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*New Look on the North Carolina Supreme Court*

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# POPULAR GOVERNMENT

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## Contents



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*North Carolina Supreme Court Justice (left) Susie Sharpe and new Chief Justice Emory B. Denny at their oath-taking ceremonies on March 15 in Raleigh. Judge Denny took over as Chief Justice from J. Wallace Winborne whose retirement brought about changes on the court. Justice Sharpe was promoted from the Superior Court by the Governor to take over Justice Denny's former seat on the State's highest tribunal, becoming the first woman ever to serve on the North Carolina Supreme Court and one of the few to be appointed to a state's highest court.*



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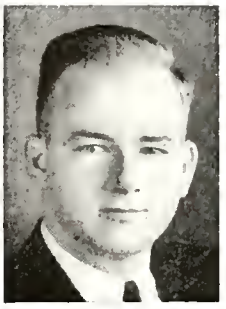
### Supreme Court on Reapportionment

*Editor's Note: On March 26, the United States Supreme Court announced its decision in the case of* BAKER V. CARR. *Appellants had sought the aid of a three-judge United States District Court in forcing the Tennessee legislature to reapportion itself, a duty neglected since 1901. The District Court had concluded that it lacked jurisdiction of the case, and an appeal was taken to the Supreme Court. In reversing and remanding the case to the District Court, the Supreme Court majority held only:*

*(a) that the court possessed jurisdiction of the subject matter; (b) that a justifiable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellants raise the issue before this Court, that the appellants have standing to challenge the Tennessee apportionment statutes.* (THE NEW YORK TIMES, *March 27, 1962, p. 18.*)

*The majority opinion did not point out what remedies would be available to the appellants if the Tennessee legislature should continue in its failure to reapportion itself.*

*The Supreme Court made this important decision, which has implications for North Carolina, after this third article by Mr. Sanders was in print and too late for inclusion and comment. In our next issue we will present an analysis of the decision, its meaning, and some of its implications.*



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

# LEGISLATIVE REPRESENTATION: 1961

## PART THREE

### Introduction

The first article in this series dealt with the historical development of the North Carolina system of legislative representation from 1776 to 1961. The second article recounted in some detail the legislative histories of 19 bills dealing with legislative representation which were considered by the 1961 General Assembly.

Both of those articles were prepared as factual, objective accounts. This third and final article departs from that pattern, and consists in large part of personal comments and conclusions, based chiefly on close observation of the legislative handling of reapportionment and redistricting in the General Assemblies of 1957, 1959, and 1961.

### Conclusions

*What Happened*

The 1961 debate over legislative representation produced two significant measures which should not be overlooked in the discussion of the many bills which were not enacted.

First, the House of Representatives was reapportioned.

Second, a means was provided which (if the voters approve it) will hereafter bring about reapportionment every ten years, and do so with less political travail than that process has recently caused.

These two measures were approved in part because they resulted in no significant shift within the legislative power structure, in part because they were treated independently of senatorial redistricting, and in part because they had the support or acquiescence of the principals on both sides of the redistricting controversy.

Much has been written in the newspapers, as in these articles, about the role of Senator Lindsay C. Warren of Beaufort as the leader of the opposition to redistricting in the 1961 Senate. It is true that he took a strong and prominent stand against extensive change in the present distribution of Senate seats. Yet accuracy as well as justice to Senator Warren requires the observation that the legislative sentiment against allowing senatorial representation in strict accordance with the Constitution was not his creation. He brought to the cause of the opposition a genius for legislative strategy and an eminent respectability. But it is doubtful that the outcome of the 1961 redistricting fight would have been different in his absence. He but marshalled the senatorial majority in the way that it was going.

*Prospect*

The probability is that the General Assembly is not rid of the senatorial redistricting issue, even for this decade. The legislators from the counties with claims to greater representation in the Senate, and other legislators whose counties do not stand to gain additional seats but who believe it important that the legislature fulfill its constitutional obligation to redistrict, will raise that issue again in future sessions. And the Republican Party, which built with care its own 1961 legislative record on the senatorial representation issue, will keep that issue alive, particularly in the populous counties where its appeal should be strongest.

*Observations*

The 1961 redistricting contest, conducted almost entirely

*On leave for the academic year, 1961-62.

in the Senate, brought into clearer focus several facts about the essential nature of the legislative representation controversy and its roots.

*"Big Fish Eat Little Fish"*

First, the smaller counties fear the larger counties. The reasons are many. Some small-county legislators are afraid that if the larger counties ever gain legislative power in proportion to their population, they will use it to alter certain present State fiscal policies, such as the policy which enables many of the smaller counties to draw more money from the State treasury for public school purposes than those counties now pay into the State's General Fund in taxes. Some legislators, particularly (but not solely) from the East, are apprehensive that city-based legislators whose constituencies include substantial numbers of Negro voters might not take an acceptable attitude on the racial issue in its various manifestations.

Pervading all is a conviction, held not alone by small-county legislators (and never put in words so plain), that greater virtue and patriotism reside in small aggregations of people than in large ones, and that therefore the State as a whole will be better served if legislative control remains largely in the hands of small-county spokesmen.

*Who Killed Cock Robin?*

Second, the division over legislative representation is essentially between the smaller counties and the larger counties, with the larger counties of the East tending to stand with the smaller counties throughout the State. It is not, as often described, simply a contest between the East and the rest of the State, although there is partial truth in such a shorthand analysis.

If an admittedly arbitrary north-south line is drawn along the western boundaries of Granville, Wake, Harnett, Hoke, and Scotland and all counties lying eastward of that line are classified as "Eastern," then there are 46 Eastern counties and 54 Western counties.[1] In terms of size they may be classified as follows:

TABLE 1

NORTH CAROLINA COUNTIES CLASSIFIED BY SIZE AND GEOGRAPHY

| *1960 Population* | *East* | *West* | *Total Counties* |
|---|---|---|---|
| 1 - 41,000 | 29 | 32 | 61 |
| 41,001 - 65,000 | 10 | 9 | 19 |
| 65,001 - 75,000 | 2 | 4 | 6 |
| 75,001 - 100,000 | 3 | 3 | 6 |
| 100,001 - 150,000 | 1 | 3 | 4 |
| 150,001 - 275,000 | 1 | 3 | 4 |
| Total | 46 | 54 | 100 |

The East alone, even if solidly united, has only 52 of the 120 Representatives and 21 to 23 of the 50 Senators—not enough to enable it to work its will against the combined power of the rest of the State. The East does, however, have certain advantages which it can use effectively. Among those advantages must be included the seniority and parliamentary skill of many of its legislators and their cohesiveness when the interests of the East are thought to be at stake.

A coalition of all of the Representatives from counties with less than 41,000 inhabitants, however, can carry the day in the House. A similar coalition of all of the Senators from counties with less than 56,000 inhabitants could dominate the Senate of 1961.

[1]"The West," as that term is used in this article, includes the Piedmont. This two-part geographic division of the State is used in preference to the currently more familiar three-part division because it offers a better means of testing the theory that on the legislative representation issue, the East dominates the General Assembly.

Thus when Eastern legislators stand united and are able to make common cause with the legislators from the smaller counties of the West—as generally happens on legislative representation votes—that combination commands substantial majorities in both houses. The argument used to weld together such an intersectional coalition is essentially the common distrust of the populous counties of the Piedmont, which have not made themselves more truthworthy in the eyes of many Democratic legislators by their increasing tendency to vote the national and state Republican tickets.

Analysis of the four contested record votes on the legislative representation issue in 1959 and 1961 shows such intersectional coalitions to have existed and strongly suggests that in those contests, county population and not geography was the more significant factor.[2]

The 1961 Senate vote to adopt the Banzet amendment to SB 66, the senatorial redistricting bill (an "aye" vote was a vote against thorough redistricting), is analyzed in Table 2 in terms of the geographical location and size of the counties of residence of the Senators.

TABLE 2

SENATE VOTE ON BANZET AMENDMENT TO S.B. 66 (1961)[3]

(An "aye" vote was a vote against thorough redistricting.)

| *1960 Population of Counties* | *Aye* | | | *No* | | | *Not Voting* | | | *Total Senators* |
|---|---|---|---|---|---|---|---|---|---|---|
| | *East* | *West* | *Total* | *East* | *West* | *Total* | *East* | *West* | *Total* | |
| 1 - 41,000 | 8 | 7 | 15 | 2 | 2 | 4 | 1 | | 1 | 20 |
| 41,001 - 65,000 | 7 | 4 | 11 | | 1 | 1 | | | | 12 |
| 65,001 - 75,000 | 1 | 2 | 3 | | 2 | 2 | | | | 5 |
| 75,001 - 100,000 | 1 | 2 | 3 | 1 | 1 | 2 | | | | 5 |
| 100,001 - 150,000 | | | | 1 | 3 | 4 | | | | 4 |
| 150,001 - 275,000 | | | | 1 | 3 | 4 | | | | 4 |
| Total | 17 | 15 | 32 | 5 | 12 | 17 | 1 | | 1 | 50 |

Adopted by a vote of 32 to 17, that amendment was generally credited as an Eastern victory. Seventeen of the 32 votes cast for the amendment came from Eastern Senators. To those 17 Eastern votes it was only necessary to add nine Western votes, all obtainable from counties with populations of less than 45,100, in order to make a majority (26) for the amendment. Those nine Western votes were obtained, plus an additional six which came from counties with populations ranging from 45,100 to 85,700. By that interpretation, it might indeed be argued that the adoption of the Banzet amendment was an Eastern victory.

But was it?

Arranging the votes cast by the Senators on that amendment first by geography, then by the population of the counties of residence of the Senators, as in Tables 3 and 4, suggests a different answer.

Table 3 shows that the votes for the Banzet amendment came in almost equal proportions from the East and the West.

[2]The 1961 votes to reapportion the House and to submit the constitutional amendment making House reapportionment automatic were virtually unanimously in favor of both issues, and so are not susceptible to this kind of analysis.

[3]The population of the county of residence of each Senator, rather than the population of his district, has been used in this and succeeding analyses, because the former factor appears to be more relevant to the Senators' attitudes than does the latter. It is not without significance here that Senatorial etiquette requires that Senators be referred to in debate as "The Senator from Durham" or "The Senator from Pender" and not as "The Senator from the Fourteenth District" or "The Senator from the Ninth District."

