecessors in the way it went about its job.

To serve as its research staff, the Commission engaged the Institute of Government of the University of North Carolina at Chapel Hill.

Some suggestions of subjects of inquiry by the Commission came from state officials; others originated with members of the Commission. A subcommittee of the Commission was ordinarily appointed to make a detailed study of each topic approved for inquiry. Written and oral factual reports were received by the subcommittees from the Commission's staff, interested State officials were called in to give their views, and on two occasions public hearings were held to obtain wider expression of opinion on matters under consideration by subcommittees. Following the presentation of each subcommittee report to the full Commission, there was full discussion, tentative conclusions were reached, a report and implementing bill (where necessary) were drafted and submitted to the administrators of affected agencies for criticism, the report and bill were reviewed and approved by the Commission, and the reports were then printed and released to the press through the Governor's Office and mailed to prospective 1961 legislators.

Copies of the reports of the Commission may be obtained from the Institute of Government, Chapel Hill.

First Report: Succession to Elective State Executive Offices and Disability of Officers

The amendment of several sections of the State Constitution is proposed by the Reorganization Commission in order that (1) a longer line of succession to the Governor's office may be established, (2) provisions for temporary succession to the other constitutional executive offices may be clarified, and (3) means may be provided for determining when an elected State executive is physically or mentally so disabled that a successor may take over. If approved by the General Assembly of 1961, the amendments would go to the voters for approval at the following general election. The current proposals are closely modelled after

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This summary of the reports and recommendations of the fourth Commission on Reorganization of State Government was prepared by John L. Sanders, Assistant Director of the Institute of Government.

parts of the revised Constitution which died of other causes in the 1959 General Assembly.

Only the elected State executives—the Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance—would be affected by the Commission's recommendations. All of these officials are now elected by the people for four-year terms, and would continue to be elected if the proposed changes are adopted.

The specific changes recommended are these:

Governor. The State Constitution now puts the Lieutenant-Governor first in line of succession to the governorship. The second and only other person now in the line of succession is the President of the Senate. If the Senate is not in session when its President must assume the governorship, the Constitution directs the Secretary of State to convene the Senate so that it may elect a President who becomes acting Governor.

The cumbersomeness of this procedure and uncertainty as to how it would be applied in certain cases (for instance, if the Governor, Lieutenant-Governor, and Secretary of State were killed in a common disaster), prompted the Commission's recommendation that the General Assembly be constitutionally empowered to prescribe by statute what officers, after the Lieutenant-Governor, shall be in the line of succession to the governorship. Thus a line of automatic succession of any desired length could be established.

While the Constitution now provides that in case of the Governor's "inability to discharge the duties of his office . . . ," the Lieutenant-Governor succeeds to the Governor's office "until the [Governor's] disabilities shall cease, or a new Governor . . ." is elected, no procedure (except possibly impeachment) is available for officially determining when a Governor is incapacitated or when he has recovered. Impeachment would hardly work, since only the Governor can call a special legislative session, and even if he were able to do so, he would be unlikely to call a legislative session if his impeachment and removal were threatened.

The solution proposed by the Reorganization Commission is that the General Assembly be authorized to find by a two-thirds vote that the Governor is physically or mentally incapacitated, and to find by majority vote that his capacity has been restored. Should the legislature not be in session when a question of the Governor's incapacity arises, a majority of the seven-member Council of State could call it into session for the limited purpose of determining that question.

An additional recommendation would permit a Governor who is physically incapacitated and wishes to withdraw from office temporarily to do so by written notice to the Secretary of State. Upon his subsequent recovery, he could regain his office in the same manner.

Lieutenant-Governor. The main features of the Reorganization Commission's recommendations with regard to the Lieutenant-Governor's office would (1) clarify the now uncertain status of the President *pro tempore* of the Senate as successor to the presidency of the Senate when the latter office becomes vacant, and (2) empower the legislature to prescribe by law a method for determining when the Lieutenant-Governor is physically or mentally incapable of carrying on his official duties.

Other Elective Executive Officers. The authority of the Governor to appoint an acting successor to perform the duties of any of the other eight elective State executive officers, and the circumstances under which such power could be exercised, are clarified in another of the Commission's suggested constitutional changes. The General Assembly would be authorized to provide by statute a method for determining when any of these eight officers is incapacitated, so that a temporary successor could be appointed by the Governor.

Second Report: State Printing

The State of North Carolina is currently spending over $1,000,000 a year for printing and binding of all kinds, exclusive of mimeographing. Statutes make the Director of Administration responsible for procuring practically all State printing. State printing is obtained from three sources: commercial printers, who bid competitively for parts of the State's printing business; the State College Printshop; and the Prison Enterprises Print Plant of the State Prison Department. State law requires state agencies to use prison-made goods and services when competitive with private suppliers. No changes are proposed in this area.

After reviewing the great quantity and variety of State publications currently being issued, the Commission on Reorganization of State Government noted "that publishing is a vital part of the work of many agencies," but concluded that the publication cost problem "seems to lie with the publishing agencies themselves—in their tendency to issue more publications, in more expensive styles, and in larger quantities than is justifiable."

To cope with this problem, the Commission recommends the transfer from the Governor and Attorney General to the Department of Administration of the statutory duty (1) to prescribe the scope, format, method of reproduction, and quantity of annual and biennial reports issued by state agencies; and (2) to prescribe the format, manner of reproduction, and quantity (but not the scope) of state publications other than annual and biennial reports. The Governor and Attorney General have in fact already delegated their powers in this field to the Department of Administration.

Third Report: The North Carolina Museum of Art

The North Carolina Museum of Art is now governed by the 16-member Board of Directors of the North Carolina State Art Society, Incorporated. Created by statute, the Board consists of eight members elected by the State Art Society, four members appointed by the Governor, and four *ex officio* members: the Governor, the Attorney General, the Superintendent of Public Instruction, and the chairman of the art committee of the North Carolina Federation of Women's Clubs.

The State Art Society was chartered in 1927 as a non-profit corporation to promote art in North Carolina. Membership is available on payment of a $5 annual fee. The Museum of Art was originated by the Society. When the State began aiding the Museum financially, and even when in 1947 the General Assembly appropriated $1,000,000 for the purchase of art works for the Museum, the money was appropriated to the State Art Society, which is legally responsible for operating the Museum of Art. The current state appropriation to the State Art Society for operating the Museum is $135,000 a year, supplemented by about $7,000 in Society funds.

Recognizing the growing public interest and investment in the Museum of Art and its character as a State undertaking, the Commission on Reorganization of State Government concludes "that the time has come when a more rational and regular arrangement for the government of the Museum of Art is called for . . ." to replace the present Board, which is dominated by representatives of essentially private organizations.

