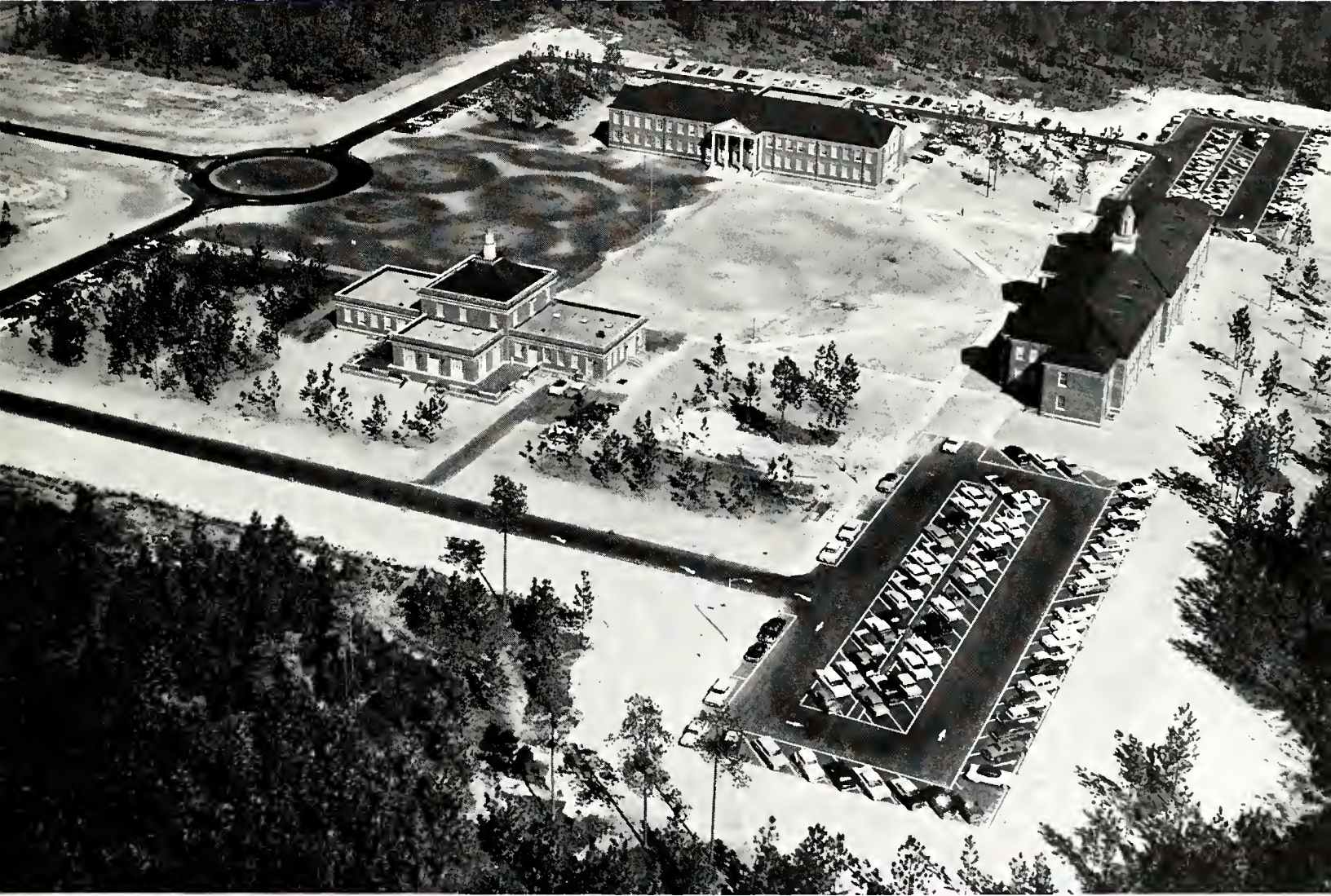


POPULAR GOVERNMENT

November-December 1962



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Higher Education: The Governor's Commission Reports

Court Revision: Where Are We?

The Clerk of Superior Court: His Office and Duties

Evidence of Speed Based On Skid Marks



POPULAR GOVERNMENT

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The cover picture and that above are shots of Wilmington Junior College. The cover shows an aerial view while the smaller photo presents a closer look at Hoggard Hall. These visual perspectives on one of the two-year State-owned junior colleges have a special relevance to the analysis by Allan W. Markham on the Report of the Governor's Commission on Education Beyond the High School (see opposite page) in the light of the Commission's recommendations regarding an expanded community college system to serve the State's growing needs in higher education.