TABLE 3

SENATE VOTE ON BANZET AMENDMENT TO S.B. 66 (1961)

(An "aye" vote was a vote against thorough redistricting.)

| *Area* | *Aye* | *No* | *Not Voting* | *Total* |
|---|---|---|---|---|
| East | 17 | 5 | 1 | 23 |
| West | 15 | 12 | | 27 |
| Total | 32 | 17 | 1 | 50 |

TABLE 4

SENATE VOTE ON BANZET AMENDMENT TO S.B. 66 (1961)

(An "aye" vote was a vote against thorough redistricting.)

| *1960 Population of Counties* | *Aye* | *No* | *Not Voting* | *Total* |
|---|---|---|---|---|
| 1 - 65,000 | 26 | 5 | 1 | 32 |
| 65,001 - 275,000 | 6 | 12 | 0 | 18 |
| Total | 32 | 17 | 1 | 50 |

Table 4 indicates that it was the Senators from counties under 65,000 population—15 of them Eastern, 11 of them Western—who constituted the necessary majority of 26 for the amendment. Of the additional six votes cast for the amendment, two came from Eastern counties of more than 65,000 population, while four came from Western counties of more than 65,000 population.

The 1959 Senate vote on the limitation of any county to a maximum of one Senator, offered by Senators Wilbur Jolly of Franklin and S. Bunn Frink of Brunswick as an amendment to S.B. 99 (the revised Constitution), suggests even more strongly that on the issue of senatorial representation, the size of the county of residence of a Senator is more relevant to his vote than is the area of the State from which he comes. (See Table 5.)

TABLE 5

SENATE VOTE ON JOLLY-FRINK ONE-SENATOR AMENDMENT TO S.B. 99 (1959)[4]

(An "aye" vote favored limiting representation of population in Senate.)

| *1960 Population of Counties* | *Aye* | | | *No* | | | *Not Voting* | | | *Total Senators* |
|---|---|---|---|---|---|---|---|---|---|---|
| | *East* | *West* | *Total* | *East* | *West* | *Total* | *East* | *West* | *Total* | |
| 1 - 41,000 | 9 | 14 | 23 | | | | 1 | 1 | 2 | 25 |
| 41,001 - 65,000 | 7 | 4 | 11 | | | | | | | 11 |
| 65,001 - 75,000 | 2 | 2 | 4 | | | | | | | 4 |
| 75,001 - 100,000 | 2 | | 2 | | 1 | 1 | | | | 3 |
| 100,001 - 150,000 | | | | | 3 | 3 | | | | 3 |
| 150,001 - 275,000 | | | | 1 | 2 | 3 | | 1 | 1 | 4 |
| Total | 20 | 20 | 40 | 1 | 6 | 7 | 1 | 2 | 3 | 50 |

On that ballot, the Senators divided 40 for the amendment and seven against it; three Senators were absent. Twenty of the affirmative votes came from the East; 20 came from the West. One of the negative votes came from the East; six came from the West.

Disregarding geography, the minimum of 24 affirmative votes necessary for adoption of the amendment was provided by Senators from counties having populations of less than 43,000 each. In fact, all but two of the 40 "aye" votes were cast by Senators from counties with less than 75,000 inhabitants, while all seven of the "no" votes were cast by Senators from counties with more than 75,000 population.

When S.B. 99 (the revised Constitution) reached the floor of the 1959 House of Representatives, an amendment was submitted to sever the one senator per county limitation (added by the Jolly-Frink amendment in the Senate) from the rest of the revised Constitution and to put that limitation on the ballot as a separate proposition. The probable effect of such a severance of issues would have been to doom the one-senator limitation to defeat at the polls by denying it the advantage of being a part of a constitutional package which might as a whole have proved popular with the voters.

A motion was made to table the amendment to sever, thus offering a basis for analyzing House sentiment on senatorial representation. A vote to table was in effect a vote for the one-senator amendment. (See Table 6.)

TABLE 6

HOUSE VOTE ON MOTION TO TABLE AMENDMENT TO SEVER ONE-SENATOR AMENDMENT FROM S.B. 99 (1959)[5]

(An "aye" vote favored limiting representation of population in Senate.)

| *1960 Population of Counties* | *Aye* | | | *No* | | | *Not Voting* | | | *Total Reps.* |
|---|---|---|---|---|---|---|---|---|---|---|
| | *East* | *West* | *Total* | *East* | *West* | *Total* | *East* | *West* | *Total* | |
| 1 - 41,000 | 24 | 26 | 50 | 2 | 5 | 7 | 3 | 1 | 4 | 61 |
| 41,001 - 65,000 | 8 | 4 | 12 | 3 | 4 | 7 | | 1 | 1 | 20 |
| 65,001 - 75,000 | 2 | | 2 | | 4 | 4 | 1 | 1 | 2 | 8 |
| 75,001 - 100,000 | 2 | | 2 | 2 | 4 | 6 | | | | 8 |
| 100,001 - 150,000 | | 1 | 1 | 2 | 5 | 7 | | 1 | 1 | 9 |
| 150,001 - 275,000 | | | | 3 | 10 | 13 | | 1 | 1 | 14 |
| Total | 36 | 31 | 67 | 12 | 32 | 44 | 4 | 5 | 9 | 120 |

The motion to table the severing amendment carried, 67 to 44, with nine Representatives not voting. The East supplied 36 of the tabling votes while the West supplied 31—nearly an equal division. Easterners cast 12 of the negative votes; Westerners cast 32.

Viewing the division without regard to geography, it appears that of the 67 votes to table, 50 came from counties with less than 41,000 inhabitants each and 62 came from counties with less than 65,000 inhabitants each. Of the 44 votes against the tabling motion, 30 came from counties with populations of more than 65,000; only 14 came from counties with populations of fewer than 65,000 each.

The same kind of analysis of the 1959 House vote on House reapportionment (HB 139) produces the results shown in Table 7.

TABLE 7

HOUSE VOTE ON HOUSE REAPPORTIONMENT, H.B. 139 (1959)[6]

| *1960 Population of Counties* | *Aye* | | | *No* | | | *Not Voting* | | | *Total Reps.* |
|---|---|---|---|---|---|---|---|---|---|---|
| | *East* | *West* | *Total* | *East* | *West* | *Total* | *East* | *West* | *Total* | |
| 1 - 41,000 | 3 | 10 | 13 | 25 | 18 | 43 | 1 | 4 | 5 | 61 |
| 41,001 - 65,000 | 3 | 6 | 9 | 8 | 2 | 10 | | 1 | 1 | 20 |
| 65,001 - 75,000 | | 3 | 3 | 2 | 2 | 4 | 1 | | 1 | 8 |
| 75,001 - 100,000 | | 3 | 3 | 4 | | 4 | | 1 | 1 | 8 |
| 100,001 - 150,000 | 1 | 7 | 8 | | | | 1 | | 1 | 9 |
| 150,001 - 275,000 | 3 | 11 | 14 | | | | | | | 14 |
| Total | 10 | 40 | 50 | 39 | 22 | 61 | 3 | 6 | 9 | 120 |

Reapportionment was defeated on second reading by a vote of 50 to 61, with nine Representatives not voting. The East furnished 39 of the opposition votes, while the West furnished 22, or more than one-third of the total. Statewide, it appears that the counties with less than 75,000 population provided 57 of the 61 negative votes—enough to have prevailed on that ballot. At the same time, however, the counties with less than 75,000 population also provided one-half of the 50 votes cast for reapportionment.

[4] 1959 SENATE JOURNAL 506-07.

[5] 1959 HOUSE JOURNAL 1083-84.

[6] 1959 HOUSE JOURNAL 353-54.

*Fallacy of Numbers*

Third, the 1961 redistricting debate again illustrated the fallacy of the inherent importance of numbers. The Constitution deals only with numbers of legislators and of constituents. Arguments for compliance with the Constitution assume that a county with two Representatives or two Senators is twice as well off as a county with but one spokesman in the House or the Senate. Yet every legislator and everyone who has observed the legislative process at any length knows that assumption to have serious limitations.

Many other factors—individual competence, personal acceptability to his colleagues, seniority, and committee assignments and chairmanships, for instance—must be considered in evaluating the effectiveness of a legislator, and consequently in measuring the strength of a legislative delegation. Sheer voting power is important at times, surely, but the outcome of any issue is generally determined before it reaches the floor for a vote. One legislator with the attributes which make for legislative influence, although he comes from a county of only 10,000 or 20,000 people, may be able to obtain far more votes for his position than can a three or four-member—and often divided—delegation from a county ten or fifteen times as large.

Although the Constitution cannot take account of such qualitative and variable factors in prescribing the system of representation, legislators can do so, and it affords some balm for their consciences to know that in denying a county additional legislative seats they are not necessarily denying that county additional legislative influence.

On this point the large-county Senators also find themselves impaled. Respect for the Constitution and political duty to their constituents require that they demand more representation for their counties in the Senate. Yet hardly a Senator representing a one-senator district would welcome a colleague to share his power and prestige, or believe that his constituents would be better served by an additional Senator.

*Dissatisfaction with Constitution*

Fourth, there is obvious dissatisfaction with the present scheme of legislative representation, especially representation in the Senate. That dissatisfaction is not entirely confined to those legislators whose constituencies would lose representation under a strict redistricting. Legislators from large as well as small counties see danger in the ultimate concentration of a majority of the Senators in a few urban centers—a possibility presently far off, but ultimately possible under the present constitutional provision for the distribution of Senate seats. Yet despite frequent criticism of the present senatorial representation system, the necessary three-fifths of both houses seem unable to agree on a substitute which will also gain the approval of the voters of the State.

*Strategy*

Fifth, as a matter of legislative strategy, the small-county champions in senatorial redistricting have shrewdly staked their defense on the proposition that no county shall have more than one Senator. They realize that once that line gives way, their cause will be much less defensible.

If one county should get two Senators, it would be difficult to deny similar treatment to other counties now and to yet other counties as their populations grow, or to deny a third Senator to Mecklenburg. So long as there is equality in this kind of discrimination, the argument can be maintained that the discrimination is a matter of universal principle and not of bias, sectional or otherwise.

*Division Limited*

Sixth, while on the issue of legislative representation proper,[7] the lines are rather sharply drawn between the larger counties and the smaller counties (and to a lesser extent between East and West), that division does not appear to extend consistently to other legislative issues.