The Commission proposes that the responsibility of the State Art Society and of its Board of Directors for the operation of the Museum of Art be transferred to a new 11-member Board of Trustees, composed of eight members appointed by the Governor for overlapping four-year terms, the Governor, the Superintendent of Public Instruction or a person designated by him, and one member chosen by the State Art Society. (The State Art Society would continue to exist by virtue of its charter, but would have no further control of the Museum of Art.) Abolition of the State Art Commission, a temporary agency, is also recommended.

The Reorganization Commission also recommends that the post of Director of the Museum be created by law, that he be chosen by the new Board of Trustees, and that he administer the Museum in accordance with policies set by the Board of Trustees.

Fourth Report:
The General Assembly of North Carolina

The Commission on Reorganization of State Government in its fourth report recommends several improvements in legislative staff services and facilities. Sharing among them over half a century of service in the North Carolina legislature, the members of the Commission are interested in enabling legislators to be well informed and to work effectively. No change in the powers and duties of the General Assembly is recommended.

Research staff. Several alternative means of providing legislators with needed objective information and research facilities were considered, among them the possibility of establishing a legislative council such as exists in 39 other states. The Commission decided, however, to make a more modest and experimental beginning. It recommends that two members of the staff of the Institute of Government be assigned to work as full-time research assistants to the General Assembly during the 1961 session. Their duties will be limited to research in the non fiscal areas of public law and government. Subsequent sessions may continue or abandon this service as they see fit.

Library. Members of the General Assembly need to have close at hand limited library facilities for their use. On the recommendation of the Reorganization Commission, the Commission in charge of planning the new Legislative Building will include therein adequate provision for a small legislative library.

Bill checking. As a safeguard against technical flaws in current legislation, the Commission has asked the Institute of Government to examine for mechanical errors (such as erroneous statutory citations) every bill introduced and to report any defects found to the introducer and the committee to which the bill is referred.

Bill printing. Currently all public bills introduced in the General Assembly are printed for the use of legislators and other interested persons. The Reorganization Commission recommends switching from letterpress to a photoduplication process by which every public bill can be reproduced in the exact form in which introduced and distributed within 24 hours of introduction, thus effecting a great saving of time, eliminating the possibility of variance between the original bill and the copies, and also saving substantially in the cost of legislative bill printing.

Fifth Report:
Heritage Square

The establishment of "Heritage Square", a center which would eventually include buildings for the State Department of Archives and History, the State Library, the North Carolina Museum of Art, and the State Museum of Natural History, is recommended by the Commission on Reorganization of State Government in its fifth report.

Recognizing the pressing need of the State Library and the Department of Archives and History for new quarters, and anticipating similar requests for new or enlarged quarters for the Museum of Art and Museum of Natural History in the near future, the Reorganization Commission proposes to meet those immediate and future needs in the form of a museums-library center which would be a significant creation in itself. "We believe," says the Commission, "that the bringing together in such a center of the State Library, the Department of Archives and History, the Museum of Art, and the Museum of Natural History can stimulate the interest and pride of the people of North Carolina in their cultural heritage and its development, and can facilitate and encourage fuller cooperation among those agencies in their common educational mission."

The Commission recommends that the 1961 General Assembly appropriate sufficient funds to acquire necessary land for Heritage Square and to construct buildings thereon for the State Library, Department of Archives and History, and Museum of Art. Space needs of the Museum of Natural History are not so urgent and can be deferred until later, the Commission states.

The Commission suggests that the long-range cost of Heriatge Square should be no greater than the cost of erecting the structures involved under the uncoordinated, building-by-building approach which will be its certain alternative.

Important by-products of the proposed center will be the release for use as offices of the space now occupied by the Library and museums, and the joint use of certain facilities (such as an auditorium and workshops) by two or more of the museum agencies if located in nearby and perhaps connected buildings.

To acquire a suitable site for Heritage Square, to prepare a general plan for its development, and to approve plans for specific buildings for the agencies to be housed on the Square, the Commission recommends the creation of a temporary nine-member Heritage Square Commission, to be appointed by the Governor.

Sixth Report:
State Capital Planning Commission

Reviewing past and current practices in providing housing for State agencies in the capital city, the Reorganization Commission finds the present case-by-case approach to the location and construction of State office buildings in Raleigh to be inadequate to future needs. The group raises a number of questions which it recommends be given thorough study. The Commission asks, for instance, when, how many, and what types of buildings will be needed over the next ten to twenty years; whether they should be concentrated in the Capitol-Governor's Mansion-Caswell Square triangle or located in less congested areas of the city; and whether the present system of budgeting capital improvements for Raleigh agencies for only one biennium at a time should be replaced by a longer-range capital budget.

Pointing out the advantages of the fairly compact and convenient group of governmental buildings now clustered around and near the Capitol and the projected Legislative Building, the Reorganization Commission questions the advisability of the recent construction of the Motor Vehicles Building a mile from the center of State government and the proposed erection of a new Highway Building even more distant from the center. "The choice between concentration and dispersal" of state buildings, the Commission states, "should take into account all relevant factors, and not just the short-run interests of the individual agencies involved."

To find answers to these questions and problems and to develop a rational policy and program for meeting the needs created by the inevitable growth of State government, the creation of a temporary nine-member State Capital Planning Commission, to be named by the Governor, is recommended.

The Planning Commission would work closely with the Department of Administration and all other administrative agencies in analyzing present State laws, policies, and practices regarding the financing and construction of State buildings in Raleigh; in projecting future needs; and in formulating and recommending to the Governor and General Assembly a long-range capital improvement policy and program for State administrative agencies in Raleigh.

Seventh Report: Commercial Fisheries

The 1959 General Assembly, instead of enacting a proposal to create an independent Commercial Fisheries Commission, directed the Commission on Reorganization of State Government to study the need for such an agency to administer the State laws regulating commercial fishing. This report is the result of the study made in compliance with that instruction.

The Department of Conservation and Development now performs its duties with respect to commercial fisheries through its Division of Commercial Fisheries, based in Morehead City. The Division enforces all State laws on commercial fishing, licenses commercial fishing boats and nets, and collects license fees and taxes paid by commercial fishermen and by fish handlers and packers. It also conducts programs to protect and rehabilitate fisheries resources, including the successful oyster planting program.

Within the Board of Conservation and Development, there is the Commercial Fisheries Committee which devotes particular attention to commercial fisheries. Advising the Board of Conservation and Development is the Commercial Fisheries Advisory Board, made up of persons with special knowledge of the industry.

After its review and a public hearing, the Commission on Reorganization of State Government concluded that there is insufficient justification at present for the creation of a separate commercial fisheries agency. Any needed improvement can be accomplished within the existing organizational framework, says the Commission.

The Commission does agree, however, that greater interest should be taken by the State in helping solve the problems of commercial fishermen, and it suggests that the General Assembly of 1961 take the steps necessary (including the appropriation of sufficient funds) to enable the Division of Commercial Fisheries to render greater service to the commercial fisheries industry.