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The Governor's Commission on Education Beyond the High School met at the Institute of Government. The pictures on this page show one of these meetings in progress. Members of the Commission included Irving E. Carlyle, chairman; W. Lunsford Crew, vice chairman; H. Clifton Blue; F. Stuart Chapin; Miss Bonnie E. Cone; Lewis C. Dowdy; Alfonso Elder; William C. Friday; Mrs. Samuel C. Hair; Deryl Hart; Dallas Herring; Addison Hewlett, Jr.; Leo W. Jenkins; John R. Jordan, Jr.; Colvin T. Leonard; H. A. Mattox; L. P. McLendon; John Alexander McMahon; Thomas J. Pearsall; Mrs. L. Richardson Preyer; Samuel D. Proctor (resigned January 1962); Mrs. Harry B. Stein; James G. Stikeleather, Jr.; Thomas J. White; J. Shelton Wicker; Thomas H. Woodard. The Commission secretary was John L. Sanders. He was assisted by Roger B. Foushee, research associate.

Report of the Governor's Commission on Education Beyond the High School

by **Allan W. Markham** *Assistant Director, Institute of Government*



... Commission at work

The report by the Governor's Commission on Education Beyond the High School climaxed the most intensive and comprehensive study ever made of the higher educational resources of North Carolina. The report has been studied by Governor Sanford, who will transmit it together with his own recommendations to the General Assembly early next year. The findings of the Commission reveal what is probably the greatest challenge in the history of higher education in North Carolina. The proposals, if adopted, will be of considerable and far-reaching consequence to virtually every North Carolinian.

In the introduction to its report the Governor's Commission specified some fundamental principles which guided it in determining the scope and form of its recommendations. It noted that the primary and ultimate purpose of public education is the betterment of society as a whole, though personal benefit to the student is the immediate result. The report states: "It is necessarily through persons—chiefly students—that education reaches and

serves society as a whole. As education is able to enlarge the understanding and augment the knowledge and skills of those whom it touches, it tends both to their individual betterment and to the advancement of the community, the State, the nation, and the civilization of which they are a part."

Pointing out that the State Constitution gives to the people of North Carolina the right to education and directs the state to maintain that right, the Commission believes that the state is obligated to provide post-high school education to all its citizens who can and will benefit from it. The report notes that this philosophy is not original with the Commission but was found in the first State Constitution of 1776, and was given additional meaning by the creation of the first public university in America, the University of North Carolina, and the subsequent establishment of many other public institutions for post-high school education in the ensuing years.

The central purpose of the Commission was to determine how North Carolina can best meet its obligation to provide opportunities for post-high school education for its citizens in the next two decades. The recommendations are based primarily upon three findings: 1) projections of college-age population in the state to 1980; 2) the evaluation of existing state resources of higher education; and 3) an analysis of the facilities and programs which will be needed to meet the state's obligations in the next twenty years. Recommendations were made concerning the North Carolina Board of Higher Education, the Consolidated University, the other public senior colleges, two-year community colleges, and matters relating to the students and faculties of all the public institutions of higher education. The report also analyzes the present and past cost to the state of post-high school education and the cost in meeting the state's future needs, and makes recommendations regarding ways in which part of this future cost may best be met. The following is a summary and discussion of the more significant Commission recommendations.

Public Senior Colleges

The Commission studied the existing nine senior colleges outside the Consolidated University—their educational functions and programs. The report notes that, while all nine were originally created as teacher-training institutions, several in recent years had developed strong liberal arts programs. This, the report states, is in keeping with the growing need for diversity in educational opportunity and also provides a sound basis for teacher-training programs. For most of these colleges the Commission foresees their future contribution being predominantly regional in nature, as in the past. The Commission also examined the statutory provision regarding the organization and administration of the senior colleges, finding the provisions sound and not requiring change.

Charlotte, Wilmington and Asheville Colleges

Soon after the Commission began its work in the fall of 1961, the trustees of three public two-year colleges operating under the 1957 Community College Act—Charlotte, Wilmington, and Asheville-Biltmore Colleges—requested that the Commission recommend the conversion of these colleges to non-residential senior institutions, and preferably campuses of the Consolidated University.

After thorough study and consideration, the Commission determined, and supported with statistics in its report, that there is a definite and growing need in North Carolina for additional public senior colleges. It also found that the greatest actual and potential need for senior institutions is in the areas served by the three colleges seeking four-year status.