This fact goes far to mitigate the effect on legislative policy of the failure to redistrict the Senate. It enables small-county legislators to contend that neither the larger counties nor the State as a whole can show any injury directly attributable to the failure to redistrict. It also suggests that it may be difficult to generate strong public pressure in support of redistricting, for not a great many people are likely to become overwhelmingly concerned in the absence of evidence that they are being hurt by their failure to get all the Senate seats their counties are entitled to have.

*Outlook for Redistricting*

Seventh, it appears likely that no significant redistricting of the Senate will occur until either the federal courts command it[8] or a Governor is willing to campaign on that issue and make it a major objective of his administration. While successive Governors have called for redistricting, they have seen fit to get along with the Senate as it is and apply their energies to the accomplishment of objectives which they deemed more vital to the State.

In the meantime, the concentration of population in a few counties already numerically underrepresented in the Senate will make that body increasingly less representative of population. In the 1950-1960 decade, 38 counties lost population and 62 counties gained population. But only 21 of those 62 counties equaled or exceeded the statewide growth rate of 12.2 per cent.

Urban areas gained 31.7 per cent in population during the decade, while rural areas gained only 2.2 per cent. Urban dwellers constituted 39.5 per cent of the State's 1960 population, compared with 33.7 per cent in 1950 and 27.3 per cent in 1940, the year before the present senatorial districts were formed.

The five most populous counties in the State registered population increases of 23.9 to 54.6 per cent during the 1950's. Those five counties—Mecklenburg, Guilford, Forsyth, Wake, and Cumberland—had in the aggregate 22.5 per cent of the State's 1960 inhabitants. They cast 20.3 per cent of the total vote for Governor in the general election of 1960, dividing their ballots almost evenly between the Democratic and Republican candidates. But they have less than 10 per cent of the Senate voting strength.

* * *

As was said in the first of these articles, at stake in the legislative representation controversy is the distribution of legislative power—who shall have it and who shall not. And the small-county groups in both houses, who generally are able to season their purpose with considerable wit, might readily concede the applicability to them of Wordsworth's lines:

> The good old rule
> Suffices them, the simple plan,
> That they should take, who have the power,
> And they should keep who can.

[7] Including, in 1961, the closely related issue of congressional redistricting.

[8] The North Carolina courts, at least in the absence of new federal court decisions, are unlikely to order redistricting. In Leonard v. Maxwell, 216 N. C. 89 (1939), a taxpayer contested his liability under the retail sales tax provision of the Revenue Act of 1937. He contended that that provision was invalid on the ground (among others) that, because the 1931 General Assembly failed to reapportion the House and redistrict the Senate according to the 1930 census, no subsequent session had authority to enact any legislation or even to remedy the 1931 default by belatedly reapportioning and redistricting. In dismissing that contention, the State Supreme Court commented: "Quite a devastating argument, if sound. . . . The question is a political one, and there is nothing the courts can do about it." (*Id.* at 99.)

# SAFE DRIVER RATING PLAN

**by C. E. Hinsdale,**

**Assistant Director, Institute of Government**

The 1961 General Assembly directed the Commissioner of Insurance to establish a Safe Driver Rating Plan which "distinguishes between classes of drivers having safe-driving records and those having a record of chargeable accidents, convictions of major traffic violations and/or a series of minor traffic violations." The Commissioner promulgated the following plan, which became effective September 1 1961.

### Experience Period

The experience period on which this Plan is based is the three years immediately preceding the date of application for automobile liability insurance, and the driving record of the applicant and any other operator of the insured vehicle resident in the same household is used. When operators of an insured vehicle have a record of no chargeable accidents nor traffic violations during the experience period, a 10% credit below the standard basic rate according to the proper classification is given. When during the experience period the applicant and any other operator of the insured vehicle resident in the same household have a record of chargeable accidents or traffic violations as hereinafter defined, a surcharge above the standard basic rate is made in accordance with the following point system. *This point system is for insurance rating purposes only and is not a part of the point system used by the North Carolina Department of Motor Vehicles in suspending drivers' licenses.*

### Differential Rate Chart

Drivers will pay for liability insurance in accordance with this schedule:

| Chargeable Points | Differential |
|---|---|
| 0 | 10% *below* basic rate |
| 1 | 5% *above* basic rate |
| 2 | 20% " " " |
| 3 | 35% " " " |
| 4 | 50% " " " |
| 5 | 75% " " " |
| 6 | 100% " " " |
| 7 | 125% " " " |
| 8 | 150% " " " |

The Plan specifically provides that the following shall not be construed as moving violations: inadequate muffler or excessive escape of exhaust products, improper lights or other equipment except brakes, failure to sign or display registration card, failure to display license plates, or failure to have in possession driver's license, provided there is a valid one in existence.

### Convictions.

Under this plan, a *conviction* includes cases involving *nolo contendere* pleas, findings of guilt involving judgment continued or suspended, sentence suspended, and forfeitures of bail not vacated.

Points are assigned for *Convictions* of *Moving* Violations as follows:

| | |
|---|---|
| Felony in which motor vehicle is used | 8 |
| Highway racing (and knowingly lending for) | 8 |
| Drunk driving | 6 |
| Hit and Run (felony) | 6 |
| Transporting illegal liquor for sale | 6 |
| Driving on revoked/suspended license/registration | 6 |
| Hit and run (property damage only) | 3 |
| Reckless driving | 3 |
| Passing stopped school bus | 3 |
| Speeding over 75 mph | 3 |
| Illegal passing | 3 |
| *Each chargable accident, (private passenger car), damage over $100 to property of another or over $100 to own car, or death/injury | 2 |
| *Two or more chargeable accidents each resulting in damage of $100 or less to property of another | 2 |
| Speeding over 55 | 1 |
| Following too close | 1 |
| Driving on wrong side of road | 1 |
| Series of minor traffic violations (2 or more convictions for any moving violation not listed above) | 1 (for each in excess of 1) |

* Not necessarily based on a conviction.

### Negligence.

"Chargeable" means "negligent." No points are assigned for accidents when the operator is free of negligence. Freedom from negligence is conclusively presumed when:

a. Car is lawfully parked.
b. The owner is reimbursed by the other driver, or has judgment against him.
c. The owner is struck by a car moving in the same direction, and is not convicted of any moving traffic violation arising therefrom.
d. The other operator is convicted of a moving traffic violation and the owner is not.
e. The owner's car is damaged in a hit and run accident, provided the owner reports it within 24 hours.

### Rating Information.

Information concerning a driver's record, required when renewing an insurance policy, may be taken from insurance company files, Department of Motor Vehicles records, or the applicant. For new business, the applicant (or his legal representative) must sign the application blank personally, and on agency business the agent must certify the applicant's signature. Policies cannot be endorsed in mid-term to take advantage of a lower rate which would apply under this plan; cancellation and reissuance of the policy is necessary.

### Applicants Licensed Less Than Three Years

Standard rates are applicable to drivers licensed for less than 3 years, provided they have accumulated no points under this plan.

### Changes in Plan

The foregoing plan is subject to change from time to time by the Commissioner of Insurance as experience requires.

by Roddey M. Ligon, Jr.
Assistant Director
Institute of Government

# LEGAL BASIS FOR WATER POLLUTION CONTROL

**This article presents a summary of a paper presented by author at Southeastern Water Law Conference, Athens, Ga., Nov. 8, 1961.*

### Introduction

Stream pollution control is not a new thing. Old laws forbidding the deposit of specific types of wastes into waters of the state go back to the middle of the nineteenth century. Stream pollution control agencies were born with the creation in 1886 of the Massachusetts State Board of Health—the first such department in the country. They came more directly into view with the creation of special divisions to handle pollution problems in the Rhode Island Department of Health in 1921 and the Pennsylvania Department of Health in 1923. The Ohio State Board of Health received complete authority to deal with the problem in 1925, while Wisconsin established a committee on water pollution in that same year. It is not surprising that the first anti-pollution laws were health laws, and that the duty of combating pollution was first placed in the state boards or departments of health, for the main objective or purpose of water pollution control laws in the early days was the promotion of the public health through the protection of domestic or community water supplies. However, in more recent times other interests and objectives have become involved or affected, such as the interest of agriculture, wildlife, conservation, industry, recreation, etc. Perhaps the most important of these today is water conservation.

Since the end of World War II, the increased problems of municipal and industrial pollution have caused most of the states to enact new, or amend existing, stream sanitation laws. Most of the states enacting such legislation for the first time have created administrative agencies made up of ex officio and public members representing various interests to deal with water resources in general and water pollution problems in particular.

The purpose of this article is to discuss two principal areas: (1) the legal basis for the state legislative bodies to enact water pollution control legislation, and (2) the legal or statutory basis for the various water pollution control programs. In connection with the latter, references will be made from time to time, for comparative purposes, to the "Suggested State Water Pollution Control Act," published in 1950 under the direction of the United State Public Health Service with the collaboration of the Council of State Governments, in compliance with a provision of the Federal Water Pollution Control Act.

No effort has been made in this paper to discuss the issue of what kind of legislation is most desirable. Rather, an effort is made to indicate in a general way the variety of legislation that exists in this area.

### Legal Basis For The Adoption Of Water Pollution Control Legislation By States

Legislation to control the pollution of streams and other waters within the state and to protect domestic water supplies has frequently been upheld by the courts as a valid exercise of the police power. The police power is, of course, the power inherent in the State, or sovereignty, to enact and enforce laws for the protection of the public health, safety, general welfare, and morals of the people. The police power is extremely broad—its scope extends to the person and property of every natural person and corporation within the jurisdiction of the state. Although the police power may not be divested by the state, it may be delegated to political subdivisions and to administrative agencies so long as the legislature delegating such power establishes sufficient standards to circumscribe and limit the area in which the

administrative agency is to operate. Thus a state legislature may create a state water pollution control agency, either independently or as a part of some other administrative agency, and specify that the agency is to have authority to adopt rules and regulations to carry out a water pollution control program. It would appear desirable for the legislation to set out the factors which the agency is to take into consideration in adopting such regulations in order to comply with the "standards" requirement. Pursuant to this authority, the administrative agency would have authority to adopt rules and regulations having the force and effect of law. The regulations must be reasonable and within the scope of the agency's authority.

A listing of a few of the recent cases supporting the points mentioned above would include:

**Plymouth Village Fire District v. Water Pollution Commissioner,** 167 A. 2d 677 (N.H. 1961). In this case the court, after holding that the community could not indefinitely postpone the carrying out of the Commissioner's abatement order, stated: "The necessity and the ultimate benefit to be gained from the legislation, as well as its constitutionality, are firmly established."