Eighth Report: N. C. State Ports Authority: Terms of Members of the Board

When the governing board of the North Carolina State Ports Authority was created in 1945, all members were appointed for six-year overlapping terms, so that at no time was the Board without several experienced members.

In 1953, the law was amended to make all Ports Authority board terms four years, expiring on June 1 following the inauguration of each new Governor. As a result, each new Governor may appoint an entirely new Ports Authority board. In the view of the Reorganization Commission, "Continuity of program and policy is essential to the long-term success of the Authority."

To insure such continuity, the Commission recommends legislation changing the terms of all nine Ports Authority board members from four to six years, with three terms expiring every second year. The proposed change would not restrict the authority of Governor Terry Sanford to appoint the full membership of the board in 1961, but would require him to make his appointments so as to initiate the staggered term arrangement.

Ninth Report: Agricultural Marketing

Recognizing the promise of improved marketing practices and facilities as one means of coping with the economic problems of the farmer, the Reorganization Commission reviewed the marketing activities of the Division of Markets of the State Department of Agriculture, the Agricultural Extension Service at North Carolina State College, and the Department of Conservation and Development.

Principal attention is given in the report to the Raleigh Farmers Market and its value to farmers as an indispensable meeting place for the buyers of large quantities of fresh fruits and vegetables and the small-scale producers of such produce. Constructed in 1955 by private enterprise and now operated jointly as a commercial and state activity, the Raleigh Farmers Market in 1959 had sales of $12,000,000 worth of farm produce by 13,400 producers. The chief purchasers of these commodities are large chain food stores and food brokers, which carry on some preliminary processing and packaging in warehouses leased from the Farmers Market.

It is the recommendation of the Reorganization Commission that the General Assembly consider the establishment of terminal markets for fruits and vegetables, to be so located as to make such facilities economically accessible to farmers throughout North Carolina. Such facilities would not only offer expanded outlets for more farmers, but would provide research information and teaching material helpful to farmers in producing, packaging, and marketing agricultural commodities.

Tenth Report: State Farming Operations

The tenth report is chiefly a factual survey of current State farm operations—the number of such farms, their location, the acreage in use, and the net return on the State's investment.

The considerations which caused these farms to be started by the State —such as the need to provide fresh foods not otherwise available, and the utilization of inmate labor—no longer apply in many cases, the Commission finds. "It is essential," the Commission states, "that the public interest currently being served be of sufficient importance to justify the continuation of each state farm operation."

Not all of the 54,343 acres of State-owned farm land and the 2,040 acres of rented land now meet that test, the Commission concludes. Some State farms are too small for efficient mechanical production, several do not make year-round productive use of full-time hired workers, several operate entirely with hired labor, mental hospitals are using less and less patient labor, some institutional farms have operated at a loss for years, and farm operations take the time of administrative personnel away from their primary tasks.

The Reorganization Commission specifically recommends discontinuation of the farming operations at Appalachian State Teachers College, Elizabeth City State Teachers College, the State School for the Blind and Deaf at Raleigh, and the State School for the Deaf at Morganton, all of which are noted as small farms, now serving no particular public interest. It recommends continued study of State farming operations, and particularly of agricultural research stations, to the end that those

farms not now serving the public interest may be discontinued.

Eleventh Report: Community Mental Health Clinics

In determining which State agency should supervise the growing number of community mental health clinics, the Commission on Reorganization of State Government in its report reviews the present state mental health organization and activities and the progress which has been made in that field in recent years. The principal emphasis, however, is on the clinics.

In the decade 1950-1960, the number of community mental health clinics grew from four to eleven, and in addition, eight county health departments now have either a clinical psychologist or a psychiatric social worker on the staff. Five of the clinics are local or private in origin; six were started by the State Board of Health. In 1949, these clinics served 761 patients and conducted 3,406 interviews; in 1959, they served 4,318 patients and held 31,976 interviews.

Expenditures for the clinics have increased ten-fold in this period, from $63,000 to $606,000. The cost of operation of the clinics is met from State and federal funds plus local and public and private aid, the details of financing varying from one clinic to another.

Since 1949, the State Board of Health has had the duty of representing the State in mental health transactions with the federal government and of supervising local mental health clinics.

While it concludes that eventually all of the mental health activities of the State (including the operation of mental hospitals and schools and supervision of mental health clinics) should be under a single agency, the Reorganization Commission states that such a move would not be timely at present. The distinction between preventive and remedial services in mental health, while lessening, is still present. Local support for the community mental health clinics, now essential to their success, can be more effectively maintained through the focus on community and prevention which the present tie with the State Board of Health and local health agencies encourages. The energies of the Hospitals Board of Control now are largely taken up by the Board's aggressive program for improving the facilities and services of its institutions.

As a means of making maximum use of present resources through coordination of the activities of the agencies involved, and as a timely step in preparation for the unification of all mental health programs under one administrative direction, the Commission proposes the creation of an Interagency Committee on Mental Health, composed of the administrative heads of five State agencies. They are the Commissioner of Mental Health (Chairman), State Health Director, Superintendent of Public Instruction, Commissioner of Public Welfare, and Director of Administration (as the State's fiscal officer).

The Committee's tasks would be (1) to review the mental health policies and programs of the agencies represented on the Committee for the purpose of coordinating those policies and programs and making the best use of available resources, and (2) to make recommendations to the Governor and General Assembly regarding needed changes in the organization and administration of the mental health programs of the State.

SUGGESTED CHANGES IN MOTOR VEHICLE LAWS

Biennially, the North Carolina Department of Motor Vehicles, as one phase of its general program of highway safety, requests and receives suggestions for changes in the motor vehicle laws from judges, solicitors, enforcement and administrative officers of the Department of Motor Vehicles, and other officials, State and local, concerned with the motor vehicle laws. Based on an analysis and evaluation of recent suggestions, the following changes in the law have been described in detail in *Changes Suggested in the Motor Vehicle Laws of North Carolina* (Institute of Government, Chapel Hill, November, 1960, 81 p.) and recommended by the Department for consideration by the General Assembly as a major part of the Department's legislative program for 1961.

This summary of the suggested changes in Motor Vehicle Laws was prepared by John R. Montgomery, Jr., Assistant Director of the Institute of Government.

MAJOR PROPOSALS

Scientific Tests for Intoxication. Laws permitting the use of chemical tests to determine whether motorists are intoxicated surround North Carolina. Virginia, Tennessee, Georgia, South Carolina, and twenty-eight other states now have such laws, considered a practical necessity for the adequate interpretation of chemical test results. The Department proposes legislation which would establish a statutory scale of evidentiary values relating to the proper interpretation of the test results virtually identical to that

recommended by the Uniform Vehicle Code and by most medical authorities. Companion legislation would establish an "implied consent" law under which the operation of a vehicle upon the highways would constitute consent of the operator to submit to a chemical test for intoxication and under which refusal to submit would constitute grounds for revocation of license.