In the Charlotte and Wilmington areas the Commission

found the number of college-age residents and annual high school graduates is sufficient to warrant the immediate transition of these two colleges to senior institutions. It recommended that the junior or third year be added to each institution in the fall of 1963 and the senior or fourth-year, in the fall of 1964.

While the Commission found the potential enrollment for a senior college in Asheville to be steadily growing, the existing college-age population does not justify immediate conversion of Asheville-Biltmore College to four-year status. The Commission did recommend, however, that when the full-time equivalent enrollment in college parallel programs reaches 700 in the college, it then be considered for conversion.

The report emphasized that at least for the foreseeable future these new senior colleges should be non-residential commuting institutions, as they now are. The reason for this recommendation is two-fold. First, the location of new senior colleges in population centers is deliberate, to enable them to draw the bulk of their enrollments from within a thirty-mile radius of the institutions, where the need for such colleges is the greatest. This concept is consistent with the Commission's view that public senior colleges should serve primarily on a regional basis. Secondly, the cost of providing higher education on a non-residential basis is considerably less, both to the state and the student, without sacrificing the quality of the instructional programs. The Commission found, for example, that the cost of dormitory construction is about \$3,000 per student resident. The Commission thus concluded that by locating new non-residential senior colleges in population centers where the need for them is greatest, more educational opportunity can be provided for the dollar than would be possible at similar residential institutions.

The Commission recommended that in organization and administration the converted colleges be identical to the present nine public senior colleges. Regarding the requests that the three colleges be made campuses of the Consolidated University, the Commission specifically declined to make recommendations, noting that a committee of the Board of Trustees of the University is currently studying the matter and will make its own recommendations.

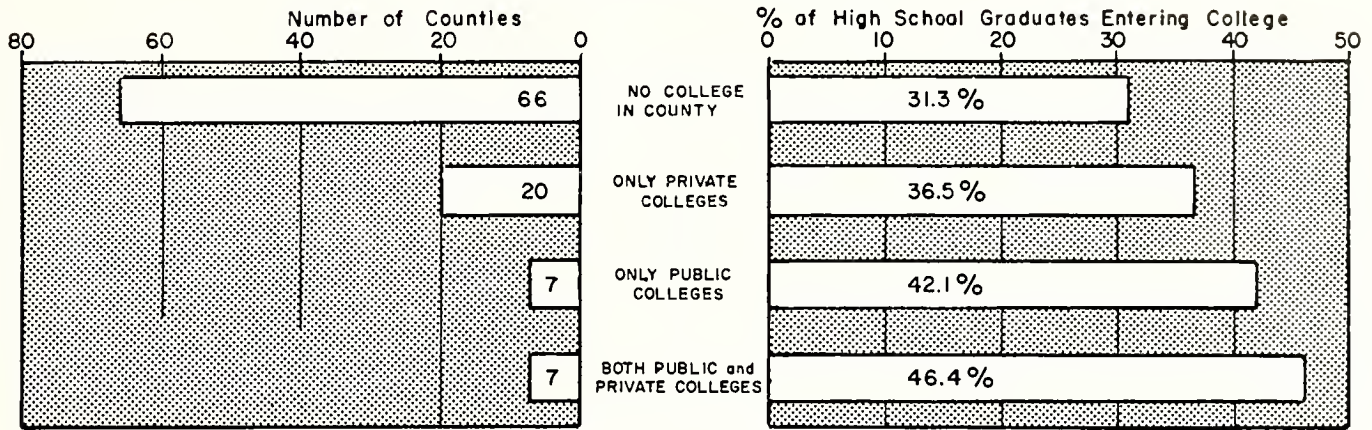
Community Colleges

The recommendations of the Commission which, if adopted by the General Assembly, will have the greatest significance for the greatest number of North Carolinians are undoubtedly those regarding the proposed system of comprehensive community colleges. The report reveals that by 1970 the number of students seeking admission to public and private colleges in the state will exceed the present capacity of the public colleges and the planned capacity of the private institutions by approximately 31,000. Moderate expansion of existing colleges plus the creation of two or three additional senior colleges as recommended by the Commission will not nearly meet the demands.