**Vermont Woolen Corp. v. Wackerman,** 167 A. 2d 533 (Vt. 1961). In this case the court stated: "The legislation in question here is concerned with promoting the public welfare . . . by providing the maximum beneficial use and enjoyment of the waters of the state to its people. Reference to the classifications of water purity previously described demonstrate that pollution abatement is to be carried out in furtherance of public health and for the protection of fish and game. Both of these purposes have already been recognized as areas appropriate for the exercise of the police power."

**City of Utica v. Water Pollution Control Board,** 177 N.Y.S. 2d 47 (1958). This case deals with the proposition that water pollution control legislation is within the scope of the state's police power, and that rather broad standards will not constitute an unlawful delegation of legislative authority. As to the first point, the court stated: "The abatement and prevention of water pollution is a matter of state concern, and legislation designed to regulate and control such pollution is within the scope of the state's police powers." As to the second point, the guideposts set by the legislature to limit the scope of the agency's operation included the setting of standards and classifications on the basis of public interest, present use, present state of defilement, and the water's chemical, physical and biological properties. The court held these to be sufficient guideposts as the breadth and technical nature of the problem made a set standard established by the legislature infeasible.

**Webber City Sanitation Commission v. Craft,** 87 S.E. 2d 153 (Va. 1955). In this case the court stated: ". . . the conservation of streams and water supply is a proper subject for the exercise of the police power for the preservation of public health."

### Principal Provisions Of State Water Pollution Control Acts

The various sections of the "Suggested State Water Pollution Control Act" are used as guideposts or launching pads for comparing, in general terms, the various water pollution control laws. The Suggested Act contains 15 sections. They are as follows: Statement of Policy; Definitions; Creation and Organization of Boards, Meetings, and employees; Powers and Duties; Prohibitions; Classification of Waters and Standards of Water Quality; Proceedings before Board; Hearings; Inspections and Investigations and Maintenance of Records; Penalties and Injunctions; Review; Conflicting Laws; Existing Rights and Remedies Preserved; Severability; and, Short Title.

#### *Definitions*

Virtually all of the state water pollution control acts contain a set of definitions. The purposes of definitions generally are to spell out the meaning of words which are not self-explanatory, and to adopt short titles or terms which may be used in the body of the act to save language. Although few people question the desirability of defining terms for the purpose of making the meaning clear, there is disagreement as to the value of defining a term, such as "board", in order to avoid having to repeat the term "State Board of Health" each time it appears in the act. The Suggested Act defines the terms "pollution", "wastes", "sewage system", "treatment works", "disposal system", "waters of the state", and "person". This appears to be about the minimum number of terms usually defined in the state acts. The most important of these are, perhaps, the definitions of "pollution" and "waters". Many of the states have defined pollution in very broad terms as does the Suggested Act. These states define it sufficiently broad to cover virtually very type of contamination or alteration of the physical, chemical, or biological properties of water that will or may be materially harmful. As to the definition of waters, again many states have the broad type of definition used by the Suggested Act so as to give the agency control over all the surface and underground waters of the state. In other states water is defined in such manner as to confine the pollution control program to certain classes of water rather than to all of the waters of the state.

#### *Organization of the Water Pollution Control Agency*

Water pollution control functions were, in most states, originally placed within the state boards of health as the original pollution control legislation dealt primarily with the protection of public water supplies. As the objectives have been expanded beyond the protection of public water supplies and into other areas such as conservation, fish, recreation, etc., many states have created independent agencies for the purpose of administering the water pollution control program. In many instances the independent agency is placed within some other state department, such as the state broad of health, and in many instances it is made a separate agency of government. A review of the various state laws dealing with water pollution control indicates that about 30 states have an autonomous water pollution control broad or commission, with a minimum of overlap of powers between that board and the state board of health or any other board or department of the state concerned. This is the type of agency contemplated by the Suggested Act, and North Carolina is an example of a state with this kind of agency. In North Carolina a Water Resources Board has been created as a separate and independent agency of state government with overall responsibility over water rsources; and, a Stream Sanitation Committee has been established within the Department of Water Resources for purposes of establishing standards of water quality, classifying the streams of the state, and issuing and enforcing pollution abatement orders, among other things.

In eight states, the state board of health has responsibility for enforcing water pollution control laws but it is aided by a water pollution board serving in an advisory capacity. In seven states, the board of health has primary responsibility for enforcing water pollution legislation, but other agencies of the state government (such as the department of conservation or a wildlife resources committee) also have considerable statutory authority within the area of their own particular interests. In five states the board of health is given sole responsibility for administering the water pollution laws. Idaho is an ex-

ample of a state falling into this category.

As to representation of interests on the board, the Suggested Act would create a board composed of certain ex officio members (the director of the department of health, director of the department of agriculture, director of the department of conservation, fish and game) and certain public members (two members appointed by the Governor). The Suggested Act recommends that the appointed members include a representative of municipal government and a representative of industry (so as to embrace the two main groups in society that have the heaviest responsibility for both producing and controlling pollution). A comparison of the state laws with respect to membership on the board, and whether it is an independent board, an advisory board, or the state board of health, indicates that five states have a board or commission composed entirely of ex officio members; fourteen states have a board or commission composed entirely of public members selected by the Governor; a few states have a board or commission with its members being named by a number of state agencies and by the Governor to represent a variety of interests; and, that the majority of the states have a combination of both ex officio and public members on the board or commission. An example of the first category would be Louisiana where the Stream Control Commission is composed of the Commissioner of Wildlife and Fisheries, the President of the State Board of Health, the Commissioner of Agriculture and Immigration, the Commissioner of Conservation, the Executive Director of the Department of Commerce and Industry, and the Attorney General, or their authorized representatives. An example of a board composed entirely of public members is Virginia. The Virginia State Water Control Board is composed of five members appointed by the Governor and confirmed by the General Assembly for four-year terms. An example of a state which has members appointd by state agencies and the Governor is Arkansas. An example of a state which follows the majority pattern of having a combination of ex officio and public members is Maryland where the Water Pollution Control Commission is composed of seven members. They are a representative of the State Department of Health, Chairman of the Board of Natural Resources, Director of the Game and Inland Fish Commission, Director of the Department of Research and Education, and three members appointed by the Governor.

Most of the independent agencies have authority to elect their own chairman, to prescribe their own procedure, to elect an executive secretary to serve at the pleasure of the board or commission, and to employ and prescribe the functions of other officers, employees and consultants as may be necessary to carry out their functions. Many states provide that the executive secretary must be a person trained asd experienced in the field of water pollution control. Also, many of the acts provide that, insofar as practicable, personnel of the health department or other state departments are to be used for the performance of certain technical services in order to avoid duplication of effort.

The Suggested Act states that, in addition to the operating board or commission, it might also be wise to have an advisory committee. The purpose of this is generally stated to be to give all of the many interests involved some representation and an opportunity to present their views while at the same time not making the operating board so big as to be unwieldy. As was indicated previously, several states do provide for an advisory board.

*Powers and Duties*

This is undoubtedly the most important section of any law setting up a water pollution control program. The powers and duties section of the Suggested Act contains eleven subsections and in general authorizes the board to develop comprehensive programs for pollution control and abatement; to cooperate with other governmental agencies and units in the furtherance of pollution control; to accept and administer loans and grants for carrying out its purposes; to conduct or participate in various research programs relating to water pollution control and prevention; to collect and disseminate information relating to water pollution and the control thereof; to adopt standards of quality of the waters of the state and to classify such waters according to their best uses; to adopt and enforce regulations implementing the powers and duties of the board; to issue orders prohibiting or abating discharges of wastes into the waters of the state, or requiring the construction of new or repair of existing disposal systems; to review plans relative to disposal systems in connection with the issuance of permits required by the act; to issue permits setting out conditions under which discharge of wastes into the waters of the state may be authorized; and to exercise all incidental powers necessary to carry out the purposes of the act.

A comparison of the laws of the various states indicates that the category into which most states fall, about twenty-two, is that of states with agencies having broad powers which include the power to establish standards of quality and to classify the waters of the state according to their best use. The law in these states is similar, in this respect, to the Suggested Act. North Carolina is an example of a state falling into this category. The North Carolina State Stream Sanitation Committee is authorized, after notice and hearing, to classify the various waters of the state and to adopt standards for each classification. The Committee publishes its final action as part of its official regulations and specifies the official effective date. The Committee also has authority to issue permits for disposal systems which are either new or altered after first approving the plans for such systems; is authorized to conduct scientific experiments and investigations; is authorized to adopt rules and regulations both as to procedures before the board and for carrying out its purposes; is authorized to issue special orders for the abatement of pollution and to issue permits and certificates; and, is authorized to co-operate with the Federal government in the furtherance of both the present water pollution control act and future legislation in this area. Seventeen states have agencies with powers customary to an administrative agency (such as rule making powers, investigation, hearings, etc.) and with authority to abate pollution, but with no provision for the establishment of standards of quality for the waters and no provision for the classification of the waters according to their best use (established either by the board or by the legislature). An example of this type of authority is that found in the Connecticut statutes. There the Water Resources Commission is authorized to control and abate the pollution of the waters of the state by ordering polluters to use or operate some practicable or reasonably available system or means which will reduce, control, or eliminate pollution if the cost of installation, maintenance, and operation of such remedial measures is not unreasonable or inequitable. In a few states the state pollution control agency is given rather broad powers but must classify the waters in accordance with standards set by the legislature. An example of this category is New Hampshire where all surface waters are classified by the legislature according to four standards, ranging in quality from the highest, Class A, to the progressively lower qualities, Class B, (divided into B-1 and B-2), Class C, and Class D. Finally, there are still a few states with agencies having limited powers, general-

ly limited to matters of public health such as the control of sewage and the protection of public water supplies. An example of this is the State of Nevada where the State Board of Health is given general authority over all matters relating to the preservation of the health of the citizens of the state, and the Board is authorized to make rules and regulations for the prevention of nuisances and the regulation of sanitary practices.