Mechanical Inspection Law. Statistics indicate that roughly 6% of all vehicles involved in accidents in North Carolina in 1959 had mechanical defects which could have been causal factors in the accidents. Twenty states now provide for official programs of periodic mechanical inspections by statutory provision; and the Department proposes a mechanical inspection law which would actually be an expansion of a "pilot" program of inspection of "foreign" vehicles, currently administered by the North Carolina State Highway Patrol under the authority of G.S. 20-53(d). The proposed legislation would utilize State-licensed private garages as inspection stations, as distinguished from State-operated inspection points, a significant departure from the type of inspection law thought by many to be an unfortunate experience for North Carolina in 1947.

The North Carolina Driver Point System. The 1959 North Carolina General Assembly enacted what is commonly known as the "North Carolina Point System Law."

Primarily as a result of recent research in North Carolina (*Driver Improvement—The Point System*, B. J. Campbell, Institute of Government, 1958), involving the investigation of the records of more than 45,000 North Carolina drivers, the Department proposes legislation which would adjust the point value of at least four offenses in the North Carolina point schedule. The offenses are: (1) illegal passing, (2) following too close, (3) driving on the wrong side of the road, and (4) failing to stop for a stop sign.

Under the North Carolina Point System Law, a driver is allowed two years within which to accumulate 12 points (8 points if he is the restoree of a license suspended or revoked because of one or more traffic violations). The Department recommends legislation which would change the period to three years, to provide a more comprehensive violation profile of drivers.

The Department of Motor Vehicles, in assigning point values, cannot consider out-of-state convictions of North Carolina motorists. This fairly obviously destroys many of the benefits of the point system in discerning habitual violators; therefore, the Department recommends legislation to provide that out-of-state conviction notices be considered in the assignment of points under the point system.

Transfer of Registration. A characteristic of the North Carolina statutory procedure for the transfer of registration and certificate of title of a vehicle is what might be termed the "plate follows the car," under which the transferor of a vehicle transfers his license plates to a purchaser along with the vehicle. This is the type of transfer procedure followed by about one-half of the states. The others follow a type of procedure under which the transferor of a vehicle retains his license plates and either transfers them to a newly acquired vehicle or surrenders them to the Department of Motor Vehicles for retirement. Since the enactment of the Vehicle Financial Responsibility Act of 1957, the Department has re-evaluated the respective advantages of the two types or transfer procedures and recommends legislation that would establish the type of transfer system under which the transferor of a vehicle would retain his license plates for transfer to another vehicle or surrender to the Department, provided the 1957 Financial Responsibility Act is continued. Companion legislation is proposed under which "transporter" license plates could be issued by the Department to cover certain operations not previously a matter of special concern from a licensing standpoint under existing transfer procedure.

The Department also proposes legislation to compel the use of temporary markers by dealers in the sale of new cars, as distinguished from "dealer plates," as a further effort to strengthen the administration of the 1957 Act, and legislation to provide that records of the Department shall constitute *prima facie* evidence of the insurance coverages status of vehicle owners.

RULES OF THE ROAD

North Carolina laws relating to the operation of vehicles under the influence of drugs cover only narcotic drugs. The spreading use of drugs, including the barbiturates, tranquilizers, antihistamines, and amphetamines, has prompted the Department to recommend legislation that would prohibit the operation of a vehicle when the driver was under the influence of any type of drug to the extent that his faculties were appreciably impaired.

DRIVER LICENSING

The Department recommends two items of legislation concerned with the suspension of licenses for certain speeding offenses. The first would permit a suspension of license under G.S. 20-16(a) (9) following two offenses of speeding between 55 mph and 76 mph within twelve months, where convictions were obtained, rather than following two convictions of these offenses within twelve months. The second would make G.S. 20-16.1, providing for a mandatory suspension of license for 30 days, applicable to convictions of speeding in excess of 15 mph over any statutory speed limit, as distinguished from convictions only where school bus limits and "open road" limits are involved.

Also recommended by the Department in connection with license suspensions are: (1) legislation that would include in the definition of "conviction," only for purposes of the Uniform Driver License Act, findings of guilty (regardless of suspension of sentence), pleas of *nolo contendere*, forfeiture of bail, or the abandonment of bail deposited to secure appearance in court, and (2) legislative deletion of the portion of G.S. 20-279.2(b) providing for a stay of license suspension pending the disposition of an independent proceeding on petition in the superior court to determine whether security should be posted under the Financial Responsibility Act of 1953 following an accident where one of more of the drivers or owners involved were uninsured.

MISCELLANEOUS

Commercial driver training schools, relatively new institutions in North Carolina, have a close relationship to a state's general program of highway safety. The connection has been recognized in several other states by the enactment of regulatory licensing, for the purpose of maintaining standards of training equipment and competence of training personnel.

The Department suggests legislation that would allow the Commissioner of Motor Vehicles to establish reasonable standards of instruction, with the assistance of the State Superintendent of Public Instruction, for commercial driver training schools; to inspect the qualifications of applicants for license; and to enforce the maintenance of established standards by powers of suspension or revocation of license where violations arise.

RECOMMENDATIONS OF THE POLICE EXECUTIVES ASSOCIATION

The Legislative Committee of the North Carolina Police Executives' Association has proposed three changes in the law of arrest and search and seizure which the Association asserts are needed for effective law enforcement. The first proposal is for statutory provision that search warrants may be issued for any property used, designed or intended to be used as the means of committing crime and any property which constitutes evidence of crime. The second proposal is for authority to arrest without warrant at the scene of a motor vehicle accident upon reasonable ground to believe that a person at the scene has committed a criminal offense. The third proposal is for authority to arrest without warrant upon personal knowledge or reliable information that a warrant is outstanding for the person to be arrested.

Search warrants. Under the present law of North Carolina, the Police Executives reported, magistrates may issue warrants only for narcotics, stolen property, gambling and lottery paraphernalia, barbiturate drugs, illicit liquor, liquor-making materials, deserting seamen, mis-used beverage containers, and fish and game taken in violation of law. There is no authority for search warrants for any other class of property; for example, investigating officers cannot obtain warrants to search for murder weapons, abortion drugs or tools, obscene matter, burglary tools, explosives, poison—to enumreate a few types of property often involved in felony investigations and prosecutions. Therefore, officers may not search dwellings, automobiles, or places of business for such property except where they have first made a lawful arrest—and the authority to search incident to a lawful arrest is severely limited—or where the person in charge has invited them in to search, waiving his constitutional rights.