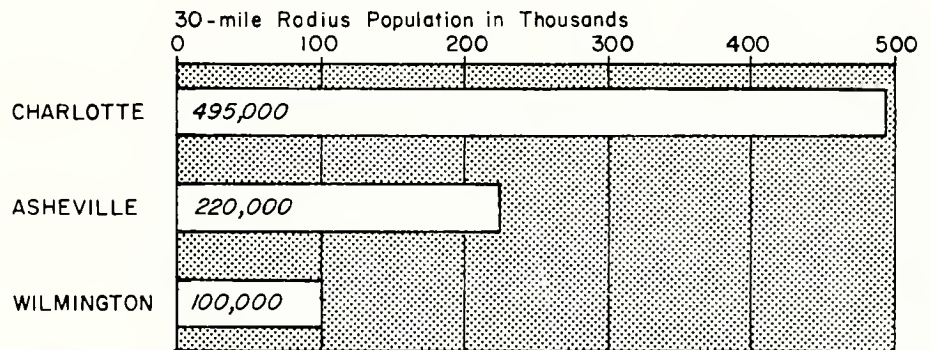
In addition, the Commission found a clearly demonstrated need for greater geographical dispersal of colleges to provide the maximum availability of higher education, particularly for those of limited economic resources. A special study disclosed that there is a close relationship between the presence of a college in a county and the percentage of high school graduates therein who enter college, with substantially higher percentages attending in those counties where colleges are located.

A third major factor upon which the Commission's plan is based is the fact that two-thirds of the undergraduate students at any given time are enrolled in the freshman and sophomore classes.

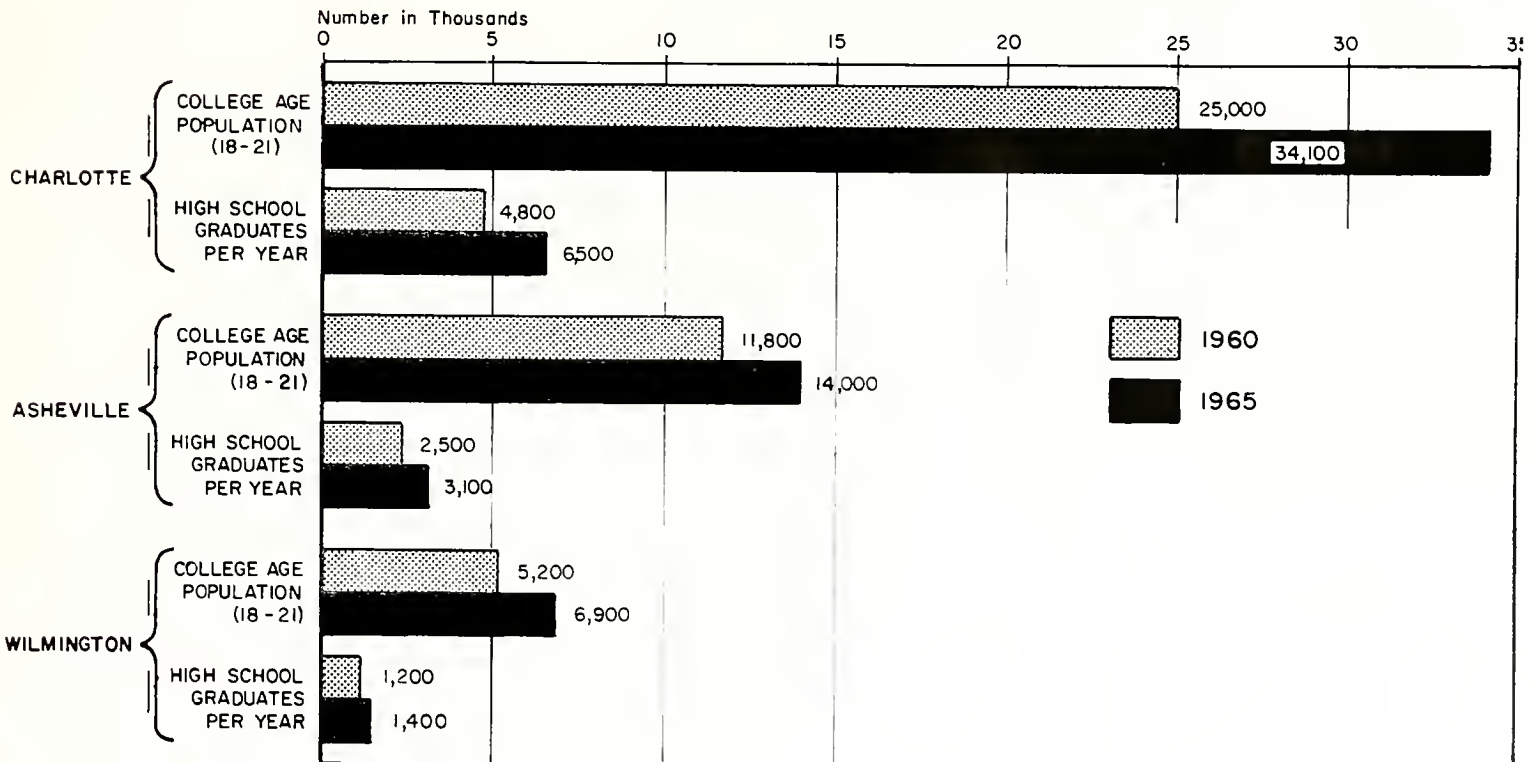
EFFECT OF PRESENCE OF COLLEGE ON COLLEGE ATTENDANCE
IN ONE HUNDRED COUNTIES - 1961