*Prohibitions*

The Suggested Act states that it is unlawful for any person to cause pollution of any of the waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. It also states that it is unlawful for any person to carry on any of the following activities without first securing a permit from the board: (1) the construction, modification or operation of any disposal system or the extension or addition thereto; (2) increase in volume or strength any wastes in excess of the permissive discharges specified under existing permits; (3) the construction or operation of any industrial or commercial establishment or any modifications thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; and, (4) the construction and use of any new outlet for the discharge of any wastes into the waters of the state.

Although a specific tally was not made of the states with laws containing similar provisions, many of the states do have similar provisions, while several others make discharges unlawful but restrict this to those instances where the discharge is detrimental to public health or where they might contaminate a public water supply, or where certain other specified dangers might be involved. An example of a state with broad prohibitory powers is North Carolina. The North Carolina law provides that after the effective date applicable to any watershed (which means after the waters of that watershed have been classified) a permit must be secured from the State Stream Sanitation Committee for virtually the same reasons as those required by the Suggested Act, noted above. In addition, the law specifies that no permit is to be issued for disposal of wastes into water used as a public water supply when it is determined that such waste disposal is sufficiently close to the source of the public water supply as to have an adverse effect thereon, unless the same is approved by the State Board of Health. The Stream Sanitation Committee is also authorized to issue certificates of approval for the voluntary installation of treatment works upon certain specified conditions.

*Classification of Waters; Standards of Water Quality*

This section was discussed previously under the heading of powers and duties, where it was noted that many states have authorized their water pollution control agency to establish classifications and standards of water quality, several have given their agencies broad powers concerning pollution control but do not specifically authorize the establishment of classifications and standards, and a few agencies are required to classify the waters on the basis of standards prescribed by the General Assembly.

*Proceedings Before the Board; Hearings*

Section 7 of the Suggested Act deals with proceedings before the board and section 8 deals with hearings. These sections spell out the right of an alleged violator of the Act to notice of his alleged violation and requires that he be afforded an opportunity for a fair hearing. The Board is authorized to issue subpoenas, administer oaths, examine witnesses, make findings of fact and conclusions of law, and enter such orders as are necessary to further the purposes of the law. These sections also afford persons who are denied a permit, or whose permits are revoked, an opportunity to be heard by the agency concerning the appropriateness of such denial or revocation. Also, exceptions are made for emergency situations requiring immediate action to protect the public health or public welfare, in which case the agency may issue orders immediately effective with a right to a subsequent hearing.

Many of the states with an independent agency with power to issue orders of abatement and to require permits also provides that the agency is to hold administrative hearings similar to those of the Suggested Act. Where there are provisions for administrative remedies, the courts generally hold that they must be exhausted before access is to be had to the courts.

A case dealing with the proposition that although the state has authority, under the police power, to regulate the contamination of the waters of the state, the exercise of this power must be consistent with the requirements of due process of law is the 1955 Michigan case of **L. A. Darling Co. v. Water Resources Commission**, 67 N.W. 2d 890. In that case, the Michigan Water Resources Commission called in the plaintiff company, held a conference with them, and ordered the company to install treatment facilities which would render its electroplating waste discharges non-injurious to the public health. At the conference or hearing, no witnesses were sworn, examined or cross-examined; no exhibits were identified; material relied upon by Commission was not introduced or referred to; and, no findings of fact were made by the Commission. The company appealed to the Courts contending that the order was issued without a fair hearing within the contemplation of the pollution control law. The State Supreme Court agreed, holding that the issuance of the order after an informal conference was not consistent with the requirements of due process of law. The Court also held that the right to appeal to the courts for a trial de novo was not justification for a failure to have a proper administrative hearing, stating: "The Legislature did not contemplate that the failure of the Commission to hold a proper hearing should be corrected by appeal."

*Enforcement*

Sections 9 through 11 of the Suggested Act deal generally with matters of enforcement. Any water pollution control law must have teeth in the sense of providing enforcement procedures in order to be completely effective. The requirement of the submission of plans and the issuance of permits by the boards was touched on previously. Such requirments are now widely used and the authority for such requirements appears to be well settled.

Once the regulations, standards, and water classifications have been provided, the state agency is then ready to get down to the business of controlling the pollution. Under the law and programs of many states (and that contemplated by the Suggested Act) a water pollution control agency proceeds with its mission of enforcement by investigating actual cases; holding hearings thereon; issuing orders for prevention, abatement, or control of pollution; acting on plans for sewage or waste treatment or disposal facilities; issuing permits for approved facilities; and denying permits for facilities where the prescribed requirements are not met. If the agency's mandates in any form are not heeded, the agency may, in many states, invoke civil court proceedings to compel compliance; or, it may resort to criminal prosecutions to punish violations.

The orders issued by the board, under the laws of many states, may provide for the discontinuance of polluting dis-

charges, or the agency may be authorized to go even further and require the construction of treatment facilities or the adoption of other remedial measures. In many instances the order to stop pollution may be most effective whereas in other instances a mandatory order to construct treatment facilities may be most effective. Even though the state law may provide only for the issuance of orders to prohibit pollution, in some instances the courts have construed the statutes by implication as authorizing the board to issue positive orders for remdial measures.

Aside from the permit requirements and the authority to issue orders to prevent pollution or to construct treatment facilities, the typial civil remedies provided in the Suggested Act and in many state acts calls for the enforcement of the provisions of the law or orders of the board by injunction proceedings. This is a well recognized from of civil action. This, like the orders of the board, may be merely an injunction to stop doing a certain thing or it may be positive in terms of requiring that certain things (such as the construction of treatment facilities) be done. Disobedience of a writ of injunction is punishable as contempt of court by a fine or jail sentence, under the recognized powers of courts of equity or courts of general jurisdiction, depending upon the statutes of the particular state involved. If the state agency is to have authority to bring injunction proceedings against those who violate the laws or orders, this should be specified in the state act as there is a general principle of law to the effect that an equitable remedy, such as an injunction, will not be issued where there is an adequate remedy at law, and often times the fact that a criminal penalty is provided is deemed to be an adequate remedy at law.

The principal penal provisions in many state acts consist of making a violation of the water pollution control law or the regulations adopted pursuant thereto by the pollution control agency a crime punishable by specified penalties. Although the water pollution control agencies generally, as do the public health agencies, rely upon education rather than law enforcement, it is absoluely necessay to have some enforcement provisions available for use if necessary as a part of the educational process. Such is the law of human nature. Pollution control agencies generally do not start a program of wholesale prosecutions, but rather devote their limited means to making investigations, issuing orders, acting on plans for treatment and disposal facilities, issuing or denying permits, etc. This would seem to the writer to be desirable. Also, it would seem to be desirable for the agencies not to start court action except as a last resort and then only if there is a reasonable chance of conviction both on the law and on the evidence. No action should be threatened or initiated that cannot be finished. A case that is lost for lack of adequate grounds discredits and weakens the enforcement authority, and weakens the prestige of the agency. Similarly, unenforceable laws should not be enacted as they create disrespect for all law.

A case illustrating the use of court decrees backed up by contempt authority for the enforcement of abatement orders is the New Jersey case of **In Re Borough of West Wildwood et. al.**, 126 A. 2d 233 (1956). The Borough of West Wildwood was directed by a chancery court in 1934 to comply with an order of the New Jersey State Department of Health to desist and refrain from allowing its improperly treated sewage to flow into Post Creek or to correct the inadequacy by a specific date. Four times over a period of 20 years the borough was found guilty of contempt of this order. The first contempt was punished by a fine of $50 against each city councilman and $250 against the borough.

The second finding of contempt was followed by the borough agreeing to make the necessary corrections in the sewage treatment plant. After the third finding of contempt, the borough was directed to raise the necessary monies to complete the correction of the sewage treatment plant.

Upon the failure of the borough to comply with this direction, the court in January 1955 levied a fine of $5000 against the borough, in addition to a fine of $25 per day until it complied with the order and $500 against each councilman-defendant who voted "no" or refrained from voting on the borough ordinance providing for correction and installation of new sanitary sewage disposal facilities and authorizing issuance of bonds to help finance such construction.

*Miscellaneous Provisions*

The remaining sections of the Suggested Act, repealing conflicting laws, preserving existing rights and remedies, specifying that the provisions of the Act are severable, and giving the act a short title, are customary and desirable legal provisions. The bills providing for water pollution control will almost always contain such provisions. A few other provisions often found will be noted.

In some states there are provisions excepting from the operation of the pollution control law discharges of sewage or industrial waste existing at a certain date, or excepting certain types of industrial waste or certain areas altogether. This type of grandfather clause or exception is considered by the enforcement agencies to be undesirable as it limits the scope of their operations, discriminates against other sources of pollution, and makes it difficult to deal with them and thereby retards the entire enforcement program.

Some states have provisions alleviating the hardships that might be caused by a sudden requirement to cease discharging pollutants into the water. For example, in North Carolina the law provides for the issuance of a special order to cease certain discharges after the stream has been classified and the standards have been provided. However, the law states that no such special order shall be issued against a person, or if issued the time for compliance shall be extended to the necessary extent, where the Stream Sanitation Committee finds (after investigation and hearing) that it is impossible or for the time being not feasible for such person to correct or eliminate the activities causing or contributing to the pollution. Such a situation is deemed to exist where no adequate or practicable method is known, or where the cost of any known method is "unreasonably burdensome" in comparison with the abatement result, or cannot be adopted because of financial inability (due to statutory restrictions on borrowing or otherwise).

Some states have overcome the problem brought about by an order against a municipality which cannot comply with the order because of financial limitations by providing that the limitations may be increased or nullified for water pollution control purposes.

**Summary**

In summary, it is now well settled that the states may, as a valid exercise of the police power, enact water pollution control laws. A state agency may be created to administer the program, and may be given rather broad powers to develop and enforce a comprehensive pollution control program provided the legislature sets out sufficient "standards" to guide and circumscribe the area of activity of the agency. It appears that over half the states now have water pollution control laws similar to those recommended by the Suggested Act, which is currently undergoing revision, while other states still have laws providing for a less comprehensive program. Although no effort has been made in this article to suggest what legislation in this area would be desirable, it is suggested that our water pollution control laws be frequently re-examined for the purpose of determining whether or not they meet today's needs.

# WATER POLLUTION CONTROL IN NORTH CAROLINA

**by W. E. Long Jr., Chief Pollution Control Section of The North Carolina Department of Water Resources**

*This article is summarized from a paper presented by the author to the Southeastern Water Law Conference, Athens, Ga., November 8, 1961.*

### Introduction

The early colonists were pleased with the abundant natural resources which they found in this area. They liked the mild climate, the adequate rainfall, the fertile soil, the great forests, the abundant game, the navigable rivers, and the clean streams which were alive with fish.