The General Assembly of North Carolina has, over the years, added one class of property at a time to the search warrant statutes as the need for search warrants for such property became pressing. Other jurisdictions, the report points out, such as Wisconsin and the federal government, provide in general terms for search warrants for any property designed, used, or intended to be used to commit crime, or which constitutes evidence of crime. The Association urges that this be done for North Carolina, for increased effectiveness in law enforcement.

Arresting at motor vehicle accident scene. The second proposal is for enactment of statutory authority to arrest without warrant at the scene of a motor vehicle accident upon reasonable ground to believe, based upon the arresting officer's personal investigation, that a person at the scene has violated the law. Under the present law, an officer may arrest without warrant for a misdemeanor only when he has witnessed the offense (by seeing or hearing or even smelling it being committed). An officer arriving at an accident scene has not witnessed a motor vehicle law violation which caused the mishap. Therefore, he cannot take a violator into custody—he may only "invite" him downtown (to make out a report or to settle the dispute). If the officer takes no action at the accident scene, where a flagrant violation is involved, the motorist who was not at fault may take a dim view of the investigating officer's zeal, not aware that under the law the officer must wait until a warrant is issued. Inquiry at the scene will enable the officer to satisfactorily determine whether a misdemeanor was committed prior to his arrival at the scene, lessening the likelihood of mistake. Virginia has such a statute, and the Police Executives' Association proposes that this state adopt a similar provision.

Arrest knowing warrant has been issued. The third proposal would authorize officers to arrest without a warrant in their possession whenever they have personal knowledge or reliable information that a warrant has been issued for the person to be arrested, with a proviso that the officer shall show the warrant to the arrested person as soon as possible. Under present law, an officer relying upon an arrest warrant as authority to arrest must have it in his possession when arresting; an officer may not arrest for a misdemeanor without a warrant unless he has witnessed the offense. Therefore, an officer on patrol who encounters a wanted misdemenant cannot arrest him even though the officer may have seen the warrant on file back at the courthouse or city hall. He must make a trip back to headquarters for the warrant, or follow the misdemeanant until the warrant can be brought to him. The suggested change would allow arrest without warrant in this situation, whether the officer had seen the warrant or had learned of it over his radio. The proposal (in keeping with the federal rule's philosophy in this situation) would require the officer to show the warrant to the arrested person as soon after the arrest as possible.

This summary of the recommended changes in criminal procedure as recommended by the Police Executives Association was prepared by Roy G. Hall, Jr., Assistant Director of the Institute of Government.

PUBLIC SCHOOL LEGISLATIVE PROPOSALS

An ambitious program for improving the public schools through the appropriation of an additional $106,000,000 in State funds in the next biennium will be introduced in the 1961 Legislature. The proposal for increased expenditures originally formulated by the United Forces for Education and endorsed by Governor Sanford has been adopted, with only slight changes, by the State Board of Education and will be introduced to the Legislature as the Board's "B" Budget.

Also, three school study commissions appointed by the 1959 Legislature will probably propose legislative programs in specific areas. These commissions are (1) The Commission to Study the Public School Education of Exceptionally Talented Children, (2) North Carolina Commission for the Study of Teacher Merit Pay and Implementation of a Revised Public School Curriculum, and (3) Commission for the Study of a Twelve Months' Use of Public School Buildings and Facilities for Public School Purposes.

"B" Budget Proposals. The State Board of Education's "B" Budget requests are just over $53,000,000 for each year in the next biennium and, if adopted, would increase State level public school expenditures by about 29 per cent. The "A" Budget requests are $180,875,586 for fiscal year 1961-62 and $183,250,108 for fiscal year 1962-63.

As most readers will know, the "A" Budget reflects the funds, including increases necessitated by increased enrollment and rising prices, required to maintain the same level of services as was provided in the preceding biennium. The "B" Budget includes additional funds which are requested to raise the level of services.

Over two-thirds of the "B" Budget request, $37,000,000 per year, would go toward raising the salaries of school personnel authorized by the "A" budget. Of this amount, $35,000,000 would go toward raising the salaries of superintendents, principals and teachers by about 21 per cent and the salaries of other school personnel by about 15 per cent. Two million dollars would be used to increase the term of employment of teachers and principals by two days and of supervisors by one month.

The beginning salary for teachers with "A" certificates would be increased from the present $2,946.30 to approximately $3,600.00 and the highest salary (for teachers with graduate degrees and 13 years experience) would be increased from the prseent $4,556.70 to approximately $5,600.00. The average salary paid to teachers would rise to $4,734.10 from the present $3,841.38.

A little over $10,000,000 annually would be used to employ additional personnel, including 87 assistant superintendents, 65 supervisors, one additional teacher for each 20 now allotted to each administrative unit, and five per cent more janitors. Also, $1.50 per pupil in average daily membership for the previous year would be allotted to each school for clerical employees and the number of vocational teachers would be increased.

Approximately $4,000,000 annually would go toward other improvements in standards, including such things as an increase in the State appropriation for instructional supplies from $1.12 to $1.50 per pupil, an increase in the State appropriation for school libraries from $0.50 to $1.00 per pupil, and an increase in State appropriations for utilities, fuel and janitorial supplies. Also about $500,000 per year would provide for expansion of services offered by the State Board of Education, including $112,500 for the creation of a permanent department of Curriculum Study and Research.

The only capital outlay funds requested in the "B" Budget are $848,000 for the 1961-62 fiscal year which would be used to equip industrial education centers.

The Commission to Study the Public School Education of Exceptionally Talented Children. This Commission's report recommends that the General Assembly:

1. Enact a law establishing a statewide program for gifted children.
2. Provide funds for adding to the permanent staff of the State Department of Public Instruction a Coordinator for the Gifted and a Supervisor in the Division of Testing and Pupil Identification.
3. Continue demonstration programs, partially financed by the State, which are now in operation at five pilot centers. (Greenville and Pitt County, Hendersonville and Henderson County, and Winston-Salem.)
4. Provide funds for a qualified school psychologist and a curriculum expert in each of 10 districts to be set up across the State. These specialists would help local administrative units to identify gifted children and plan programs to meet their needs.
5. Appropriate funds through the Department of Public Instruction to encourage local school administrative units to develop programs that meet their individual needs. Thirty teachers would be provided at State expense, three in each of the ten districts.
6. Provide funds for conducting and publishing research in the education of gifted children.

The cost of the program is placed at $444,000 for 1961-62 and $504,000 for 1962-63, a total of $948,000 for the biennium.

The Commission cites results of studies in other states and programs for the gifted presently being conducted in North Carolina as evidence that exceptionally talented children need special attention to achieve their potential.

The Commission thinks that it would be impractical to set forth a standard program for gifted students that could be adopted by all school systems in the State. However, it urges that systematic and scientific methods of identifying gifted students be used in all grades. Suggested programs for instruction of such pupils include grouping according to ability, either on a full-time basis or a part-time basis for single subjects; the non-graded primary school, in which pupils progress at their own rate and may be promoted to the fourth grade after two years in school; special classes; television courses; and summer programs on a local or regional basis.