AREA POPULATIONS - 1960



COLLEGE AGE POPULATION and HIGH SCHOOL GRADUATES PER YEAR
1960 - 1965



The Commission thus concluded that public, non-residential institutions offering two-year college-level programs, located in communities where the local population is sufficient to support them, are the best means of meeting a large part of future enrollment demands.

Community Colleges and Industrial Education Centers

The report points out that though there are at present five public two-year colleges in North Carolina, operating under the Community College Act of 1957, they are more accurately "junior colleges." They offer almost exclusively college-level courses with few technical-vocational or adult education programs, these latter being conducted by the separately administered system of industrial education centers.

The Commission recommended that the Community Colleges and the industrial education centers be combined into a single system offering college parallel, technical-vocational, and adult education programs. It was the Commission's opinion that if the two types of institutions should continue as separate systems, in time their respective curricula would tend to become more and more similar and overlapping. Because of the nature of the programs and the method of financing, the Commission further recommended that the system be administered by the State Board of Education, which presently administers the industrial education centers.

Establishing and Financing Colleges

The report does not specify communities in which community colleges could appropriately be located. It does, however, recommend criteria which the State Board of Education might follow. The Commission feels that there should be a potential full-time equivalent enrollment in the college parallel program alone of 400 students within a radius of thirty miles of the college. Consideration, of course, should be given to the proximity of other colleges and the appropriateness or adaptability of their curricula and admission standards to the local educational needs.

Local interest is also of paramount importance because local financial support will be required for a community college. The Commission recommended that no new community college be approved until a local survey is conducted under the supervision of the State Board of Education. The purpose of the survey would be to determine the extent of unmet local educational needs and the degree of interest in establishing and supporting a community college. The initiative for establishing such colleges, however, would always rest with each particular locality. The Commission recommends that the acquisition of land and construction and maintenance of the physical plant be a county responsibility. The Commission leaves the way open for multi-county sharing of the financial obligation should several counties desire it in particular cases. The operating expenses, under the Commission's proposal, would be derived 65% from state and federal sources, 20% from student tuition and fees, and 15% from the county, including its expenditures for maintenance of plant. The Commission recommended that the establishment of 15 such institutions be given top priority.

Private Junior Colleges

Some concern has been expressed, during the Commission's study and after the publication of its report, that the proposed public community colleges would constitute a system of two-year colleges with which the private junior colleges of the state would not be able to compete. The Commission's report, however, explicitly states that its recommendations are based upon projected increases in enrollment which neither the existing public nor private colleges, under present plans, will be able to accommodate.

The statistics in the report show that an estimated 42,500 more young people will be seeking admission to

college by 1970 than the 75,000 who were enrolled in all colleges in North Carolina last year. The private colleges, by their own estimates, probably will enroll only about 11,300 of this increase. It is the remaining 31,200 for which the Commission seeks to provide. Some private college spokesmen have suggested, however, that part of the money which the state would spend in support of the community colleges should be used instead to assist private colleges in a program of expansion to meet the growing enrollment needs.

It will be up to the Governor and the General Assembly to decide how public money should be spent to provide the most efficient and effective support of higher education. The Commission's finding is clear: a system of public comprehensive community colleges is the best answer for North Carolina.

State-Wide Planning and Coordination The Board of Higher Education

The Commission has proposed a state-wide system of post-high school education in which the North Carolina Board of Higher Education would be primarily responsible for the promotion, planning, and coordination of higher education and for allocation of educational functions among the public senior colleges. In addition, the Board would have an important role as advisor to the Governor and Advisory Budget Commission and the General Assembly on matters pertaining to higher education. In theory, at least, this is one function of the Board under the present laws. The purpose of the Board is stated in G.S. §116-54 to be: "... to plan and promote the development of a sound, vigorous, progressive and coordinated system of higher education in the State of North Carolina."