But how were these early settlers to know that within little more than two hundred years this area would have a population of over 4.5 million? How were they to know that most of the trees would be cut, the lands drained, farms developed, minerals extracted, roads, railroads and airports built, power developed, factories erected, and towns and cities estabilshd. They could not foresee the damage and destruction to these rich natural resources that their descendants would produce by cutting the forests, wearing out and wasting much of the crop land, killing the wildlife, and polluting the streams. Yet today, this is what has happened to an alarming degree in the area now known as the State of North Carolina.

### Water Assets And Uses

North Carolina has 16 major river basins with a drainage area of approximately 52,285 square miles. The average rainfall is about 48 inches per year. It must be pointed out that these water assets while abundant are fixed, and are more or less constant over a long period of time.

Individual, municipal, industrial, and agricultural uses of water are increasing as time goes on. If our supply of water is relatively fixed, and our uses of water are increasing, it will be but a matter of time until the demand for water will exceed the supply.

In order to conserve water, it must be reused as much as possible. It is imprudent to squander our greatest natural resource by using it but once, soiling it beyond redemption, and then throwing it away. Our continued growth and security demands that water be made to do more and more work, for more and more people, by being used over and over again. On the average, municipalities return to streams about 80% of the water they use, and industries may return a somewhat higher percentage. With proper treatment prior to its release, this returned water can be put to work by other users. It is the treatment of this "used water" or wastes that brings us to the problem of water pollution control.

### Brief History Of Pollution Control

The North Carolina State Board of Health has been concerned with the problem of municipal sewage disposal since the first State laws relating to the protection of public water supply were passed in 1893. These laws, subsequenlty amended, were primarily concerned with protecting streams used as sources of public water supply; therefore, little or no protection was afforded other streams for essential uses.

The State Department of Conservation and Development first became concerned over the destruction of fish and animal life, and the effects of pollution on the development of recreational, agricultural, and industrial water uses. Therefore, in 1926 a cooperative study between the State Board of Health and the State Department of Conservation and Development was carried on under the direction of a joint committee known as the "State Stream Sanitation and Conservation Committee" until 1931, when it was abandoned because of the depression.

Little was done until 1937 when the State Planning Board, recognizing the need for an effective pollution control program, recommended that suitable legislation be enacted. A bill was introduced in the 1937 General Assembly, but failed to pass, and nothing was done until 1945 when a bill was passed authorizing the establishment of an official study group known as the "State Stream Sanitation and Conservation Committee." This legislation specified that the facilities of the member agencies be utilized, and no funds were appropriated to carry out the work. Through the transfer of some funds in the State Board of Health budget, it was possible to obtain assistance from North Carolina State College, and a report entitled, "The Extent of Stream Pollution in North Carolina" was presented to the 1947 General Assembly with the request for funds to carry on the studies necessary to determine the type of legislation required to cope with the stream pollution problem. Approximately $20,000 were made available as of July 1, 1947, for this purpose.

During 1945-49, the studies revealed the need for additional legislation to establish a control agency. Consquently, a bill similar to the 1937 bill was introduced in the 1949 General Assembly. This bill did not pass, and in 1951 another was introduced. After being rewritten in committee, this bill finally passed on April 6, 1951.

### Present Law

The "Law Relating To Stream Sanitation" was codified into the General Statutes of North Carolina as Article 21 of Chapter 143. This act was amended slightly by the 1955 and 1957 General Assemblies. In 1959 it was further amended by Chapter 779 which created a State Department of Water Resources into which was transferred the State Stream Sanitation Committee without change in its powers, duties, responsibilities, and functions.

### Declaration Of Policy

Section 143 - 211 of the General Statutes states the policy of the State as follows: "It is hereby declared to be the policy of the State that the water resources of the State shall be prudently utilized in the best interests of the people. To achieve this purpose, the government of the State shall assume responsibility for the quality of said water resources. The maintenance of the quality of the water resources required the creation of an agency charged with this duty, and authorized to establish methods designed to protect the water requirements for health, recreation, fishing, agriculture, industry, and animal life. This agency shall establish and maintain a program adequate for present needs, and designed to care for the future needs of the State."

### Duties Of State Stream Sanitation Committee

The duties of the State Stream Sanitation Committee are set forth in Section 143 - 215 of the General Statutes as follows: "(1) To develop and adopt, after proper study, a series of classifications and standards applicable to each

such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this Article most effectively."

This was no easy task as no yardstick existed for measuring pollution in the streams of the State, or was the best usage of every stream known. The Committee finally adopted the following six classes for fresh surface waters, and the standards of water quality to be applied thereto:

| Classification | Best Usage |
|---|---|
| A-I | Unfiltered public water supply after approved disinfection. |
| A-II | Public water supply with approved treatment equal to coagulation, sedimentation, filtration, and disinfection. |
| B | Outdoor bathing. |
| C | Fish and wildlife propagation. |
| D | Agriculture and industrial cooling and process water. |
| E | Navigation and waste disposal. |

Four classes were established for tidal salt waters as follows:

| Classification | Best Usage |
|---|---|
| SA | Shellfishing for market purposes. |
| SB | Salt water bathing. |
| SC | Salt water fishing. |
| SD | Navigation and waste disposal. |

"(2) To survey all the waters of the State and to separately identify all such waters as the Committee believes ought to be classified separately in order to promote the polciy and purposes of this Article, omitting only such waters as, in the opinion of the Committee, are insufficiently important to justify classification or control under this Article.

"(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Committee deems proper in order to protect it for its present or potential future 'best usage.' "

### Classification Procedure

The accomplishment of these duties requires considerable time and work. The law requires that classifications be established on an entire river basin at a given time. When a river basin is to be classified, a survey is made of the entire drainage area to determine the location of each significant source of pollution. Then, at least, one sampling station is set up above and below each point of significant pollution. Additional sampling stations are estabilshed as may be needed. Many samples are collected and analyzed from each sampling station. These data are checked and tabulated, and with other information gathered from various sources are published in a Pollution Survey Report for that river basin. This technical report is mailed to all towns and industries within the river basin, and to others on the official mailing list. After due notice, one or more public hearings ar held at which the people have an opportunity to express their views concerning the recommended classification of the various streams within the river basin. All public hearings are tape recorded, and the proceedings are published shortly after a 30-day period following the hearing during which time written briefs may be submitted. With the benefit of the technical data in the Pollution Survey Report, and the proceedings of the public hearings, the State Stream Sanitation Committee establishes the classification for each significant stream or segment thereof in the river basin. A Comprehensive Pollution Abatement Plan is then worked out for the entire river drainage basin. This Plan spells out in general terms what each significant point of pollution should do in order to meet the assigned stream classification. This Plan is mailed by Certfied Mail Return Receipt Requested to all points discharging wastes into the waters of the river basin, together with forms to be used in filing an application for a Temporary Permit within six months after receipt of the Comprehensive Pollution Abatement Plan. This application for a Temporary Permit must contain a satisfactory proposed time schedule for the accomplishment of the various steps necessary to solve the problem in question, and must be accompanied by either a certified copy of resolution adopted by the governing body, other appropriate document signed by an authorized person or agent stating that the time schedule submitted will be followed in the execution of the needed improvements.

The time schedule submitted for pollution abatement must contain estimated dates for the following:

1. Engineers will be retained on or before ————
2. Reports and plans will be filed on or before ————
3. Construction will begin on or before ————
4. Works will be completed and placed into operation on or before ————

If the dates submitted in the proposed time schedule are deemed satisfactory with respect to the magnitude and complexity of the problem, a Temporary Permit is issued to the municipality or industry for the period of time stated, to permit the continued discharge of untreated or inadequately treated wastes into the classified waters of the State until adequate treatment facilities can be constructed and placed into operation. Except in very unusual circumstances, the Committee has established the maximum time for the installation of proper treatment works as five years.

### Progress To Date

Much progress has been made in carrying out the stream sanitation program in North Carolina. Eleven river basins representing about 81% of the State's area have been classified. The field studies have been completed and the pollution survey reports are being prepared for the remaining five river basins which represent approximately 19% of the State's area. If present plans can be carried out, all streams in the State will be classified by the end of 1962.

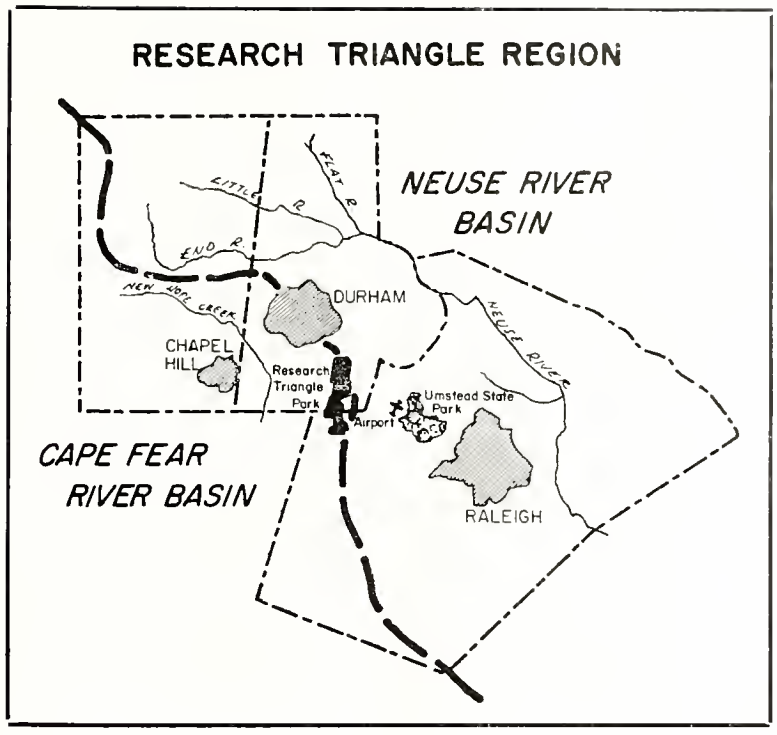
Concerted efforts have been directed toward the abatement of existing pollution in our streams, and the control of new pollution. These efforts have resulted in the issuance of 256 approval documents covering domestic sewage and industrial waste collection and treatment projects having an estimated cost of $75,000,000.