This summary of the legislative proposals of the State Board of Education and the reports of the various school study commissions was prepared by Marion W. Benfield, Jr., Assistant Director of the Institute of Government

Commission for the Study of a Twelve Months' Use of Public School Buildings and Facilities for Public School Purposes. The Commission states that "it is imperative that school plants . . . be utilized in the future for an extended period of instruction beyond the traditional nine months term" and says this can be done by either one of the following ways: (1) adoption of a 10-months school term with eleven grades, (2) adoption of a four quarter system under which twenty-five per cent of the pupils are on vacation each quarter, (3) more extensive use of summer schools, and (4) extension of the present school term with retention of the twelve grade program.

The Commission does not make any definite recommendations as to which of the four alternatives might best serve the purpose of fuller utilization. It does suggest that the Legislature adopt permissive legislation which would allow local school units to experiment with the ten months-eleven year system, the four quarter system, or other systems which "may be conducive to educational progress in the State." The Commission also suggests the appropriation of adequate State funds to guarantee efficient enforcement of the compulsory attendance laws; the development, with State support, of a system of kindergarten or pre-school classes, and extension of the term of employment of teachers to give them more time for improvement of the instructional program through participation in workshops, institutes, and other similar activities.

The Commission for the Study of Teacher Merit Pay and Implementation of a Revised Public School Curriculum. As to teacher merit pay, the Commission recommends that a four-year experimental study of merit pay plans be made in at least two school administrative units. In these experimental studies, merit pay increases in unspecified amounts would be granted to teachers with "A" and "G" certificates who have already reached the maximum salary under the regular salary scale (after 12 years for "A" holders, and after 13 years for "G" certificate holders). The Commission recommends appropriation of $150,000 for this purpose during the next biennium and $200,000 for 1963-65.

The Commission states that before a merit pay plan can function efficiently there must be agreement as to the qualities which make up a good teacher and as to the validity of techniques which will be used to measure these qualities, and evaluators must become skilled in the use of the rating techniques. These are the problems which would be given particular attention in the experimental programs.

The Commission expresses the opinion that merit pay programs will not be beneficial unless they are superimposed upon a basic salary schedule which is sufficiently high to attract capable college graduates to the teaching profession and upon a strengthened program of teacher training in the colleges of the State. The Commission also stresses the desirability of a strong in-service training program for teachers.

As to curriculum revision, the Commission's recommendations stress increased financial support and are essentially the same as the program contained in the State Board of Education's "B" Budget reviewed above.

LEGISLATIVE PROGRAM OF THE NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

The legislative program adopted by the North Carolina Association of County Commissioners at its 1960 Convention contains recommendations for changes in existing laws, sets forth the Association's views on matters of legislative policy, and concludes with recommendations concerning State appropriations for 1961-63.

Recommended Changes in Existing Law

The following changes are recommended in the laws affecting county government:

(1) *Authorizing a Board of County Commissioners to Select a Vice-Chairman.* Present law makes no provision for a vice-chairman. It only authorizes the selection of a temporary chairman in the absence of the regular chairman. Since many boards do elect a vice-chairman as a matter of practice and desire to continue to do so, the law should be amended accordingly.

(2) *Exempting Elected Officials from Jury Duty.* Elected officials, when drawn for jury duty, are invariably challenged by one of the contending attorneys in any suit on which they sit. To them, jury duty is a waste of time, because they never have an opportunity to serve on a jury in a specific case. The law should therefore be amended to exempt elected officials from jury duty.

(3) *Permitting Counties to Control Garbage Collection.* The concentration of population in the fringe areas beyond the corporate limits of municipalities has given rise to the need for garbage collection service in those areas. At present, county boards of health may impose sanitary requirements on private collectors, but they probably cannot control collection areas and fees. Several counties, through special legislation, have found broad control through the board of county commissioners a satisfactory solution to the problem of private collection. This authority should be extended, on a permissive basis, to all counties. In addition, some counties have found it advisable to collect or dispose of garbage through their own employees. All counties should be authorized to do this if the need arises, financing the collection either through service fees or through taxes levied on areas served.

(4) *Increasing County Representation on Certain Community College Boards.* Under present law, a board of trustees of a community college is composed of four members appointed by the Governor, four members appointed by the local boards of education, two members appointed by the board of county commissioners, and two members appointed by the appropriate city governing board. Where the city does not make a substantial contribution to the community college, the board of commissioners should be authorized to appoint four members and the city governing board none.

(5) *Requiring Night-Time Identification of Law Enforcement Vehicles.* People have often been frightened when stopped at night by an unmarked law enforcement vehicle for a traffic violation, for they have no way of being sure that they are being stopped by a law enforcement officer. The law should be amended to require a law enforcement officer to sound a siren or flash a red light before stopping a vehicle at night, in order to identify himself as engaging in law enforcement.

General Recommendations Concerning Legislative Policy

The following policies are recommended to guide the 1961 General Assembly:

(1) *Tax Exemptions and Classifications.* Several existing property tax exemptions and classifications are of doubtful constitutional validity. All these should be repealed to provide as broad a tax base as possible for county and municipal government. Moreover, exemptions and classifications should be strictly limited, and provided, if at all, only on a state-wide basis in order to prevent competition between counties. To insure this, a constitutional amendment should be submitted to the people requiring state-wide exemptions and classifications.

(2) *Leaving the New Revaluation Schedule Unchanged.* A new 1959 law placed property revaluation on an eight-year schedule and made adequate provision for financing revaluations. Every county has adequate opportunity to plan a revaluation, and there is no reason for any postponement. There should be no amendment to the new revaluation schedule, and no county should be authorized to postpone revaluation.

(3) *Payments-in-lieu of Taxes on State-Owned Property.* Some counties and municipalities contain substantial amounts of state-owned property. The exemption of this property from taxation means that other property must carry an increased load. This problem and its consequences should be examined on a state-wide basis, perhaps through a study commission created by the legislature.

(4) *Improving the Administration of Justice.* County officials were impressed with the study given the administration of justice during 1957-59, and they regretted that the 1959 General Assembly did not provide for reform. County officials are aware of dissatisfaction concerning the present administration of justice, particularly the fee system of compensating justices of the peace, the variations in jurisdiction and procedure in the inferior courts, and delays in trials in superior court. The 1961 General Assembly should again consider the problem and provide for court reform.

(5) *Full Scale Study of Public Welfare Problems.* In recent years, there has been much public discussion of welfare problems, touching on the question of whether welfare rolls include only needy persons, whether supervision of expenditure by recipients is adequate, whether the complicated formula now used for the determination of individual grants accomplishes its purpose, whether maximum utilization is being made of available surplus agricultural commodities, and others. The time has come for a full-scale study of public welfare matters, and it should be conducted by an impartial commission or committee.