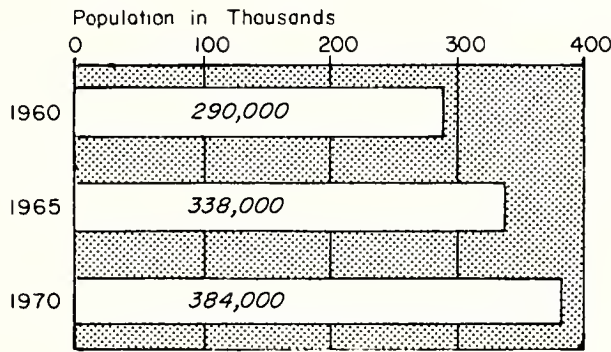
To this end the Board is presently directed to "seek the cooperation of all institutions of higher education and of other educational agencies in planning a system of higher education that will serve all the higher education needs of the State." It is, however, the opinion of the majority of the Commission, based upon its findings, that the Board is not, under the present law, providing the leadership nor achieving the confidence and cooperation which a sound system of higher education demands of it.

The recommendations which the Commission majority believes will place the Board in a role of affirmative leadership and confidence affect both its memberships and its functions. One of the recommendations, that relating to the Board's membership, has created more interest and comment than perhaps any other aspect of the report. Indeed, it was with regard to this one proposal only that the Commission failed to reach complete agreement and that the dissenters submitted a minority report.

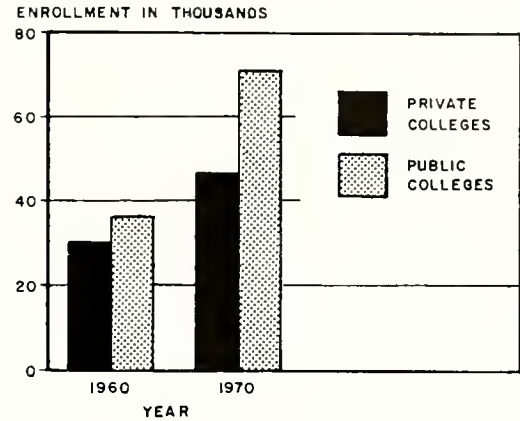


Major L. P. McLendon, back to camera, speaks at meeting of Governors Commission on Education Beyond the High School. Chairman Irving J. Carlyle presides.

NORTH CAROLINA COLLEGE AGE POPULATION (18-21)
1960 - 1970



NORTH CAROLINA PUBLIC - PRIVATE
COLLEGE ENROLLMENT - 1960-1970



Membership

Specifically, the majority recommended that the Board membership be increased from nine to eleven members, seven of whom would be subject to the restrictions now applicable to all members—that they be citizens of North Carolina who are neither state employees nor in any respect associated with public institutions of higher education. The proposal would require, as now, that one of these seven be a member of the State Board of Education appointed as an *ex officio* member of the Board. The other four members would be the President of the University of North Carolina and three other senior college presidents appointed by the Governor upon recommendation of the Council of State College Presidents. The majority of the Commission believe that giving the public colleges representation on the Board will help foster an atmosphere of understanding and of mutual trust and confidence.

Powers and Functions

The Commission's recommendations regarding changes in the Board's powers and functions are less controversial than those concerning Board membership. Briefly, the recommendations are that the act creating the Board be amended: 1) to emphasize the planning and coordinating role of the Board; 2) to broaden the Board's function as advisor to the Governor, the Advisory Budget Commission, and the General Assembly; 3) to require the Board to consider techniques to increase the utilization of instructional facilities and personnel in higher education; 4) to make clear that the system of comprehensive community colleges, if adopted by the General Assembly, will be under the State Board of Education; 5) to transfer from the State Board of Education to the Board of Higher Education the authority to license private degree-granting institutions; and 6) to specify that the Board's review and recommendations concerning institutional budget requests be made with regard to the general level of support and the compatibility of budget requests with the assigned educational functions of respective institutions.

The Commission believes that these changes in the act also will facilitate the Board's assumption of a position of affirmative and active leadership in higher education.

Regarding recommendation 6), relating to the Board's budget reviewing function, the Commission found an unnecessary duplication of responsibility in the present budget reviewing process. The Board reviews line-by-line the budget requests of the institutions and then submits a detailed recommendation to the Governor and the Advisory Budget Commission, who repeat the same process

before the requests ultimately reach the General Assembly. The Commission believes that a more efficient and appropriate function of the Board would be to concentrate on the broader aspects of higher education fiscal policy in advising the state budget-making authorities. The Commission specifically does not recommend that the Board be restricted from examining individual requests in as much detail as might be necessary to support its general recommendations, but it does urge that the Board be relieved of the requirement of detailed examination and recommendation.