Applications for Federal Grants under Public Law 660 have been filed by 62 municipalities through fiscal year 1960-61. The estimated cost of these projects is 30.2 million dollars, and the grants are estimated at 6.3 million dollars. Of these 62 projects, 36 have been completed, 15 are now under construction and 11 are in the planning stage. Applications received for grants during the fiscal year 1961-62 total 51. These applications represent projects having an estimated cost of 32.5 million dollars, and the grants are estimated at 6.1 million dollars.

In addition to the above, special studies have been conducted on waste discharges from many municipalities and industries. Assistance has been rendered to officials of other State Agencies, municipalities, industries and their consulting engineers in evaluating plant sites and waste treatment problems for new and prospective industries.

### Future Outlook

We believe that water pollution control will be accomplished as the people of the State are educated to the needs by the facts. We, in the Division of Stream Sanitation and Hydrology, are trying to get these facts, and present them to the people for the necessary action. Every individual and every organization interested in the future of our State should take an interest and assist in the protection and conservation of our greatest natural asset - our water resources. With the continued backing of our people in this most important work, we believe that we shall be able to provide our growing municipalities and our expanding industries with an adequate supply of suitable water, and to make North Carolina a greater Variety Vacationland, and a better place in which to live.




# WATER USE LAW IN ACTION

by Milton S. Heath, Jr.
Assistant Director,
Institute of Government

**An analysis of arrangements made by water users to secure their sources of water supply, with particular reference to the Research Triangle Region of North Carolina***

*This is a summary of a paper that described a study of arrangements to secure sources of water supply by the water users in the Research Triangle Region. The Triangle Region study is a part of a continuing investigation being carried on by the author in "water problem" areas of the state. Its aims are to broaden existing knowledge of the actual workings of the present system of water law, to demonstrate the cost to various classes of water users of operating under this system, to point out gaps and ambiguities in existing law, and to help show how existing laws may act to encourage, or to discourage or prevent, various uses of water.*

### The broad setting of the study

Parts of the southeast have in recent years been brought close to the margin of developed water resources. This has come about through a combination of population growth, increased industrialization and technological change (such as the development of aluminum piping for irrigation). The large question posed by these developments is, what is to be done about this: should this condition be accepted as a potential limitation on economic growth? If not, where are solutions to be found—in engineering measures, such as building more reservoir storage? in new laws and institutions? or elsewhere? These are the broad issues to be met; this paper concentrates mainly on their legal and institutional facets.

### Method and scope of study

In this study arrangements made by water users to secure sources of water supply have been examined in an effort to learn more about:

. . . how cities, industries, farmers and other water users actually operate within the framework of existing laws and institutions;

. . . at what cost;

. . . what obstacles have been posed to water users by existing laws and institutions; and

. . . how have the water users sought to overcome these obstacles and with what success.

The study has been conducted mainly through interviews of water users, starting from prepared questionnaires as a point of departure. So far it has reached a sample of some 70 farm irrigators in the Research Triangle Region (Durham, Orange and Wake Counties), 14 cities in the Piedmont and Mountain areas (concentrating on the Triangle Region), and a few scattered industrial water users. The heart of the questionnaires

*The author wishes to acknowledge the assistance of Mr. Robert Page, Research Assistant at the Institute of Government in interviewing irrigators for this paper.

is a group of questions concerning acquisition of water rights and controversies among water users. For purposes of this article, the interviews were supplemented by information from several other sources, including the State Department of Water Resources; the United States Soil Conservation Service; Howard Ellis of the State College Department of Agricultural Extension; and Ray Lester of the Research Triangle Regional Planning Commission.

**Summary of findings concerning the Research Triangle Region and its water users**

The tri-county Research Triangle Region had a 1960 population of 324,047. Recent projections of regional population in 1980 range from about 450,000 to 650,000—increases which obviously will require further development of its water resources.

The region straddles two major river systems, the Cape Fear and Neuse, which are currently its principal source of water supply, ground water development having been negligible. The divide of the two basins splits the City of Durham. For years Durham has obtained its municipal water supply entirely from Neuse River tributaries and dumped its sewage partly into Neuse tributaries and partly into Cape Fear tributaries (resulting in a trans-river-basin diversion to this extent).

*Municipal water supply.*—Major municipal water suppliers are the City of Raleigh, the City of Durham (which also supplies the Research Triangle Park and Umstead State Hospital), and the University of North Carolina (which supplies itself as well as the Towns of Chapel Hill and Carrboro). Smaller suppliers include the Town of Hillsboro in Orange County and the Towns of Apex, Cary, Fuquay-Varina, Garner, Wake Forest, Wendell and Zebulon in Wake. The Raleigh-Durham Airport maintains its own supply. This survey reached directly the three major suppliers and Hillsboro and covered the others through secondary sources.

The municipal suppliers surveyed depend mainly on surface water reservoirs for water supplies in this ground water poor region. The larger suppliers have been involved in a few lawsuits over water use, concerned more often than not with water pollution rather than water supply.

Rarely has any of the municipalities surveyed, either within or without the Research Triangle Region, found it necessary to purchase water rights or related property interests for the purpose of securing sources of water supply. A notable exception involves the City of Durham. Around the turn of the century the Durham Water Company, then supplying the City, acquired for nominal consideration of $432 water rights and stream beds affecting nearly 5500 acres of land bordering the Eno River and its tributaries. The City now owns these properties, which are being held as a possible future reservoir site. Two other examples of buying up riparian rights found in this survey involved cities outside the Triangle Region, Burlington and Greenville (S.C.). In acquiring recent reservoir sites, Burlington paid out approximately $5,750 to objecting landowners, including allowances for building farm ponds or wells to farmers who had formerly irrigated from the stream. Greenville settled water rights disputes with downstream textile mills for something like $55,000 to $60,000.

Burlington, following its settlements with the irrigators, put into operation a system of experimental 30-day permits allowing farmers access to its new reservoir for irrigation purposes. Irrigation under these permits during the summer of 1961 was negligible in relation to the capacity of the reservoir, according to reports made by the irrigators to the City. This is the lone example uncovered in the survey of any effort by a municipality to regulate other water uses affecting its reservoirs, beyond routine fishing and boating regulations.

Some water users in the Triangle Region, including the largest municipal supplier, Raleigh, will soon need to expand their sources of water supply. This will of course cost money and require advance planning, but it does not seem likely to pose extraordinary legal difficulties.

*Institutional water uses.*—In the region there are several institutional water users whose nature or location poses unique water supply problems—the University of North Carolina, Umstead State Hospital (located just outside the region but currently supplied by Durham), and the Raleigh-Durham Airport Authority. The University, supplying its own needs as well as those of the Towns of Chapel Hill and Carrboro, has apparently encountered no unusual difficulties to date. One might anticipate, though, that potential industrial and residential development of surrounding areas could be a source of future problems for the University unless an ample regional supply source is developed to serve such development. The Hospital and its hometown of Butner have had to rely hitherto on the City of Durham as a source of supply. An engineering survey has been made for an adequate independent source; this project received at least a temporary setback, though, with the defeat last fall of the State bond issue, which included funds for the new water supply. The Airport, because of its location, has been unable thus far to develop a completely adequate independent source of supply or to tap onto an accessible city water line.

*Farm irrigation.*—Farm irrigation in the Triangle Region is practiced on a relatively small scale, principally on flue-cured tobacco. The farmers surveyed rely almost exclusively on farm ponds as their source of irrigation water. They have been involved in few disputes over water either among themselves or with other water users; they have not found it necessary to purchase water rights in order to secure sources of water; these wet years, none of them complains of having lacked water; and commonly they are disposed to share their water with their neighbors.

The marked reliance upon farm ponds is of special interest. It had been expected that far more substantial use of streams would be found. If this sample is typical it suggests that, in this region, the legal position of the farm irrigator is somewhat stronger than had been anticipated and the probability of water use conflicts arising from irrigation is less than has been anticipated.

*Industrial and recreational water uses.*—The comments under this heading are drawn from secondary sources and general observations, since systematic coverage of industrial and recreational water uses has not yet been possible in this survey.

In the Triangle Region water for industrial use is obtained mainly from municipal suppliers, though there are a few establishments that maintain their own ground or surface supplies. There are several industries in the area using more than one mgd, but no "wet" industries that demand enormous quantities of water. This is probably fortunate, since the regional water resource is not geared to meet such heavy demands.

The region has no major water recreational facilities, and if expected population growth materializes the inadequacy of the existing facilities will become increasingly apparent. Best hope for filling the gap probably lies in construction of one or more large multipurpose reservoirs within easy distance of regional population centers. The problem of developing legal arrangements to secure such sources of water for recreational purposes and to resolve conflicts involving water recreation may be quite challenging. In the Triangle Region the nature of these problems may vary considerably, depending on where the reservoirs are located and by whom they are constructed.

*Disposal of sewage and industrial wastes.*—Undoubtedly the most serious regional water resource problem is to find a satisfactory way to dispose of sewage and industrial wastes. Presently the Neuse River for some distance downstream from Raleigh is classified by action of the State Stream Sanitation Committee for public water supply purposes. Low flows in this stretch of the Neuse and its tributaries will not assimilate substantially more wastes than are already discharged into it, without impairing this water quality classification. But if the population and industrial growth anticipated during the next two decades for the region materializes, large additional sewage and industrial waste loads must of course be disposed of somewhere.

Unless the downstream classification of the Neuse is lowered, which does not seem likely, the region apparently confronts these alternatives: (a) to augment minimum stream flows in the Neuse to the point where substantially more wastes can be assimilated without impairing water quality, if this is feasible; (b) to divert more sewage and industrial waste effluent to a neighboring basin (the Cape Fear being the most likely candidate); or (c) to accept a limitation upon future economic development.

The staff of the Research Triangle Planning Commission is now reviewing and analyzing proposals for construction of a sewage treatment plant within the Cape Fear Basin to handle a significant part of the region's sewage and industrial wastes, or construction of low flow augmentation dams in the upper Neuse Valley, or both. The possibility of a trans-river-basin diversion, resulting from such a sewage disposal system, raises the question: is this permissible under existing law? Or, more precisely: would an injured downstream riparian landowner be entitled to an injunction against the diversion? No definite response is possible without litigation, or at least until the factual situation has more nearly crystallized. Undoubtedly, though, an answer favorable to the Triangle Region would come far easier if minimum stream flows in the upper Neuse Valley were augmented by artificial storage.*

*Federal water resources agencies.*—No consideration of water usage in the Triangle Region would be complete without mention of two federal agencies that work in the area, the Corps of Engineers and the Soil Conservation Service.