(6) *Reducing the Amount of Local Legislation.* Legislators and county officials are regularly criticized because of the large volume of special acts, and both groups would benefit from a reduction in the number. A constitutional limitation, however, would reduce the flexibility now provided. Local legislation could and should be substantially reduced: (a) by placing broad discretionary authority in the hands of county commissioners, particularly over salaries, fees, and internal organization; (b) by screening all special acts to determine if they are now covered by, or if they could be covered by, a general law; (c) by providing maximum local discretion in general laws, to authorize local officials to determine the details of administration. We hope the General Assembly will proceed on this basis in 1961. In addition, the General Assembly should refrain from exempting counties from the provisions of permissive general laws, leaving to the good sense of county officials and the people of the county the determination as to whether such authority will be exercised. Finally, each county should screen its own special legislative proposals, to make sure that they are necessary and that they cannot be obtained from existing or proposed general law.

Recommendations Concerning Appropriations

The following actions on appropriations for 1961-63 are recommended:

(1) *Public Welfare Appropriations.* We endorse the requests of the State Board of Public Welfare for (a) additional funds for public welfare administration, in order to reduce the burden on the counties and to enable them to better administer all public welfare programs, and (b) additional funds for the hospitalization of public recipients, in order to more adequately meet the daily costs of hospital care. We believe that any increase in appropriations for public assistance should follow assurance that grants are made only to needy people and are used for food, shelter, clothing, and other necessary items, and assurance that maximum utilization is obtained from the surplus food program of the United States Department of Agriculture. As a general rule, additional state and federal appropriations, if any are forthcoming, should be used to strengthen administration and the hospitalization program, leaving to county responsibility and county control the field of general assistance.

(2) *Public Schools.* The General Assembly should appropriate sufficient funds to meet the state's statutory responsibility for paying appropriate salaries to school teachers and employees, to provide sufficient teachers to all administrative units, to provide sufficient books and instructional supplies, and to meet the cost of janitorial services and utilities for the public schools.

(3) *Public Health.* The General Assembly should appropriate additional funds for aid to county health departments, reversing the trend of recent years which has resulted in shifting public support to the property tax. This would return to a more equitable allocation of public health costs between the state and the counties.

(4) *Appropriations for Trials of Inmates in State Institutions.* At times prisoners and patients in state prisons and hospitals are accused of crimes committed in the state institution. Such persons must be tried in the county in which the institution lies, and the county must bear the court cost and often must provide an attorney for the defendant. Since these people are the responsibility of the state, the state should appropriate funds to meet these costs.

JUDICIAL COUNCIL RECOMMENDATIONS

by **Bert M. Montague**
Executive Secretary

The Judicial Council was created by the 1949 General Assembly and assigned duties as follows:

1. To make a continuing study of the administration of justice in the State and of the methods of administration of the courts of the State;

2. To receive criticisms and suggestions pertaining to the administration of justice;

3. To recommend to the legislature, or the courts, such changes in the law or in the organization, operation or methods of conducting the business of the courts, or with respect to any other matter pertaining to the administration of justice, as it may deem desirable.

Represented on the Council are the Judicial Department, at both the Supreme Court and Superior Court levels, the Legislative Department, The Executive Department, and the Bar.

SUPERIOR COURT JUDGES

1. *Authorization for the Appointment of Two Additional Special Judges.*

Growth in the litigation coming before our Superior Courts is an established fact. Each year brings an increase in the number and complexity of civil cases being filed and criminal prosecutions instituted. Accumulations of civil cases have become acute in several counties. The time has come when our supply of full-time judges can no longer meet the advancing demands.

Since June, 1955, 177 weeks have been added to the annual superior court calendar. There is an established need for other additions, but they cannot be made without more judicial manpower. We recommend and will present to the General Assembly a bill authorizing the Governor to appoint two Special Judges to terms expiring June 30, 1963.

2. *Compensation of Emergency Judges for Holding Special Terms of Court.*

The State has traditionally paid the salaries and expenses of the superior court judges. One exception to this rule is found in G.S. 7-50 which requires the county involved to beart the cost of an emergency judge who holds a special term of court. We recommend that the statute be amended so as to assign this responsibility to the State.

SOLICITORIAL DISTRICTS

When our present solicitorial districts were established twenty-four years ago, the workload was relatively evenly distributed among the districts. Due to population shifts and resulting changes in criminal violations this distribution has become inequitable. In the two districts having the worst conditions, the solicitors are frequently scheduled to be in two counties at the same time. There is never a break in the schedule to allow the solicitor time for preparation of cases or for arranging special terms.

We make the following separate recommendations relating to the tenth and twelfth districts.

1. *Divide the Tenth District into Two Districts and Transfer Chatham County to the New District.*

At present the tenth district is composed of Durham, Alamance, Orange, Person and Granville Counties. Our proposal will make Durham a one county district. The remaining counties of the tenth district, to which Chatham will be added, will constitute district No. 10-A.

2. *Provide a State-Paid Assistant Solicitor for the Twelfth District.*

The twelfth district which is composed of Guilford and Davidson counties is not susceptible to a division. Although it has almost twice the work of the average disrtict, over 80% of the business is transacted in Guilford County alone. Considering a division of the county impractical, we recommend authorization for the appointment of an assistant by the solicitor, such assistant to assist in the prosecution of the dockets throughout the district and to be paid by the State, $7500 per year plus $1000 per year for expenses.

CIVIL LAW AND PROCEDURE

1. *Non-Jury Trial of Uncontested Divorce Cases in the Superior Court.*

We have experienced widespread dissatisfaction with the requirement of a jury verdict in uncontested divorce cases tried in the superior court. Submission of the case to the jury is tantamount to a verdict for plaintiff. We recommend a bill authorizing the presiding judge of superior court, in open court, to make the necessary findings in an uncontested divorce action, unless one of the parties requests a jury trial.

2. *Referral of Motions to the Judge Assigned to an Adjoining District.*

G.S. 7-62 authorizes a judge before whom a motion is made, who disqualifies himself from determining it, to refer the matter to the resident judge of any adjoining district. The restriction to the "resident" judge has frequently caused delay since the resident judge is out of his district a majority of the time. To remove this cause, we propose to authorize referral of such motions to the judge regularly holding the courts of any adjoining district.

3. *Restrict the Right of Plaintiff to Take a Voluntary Non-Suit After Case Is Submitted to the Jury.*

Under our practice the plaintiff can take a voluntary non-suit at any stage of the proceedings prior to rendition of the jury's verdict, and reinstitute his action at a later date. This right seems to be reasonably justifiable, up to a point. However it does not seem necessary to allow this as a matter of right after the case is submitted to the jury. When this stage is reached, the plaintiff has had ample time to evaluate his case and correct his mistakes. He has consumed the time of the court and jury. He has had his day in court.