Minority Report

The minority report is, in effect, a dissent to the majority's recommendations regarding Board membership changes. Both reports agree that central planning and coordination by the Board are essential. The minority, in their report, specifically disagree with neither the finding that the Board lacks the confidence and cooperation of the public colleges nor the opinion that adding college presidents to the Board may help to achieve this.

The primary objection voiced in the minority report is that the addition of college presidents to the Board will destroy its objective viewpoint in determining the needs of the state. Secondly, the minority fear that individual president-members will be faced with situations of conflicting interests in cases in which the aspirations of their respective institutions are not entirely compatible with the needs of the state as a whole. Also, they fear that local groups such as chambers of commerce will exert political pressure to obtain appointments to the Board for those who would use such appointments to promote local institutional and regional ambitions, even as they might today.

As an alternative to the proposed reconstitution of the Board of Higher Education, the minority recommend that the Council of Presidents elect a committee of institutional representatives, not necessarily restricted to the presidents, which would serve as a liaison between the Board and the Council and as an advisory committee to the Board. In this way, it is felt, the Board and the public institutions would be brought into closer understanding and cooperation without sacrificing the Board's objectivity.

Miscellaneous

The Commission recognized that to meet the challenge of future needs in higher education a great deal of money will be required and that the major burden will be on the state. While the report does not propose means by which the state might raise this additional money, it does make

recommendations regarding the greater and more efficient utilization of public higher education resources and facilities. For example, the Commission recommends that public institutions give careful consideration to the feasibility of converting to full-scale year-around operation and, if it is found to be financially justifiable, that the General Assembly appropriate the necessary funds to permit conversion to the system. The report specifically states, however, that the Commission does not recommend the involuntary conversion of any institution to a year-around basis.

The Commission also made it clear that it does not favor a policy of exclusion of out-of-state students as a means of easing enrollment problems in North Carolina public colleges. It takes the position, however, that the tuition charged an out-of-state student should equal the cost-per-student to the state for undergraduate instruction and recommends that the respective boards of trustees of the several institutions adopt tuition structures which reflect this cost. On the other hand the Commission urged that tuition for North Carolina residents be kept as low as possible and that great caution be observed in increasing any of their costs, including dormitory rental.

The Consolidated University of North Carolina was studied by the Commission and several recommendations were made. They are not dealt with in detail here because they are primarily concerned with the continuation and expansion of existing programs and policies rather than with changes. Two recommendations of particular significance were: 1) a suggested amendment to the statutes to authorize the Board of Trustees of the University, subject to control by the Board of Higher Education, to establish additional campuses of the University when and where they might be warranted; and 2) a recommendation that the Consolidated University be the only public institution in the state authorized to grant the doctorate degree.

Extensive recommendations were made concerning the preparation and screening of students seeking admission

to college, including counseling at the high school and college levels, pre-admission testing, and remedial programs. The Commission also urged a continuing increase in teaching pay scales to aid in attracting and retaining capable and dedicated people in the profession.

College faculties and their salaries were also studied. The report notes that salaries in North Carolina's public institutions do not compare favorably with the national levels and in some cases with the levels of other Southern states. The Commission found salary increases and improvements in the retirement program to be most needed by college faculties.

Finally, the Commission urged that the public and private colleges and the North Carolina Board of Higher Education seek ways of cooperation for their mutual benefit and for the benefit of the people of North Carolina.

Conclusion

In all, the report of the Governor's Commission on Education Beyond the High School contains sixty-one recommendations. The Commission did not try to study in detail every aspect of higher education but devoted most of its attention to the several matters which it considered to be of paramount importance to the state. These matters are reflected in the recommendations which have been discussed here: the need for a planned and coordinated state-wide system of higher education; the need for more senior colleges to meet growing enrollment demands on the present senior colleges; and the need for a system of community colleges which will make post-high school education available to as many as possible as inexpensively as possible.

What affirmative action and legislation will result from the study by the Governor's Commission remains to be seen. The Commission, through its study and analysis of the state's resources and future needs, has clearly indicated the course it believes North Carolina higher education must follow for the next several decades.