The Corps long has had under consideration building a multipurpose impoundment at the Falls of the Neuse, just above Raleigh, and a similar dam on the New Hope River near Moncure, downstream from Chapel Hill and Durham. These projects would have some bearing on the water supply, sewage disposal and recreational needs of the area, though it is not clear precisely how they will fit into the picture.

The Soil Conservation Service in carrying out its responsibilities under Public Law 566 gives financial and technical aid for small watershed projects. Though designed primarily for agricultural flood control purposes, small watershed projects may also include elements of urban flood protection, and municipal, industrial and farm water supply. A small watershed project is now being planned on Crabtree Creek, which flows through parts of Raleigh and into the Neuse, with responsibility for the project centered in the recently created Crabtree Creek Watershed Improvement District. It is possible that one or more of the reservoirs built in connection with this project will be available for public recreation or public water supply purposes, but this remains to be seen. The City of Raleigh and Wake County are giving the program excellent co-operation. The City and County have contributed $3,000 each to the District—a sum approximating the estimated annual maintenance costs—and have indicated their intent to make similar contributions in future years. The City Council has also shown a receptive attitude toward use of zoning and subdivision controls to restrict land usage in the Crabtree Creek flood plains within the city limits, should this prove necessary.

*Of equal significance is this question: though injunctive relief were unavailable, could downstream riparians obtain prohibitively large damage awards to salve their pains? If anything, this question is even harder to answer. Obviously, though, it might be difficult to prove actual damages if stream flows had been augmented by upstream storage sufficiently to offset the diversion.

## RESEARCH TRIANGLE PLANS TO DEVELOP WATER RESOURCES

At a recent meeting of the Research Triangle Planning Commission a staff progress report was presented outlining a suggested plan for developing the water resources of the Triangle Region. The report initially sketched the reasons for the plan, noting *first* the need for a development program in order to keep pace with anticipated growth, and *second* the undesirability of a piecemeal or unilateral approach to development, because of a scarcity of available sites for reservoirs. Four potential reservoirs were presented which, together with existing facilities, would meet indicated needs projected to the year 2000. These were reservoirs on Eno River (located at elevation 400' msl, capacity 12.5 bil. gal.), Little River (elevation 360' msl, capacity 7.088 bil. gal.), Neuse River (Falls of the Neuse Dam under consideration by the Corps of Engineers), and Crabtree Creek (elevation 260' msl, capacity 3 bil. gal.)

Together with existing reservoirs, the Eno and Little River projects would augment existing flows enough to meet the water supply and sewage dilution needs of 570,000 regional population, and also furnish much needed recreational facilities. The Crabtree project would add further recreational benefits and augment stream flows to supply an additional 30,000 Raleigh-area population. No definitive description of the Falls of the Neuse Dam, nor of its water use effects, is possible at this time.

The report assigned first and second priority, for water use purposes, to the Eno and Little River projects; third and fourth priorities would fall to the other two projects. Construction of the Eno River, Little River and Crabtree Creek projects, it is assumed, would be under local auspices. Possible forms of local organization not yet having been explored, the report merely comments that some sort of locally controlled regional action agency is required. Inter-relationships of the suggested Eno-Little-Crabtree facilities with the Crabtree Creek watershed program and with the projected Corps of Engineers dam at the Falls of the Neuse are now being investigated.

**The background data concerning the plan described here was supplied by Ray Lester of the Research Triangle Planning Commission staff.*

*Above is a scene from the Institute school for Prison Directors and Supervisors held in January under the direction of Assistant Director, V. L. Bounds.*

# INSTITUTE SCHOOLS, MEETINGS, AND CONFERENCES

Between September 1, 1961, and March 1, 1962, some sixty schools and conferences for public officials have been held at and by the Institute of Government. These schools, conducted by members of the Institute staff, have been attended by 3,000 officials representing cities and counties from all sections of the State, as well as State and federal agencies and commissions.

From these figures it is clear that the three schools pictured on this page represent only a small sampling of the classroom work of the Institute and its staff. Since last October a comprehensive course in Municipal Administration has been in progress, taught by nine staff members of the Institute of Government and selected municipal authorities and directed by Assistant Director Warren J. Wicker. This twelve-session course is being faithfully attended by municipal officials and employees from all over the State. Seven sessions have been completed; four remain for the spring, with the twelfth and final session, which will culminate the course with final problems and graduation set for May 23-26.

Regular basic training schools and refresher courses for State Highway Patrol officers and troops also have been held by the Institute of Government under the direction of Assistant Director C. E. Hinsdale through the months, in addition to courses for Drivers License Examiners, Hearing Officers, Motor Vehicle Inspectors, Patrol Clerks, and Driver Education representatives.

In addition to Prison Supervisors schools, the Institute has been conducting sessions for Parole and Probation officials, and has begun work with a Juvenile Training program, under the aegis of V. Lee Bounds. As the two pictures (below) indicate, the Institute is engaged in conducting numerous schools and conferences related to municipal and city planning. The North Carolina chapter of the American Institute of Planners meets at the Institute. A series of schools for Wildlife Protectors, Supervisors, and recruits is under way with Assistant Director Neal Forney in charge.

Established Institute schools of many years standing include those conducted by Assistant Director Henry W. Lewis for new Tax Supervisors and the North Carolina Association of Assessing Officers; by Assistant Director Don Hayman for the Employment Security Commission; by Assistant Director Roddy Ligon for the State Board of Health in Records Keeping; Assistant Director Bob Byrd with the County Accountants; by Assistant Director Al Markham with the Registers of Deeds; by

*Institute of Government Seminar on County Zoning (Pictured above) was conducted by Assistant Director Philip P. Green, Jr. on January 12.*

*Unusual seminar on Urban Design was inaugurated by the Institute of Government on February 2 under the direction of Assistant Director Robert E. Stipe. A further report on this interesting "ground-breaking" in the field of city planning will appear in the next issue of* POPULAR GOVERNMENT.

Assistant Director Roy Hall with A.B.C. Peace Officers; and by Assistant Director Phil Green in a County Zoning Seminar.

Other Institutes events of special interest have included meetings of the Governor's Conference on Economic Development, with Assistant Director Phil Green in charge for the Institute; Governor's Conference on Education Beyond the High School, with Assistant Director John Sanders (now on leave); the N. C. Court Study Commission, with Assistant Director Clyde Ball; the N. C. Division of the American Institute of Planners, with Assistant Director Bob Stipe; the N. C. Reorganization Commission, with Sanders; Superior Court Judges Conference, with Director Albert Coates; and Boards of Directors of the County Commissioners, with the Institute staff.

*North Carolina Government Study Commission Meets at Institute*

## REPORTS FROM RALEIGH AND WASHINGTON

The appointment of the first woman judge to the N. C. Supreme Court was made possible by a neat triple-play—a combination of judicial retirement, another appointment, and finally, the appointment of the lady Justice. Judge Susie Sharpe of the N. C. Superior Court became Justice Susie Sharpe of the N. C. Supreme Court when she was appointed by Gov. Terry Sanford to succeed Justice Emory B. Denny who had in turn been appointed by the Governor to succeed Chief Justice J. Wallace Winborne *(See front cover)*. Justice Sharpe was appointed to the Superior Court bench by the late Gov. Kerr Scott. Had Chief Justice Winborne retired ten days earlier, his successor, under the N. C. statutes, would have had to be elected by the voters in the next general election.

* * *

A $12,000,000 loss in state funds or in a business gross would be considered an economic catastrophe of the first magnitude. Yet the $12,000,000 estimated loss suffered by the N. C. coast from an unexpected storm seems a little more difficult to comprehend. The storm unexpectedly blew in from the sea, washed away homes and business establishments, moved sand, and completely obliterated property lines in a devastating display of rampant nature. The irony of the occasion lay in the fact that if the planned weather satellites for the Atlantic Ocean had been in operation, the storm could have been forecast and must of the loss avoided. Both state and federal government weathermen have noted through the years that these occasional incursions by offshore storms sometimes make accurate weathercasting for the Tarheel area virtually impossible.

The aftermath of the storm also created tax problems for land owners and assessors in coastal counties. In response to a request from some of these tax officials, Institute of Government tax expert Henry W. Lewis has prepared and sent an analysis of these tax problems and possible decisions.

* * *

"High Dam" or "Low Dams?" "Big Dam" or "Little Dams?" That is the question. Whether 'tis better to harness the Cape Fear River and develop its water resources through the New Hope "High Dam" plan of the Army Board of Engineers for Rivers and Harbors, or the 232 small and middle-sized dams proposed by the Soil Conservation Service of the Department of Agriculture. The "High or Big Dam" concept seems likely to prevail, in view of recent approval by the Board of Engineers in Washington. The "Big Dam" project calling for a 101-foot structure in the headwaters of the Cape Fear is supported by U. S. Senator B. Everett Jordan and Sixth District Congressman Horace Kornegay who hope to see it passed by the Board of Rivers and Harbors, submitted to and approved by the public works committees of Congress and authorized under an omnibus bill during the current session of Congress. The "Little Dam" proposal is backed by Fourth District Congressman Harold D. Cooley who has requested and obtained deferrals of consideration by the Army Engineers of the other plan. Development of the Cape Fear would bring to realization the dream of the late Gov. Kerr Scott for stimulating the industrial growth and progress of eastern North Carolina.

*M. Luther Peel, Sr., center, is shown above with Mrs. Peel, as he is presented a silver bowl by J. C. Manning in Williamston. Mr. Peel retired this January as Martin County tax collector after twenty years of able service. The bowl, a gift from fellow employees, was presented at a retirement party attended by county officials and employees in the Martin County Courthouse.*

*Credits: The cover picture is courtesy of the* Raleigh News and Observer. *Pictures on pages 15, 16 and the inside back cover are by Institute of Government photographers Jim O'Neal and Charles Nakamura. Drawings and layout are by Joyce Kachergis.*

**MOUNTAIN RESCUE EXPERT** Robert Byhre risks his life — without pay — to save people in distress high in the mountains. A long-time Camel smoker, Bob says Camels seem to taste even better to him today than when he started smoking. They give him the satisfaction he wants — every time he lights up!

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