We propose to allow a voluntary non-suit, after submission of the case to the jury, only in the discretion of the court.

4. *Remove the Limitation That Only the Presiding Judge May Order a Venire from Another County.*

Under authority of G.S. 1-86, the presiding judge to whom suggestion is made that a fair and impartial trial cannot be had, may order a venire from another county. The suggestion is frequently made, and such order is frequently entered.

A case of this nature will often constitute a majority of all of the business calendared for the particular term of court. Equally often, one, two or three days of the court will be wasted while the jury is being rounded up. To eliminate part of this loss we propose to authorize a judge presiding at an earlier term of court, regardless of whether he will preside at the term involved, to enter the order so that the venire can be summoned and ready for service on the appointed day.

5. *Decrease the Time Required for Publication of the Administrator's Notice to Creditors.*

Most of our statutes relating to publication of notices provide for publication four consecutive weeks, or less. G.S. 28-47 requires the administrator's notice to creditors to be published for six consecutive weeks. Knowing of no

valid reason for this distinction, we propose to reduce the burden by authorizing such publication requirement to be satisfied in four weeks.

6. Amend the Procedure for Awarding Subsistence and Counsel Fees under G.S. 50-15.

Two different statutes provide procedures for various situations in which a wife may obtain a subsistence allowance and counsel fees in an action against her husband.

Under G.S. 50-16, the court may grant an application for subsistence and counsel fees upon a showing tha it is probably justified. To make a similar award under G.S. 50-15, the court must find the facts substantially the same as the jury must ultimately find them in the trial of the principal action. This results in two trials, one initially before the court and the other subsequently before the jury. We recommend that G.S. 50-15 be amended so as to make the procedure thereunder conform to the procedure under G.S. 50-16.

7. Protection against Default Judgment Entered in an Action of Which Defendant Had No Notice.

In certain cases we have had default judgments entered and enforced against insurance companies following an action against the insured when the company had not notice of the action nor opportunity to defend. *Swain v. Ins. Co.*, 253 N. C. 120. Under the present language of the statutes, lack of notice is not sufficient ground to relieve the defendant insurance company from such judgment. We will recommend an amendment that will encourage the insured defendant to forward notice of any claim or action to his insurance carrier and that will provide relief for the carrier in the cases in which it does not receive notice.

CRIMINAL LAW AND PROCEDURE

1. Larceny by Trick.

G.S. 14-72, which makes larceny or receiving stolen goods knowing them to be stolen only a misdemeanor when the value of the goods stolen is not more than one hundred dollars ($100.00), contains certain exceptions; larceny from the person, larceny from a dwelling by breaking and entering, and horse stealing. It has been brought to the attention of the Council that each year, particularly during the fall market seasons, a number of gullible persons are victims of so-called "flim-flam" artists and, therefore, a bill is being recommended which would add larceny by trick to those types of larceny which are excluded from the misdemeanor provisions of G.S. 14-72.

2. Peremptory Challenges in Criminal Cases.

There seems to be no valid reason why the defendant should arbitrarily be allowed a greater number of peremptory challenges in a criminal case than the State is allowed. Therefore, a bill is being submitted which would amend G.S. 15-164 to increase the peremptory challenges of the State in a criminal case to the same number as is allowed the defendant.

3. Right of Solicitor to Argue for Death Sentence In Capital Case.

Although the trial judge must instruct the jury in the trial of a capital felony that it may recommend life imprisonment instead of the death penalty, the Supreme Court has held that the present statutes would not justify the solicitor in arguing to the jury that the death penalty be imposed. Inasmuch as the jury may make its recommendation of life imprisonment in its unbridled discretion, and inasmuch as defense counsel may argue for life imprisonment rather than death, it is believed that in the interest of fairness and justice the solicitor ought to be permitted to argue for the imposition of the death penalty whenever in his discretion, he deems it wise to do so. A bill is being offered which would so authorize the solicitor.

4. Publishing or Uttering a Forged Endorsement.

Statutory law recognizes that it is a criminal offense to forge certain instruments, to utter such instruments, and to forge an endorsement of certain instruments. While it is probably a crime under the common law, it is believed it would clarify the statutory law to amend G.S. 14-120 so as specifically to make uttering an instrument with a forged endorsement a criminal offense, and a bill is offered for that purpose.

5. Evidence of Receiving Stolen Goods.

There exists a judicial rule of evidence that, when the theft of goods is proven, then evidence of possession soon thereafter is some evidence that the possessor was the thief. However, there is also a judicial rule of evidence that such possession is not any evidence of having received the stolen goods knowing them to have been stolen. When a person is beyond a reasonable doubt guilty of one of the two offenses, he ought not to be allowed to go free merely because the State cannot show with certainty which of the two offenses he committed. Therefore, a bill is being offered which would change the second rule of evidence set out above and permit evidence of possession of recently stolen goods to be considered as some evidence of having received the goods knowing them to have been stolen.

6. Clarify the Procedure for Extending a Term of Court Otherwise Expiring in the Course of a Trial.

G.S. 15-167 provides that if a term of court expires during the trial of certain actions and before such action is completed, the judge may extend the term until the case is completed. The statute does not specify when a term expires nor at what time during the week the judge is authorized to make the necessary finding. We propose to clarify this question by an amendment which will specify the proper procedure.

7. Delete Inferior Courts from the Provisions of G.S. 15-180.1 Relating to Appeals on Questions of Law.

Our Supreme Court has held that where an appeal is taken from a judgment in which a prison sentence is suspended, even though no error appears in the case, the judgment will be stricken and the cause will be remanded for proper judgment. Chapter 1017 of the 1959 Session Laws, designed to change this holding, provides that a defendant may appeal from a suspended sentence entered in the inferior courts and in the superior courts under the same rules as from any other judgment in a criminal case, and that by giving notice of appeal the defendant does not waive his acceptance of the terms of suspension of sentence, but takes the position that there is error of law in his conviction.

Criminal cases appealed from inferior courts are tried de novo in the superior court. There is no provision for appeal on questions of law. Therefore, we recommend that the above cited statute be made inapplicable to inferior courts.

8. Increase the Property Valuation Separating Misdemeanor Larceny and Receiving From Felonious Larceny and Receiving.

Under the present law the larceny of property of the value of not more than $100 is a misdemeanor. If the stolen property is worth more than $100, the offense is a felony. The valuation which served to divide these offenses was originally set at $20. It was increased to $50 in 1941, and to $100 in 1949. Because of rising prices, an increase in this valuation to $200 would retain the original meaning of the statute.

We are informed that a majority of the larceny cases involve property valued at more than $100. Thus a trial in superior court is necessary. The inferior courts formerly handled, and should be handling now, those cases involving property now valued between $100 and $200, and by increasing the valuation we can have such cases disposed of in the proper forum.

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