(SEE MAP SHOWING NORTH CAROLINA COLLEGES AND UNIVERSITIES, PAGES 14-15)

THE GOVERNOR ON HIGHER EDUCATION —

Here are excerpts from the statement by Governor Terry Sanford to North Carolina college and university presidents regarding the report of the Governor's Commission on Education Beyond the High School.

"We must establish a grand partnership with all who have responsibilities for college education. . . .

"We have the best plan the State has ever had for advancing education. I look to you to understand it, to interpret it to your trustees, your alumni and to the public.

"I have already outlined from the splendid report [of the Commission], a program of action that seems reasonable and possible right now. . . .

"The report is full of suggestions which will strengthen our colleges. Your budgetary requests have received our sympathetic attention, and the Board of Higher Education

is recommending salaries which will help to strengthen your faculties.

"You hold the great hope of the greatest number of boys and girls, so let's work to make their opportunities superior. . . .

"The community colleges, comprehensive in nature, offer many new changes for education. The Board of Education is requested to step up its planning to be ready to assume this new responsibility, to outline the criteria and procedures to be followed by interested communities. . . .

"We are asking several private college presidents to meet regularly with the Board of [Higher] Education so they might know something of our planning, and so that they might contribute their own valuable suggestions and ideas."

COURT REVISION:

WHERE ARE WE?

By **Clyde L. Ball**

Assistant Director, Institute of Government

At the November 6 general election the voters of North Carolina approved the proposed constitutional amendment revising the structure and functioning of the Judicial Department of North Carolina. When the results of this election were certified by the Governor to the Secretary of State, the amendment became a part of the fundamental law of the state.

The amendment is a mandate to the General Assembly to establish a uniform state system of lower courts to replace the existing courts below the Superior Court. The General Assembly is allowed until January 1, 1971, to accomplish this task. The major changes flowing from the amendment must, therefore, await the enactment of implementing statutes and the establishment of courts pursuant to those statutes. There are, however, a number of changes which took effect upon certification of the amendment.

I. Changes which are not dependent upon legislative implementation

(1) **Judges.** Several changes affecting judges took effect immediately upon certification of the vote on the amendment. The Justices of the Supreme Court and Judges of the Superior Court became judges within the General Court of Justice. This is a purely formal development. The judges affected retain their former titles and their former powers; they now hold their respective ranks within the unified court.

In the event the Chief Justice of the Supreme Court is unable, on account of absence or temporary incapacity, to perform any of his duties, the senior Associate Justice available is now expressly authorized to discharge such duties.

The principle of rotation of Superior Court judges is retained, but the requirement that no judge may hold all the courts in a particular district more often than once in four years has been eliminated, and the Chief Justice, acting in accordance with rules of the Supreme Court, is authorized to make assignments of Superior Court judges. The rotation assignments of regular Superior Court judges was formerly established by statute, with the Chief Justice having power to make additional assignments when in his opinion the public interest so required.

(2) **Supreme Court.** The authority of the Supreme Court to sit in divisions is eliminated. This authority had not been used.

(3) **Sessions of Superior Court.** The Supreme Court is authorized to promulgate a calendar of courts fixing the times at which regular trial sessions of the Superior Court shall be held in each county. The schedule of court terms was formerly fixed by statute. The requirement that at least two sessions of Superior Court be held in each county each year was retained.

(4) **Superior Court Solicitors.** Solicitors of the Superior Court districts are now expressly charged with performing such duties as the Attorney General may require relating to appeals from the Superior Court of their districts to the Supreme Court. This provision is expected to provide better continuity in the State's representation in criminal cases.

(5) **Superior Court Clerks.** Clerks of Superior Court are now removable from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Under the former provision, a clerk of Superior Court was removable for mental or physical inability by the judge riding the district.

(6) **Attorney General.** The Attorney General is expressly charged with the duty of recommending to the General Assembly changes in Superior Court solicitorial districts when he determines that there is good cause for change. Also, by necessary implication from the duty imposed upon Superior Court solicitors, he is authorized to require solicitors to perform duties with respect to appeals in criminal actions from the Superior Court to the Supreme Court.

(7) **Establishment of Inferior Courts.** The General Assembly no longer has the power to establish such inferior courts as it may desire.

Any new inferior courts must fit into the district court framework.

(8) **Court for the Trial of Impeachments.** If the Lieutenant Governor should be impeached, the Chief Justice will preside over the Senate, which acts as the court of impeachment. The former provision specified that the Chief Justice should preside if the Governor should be impeached, but made no mention of the procedure to be followed if the Lieutenant-Governor should be impeached.

(9) **Coroners.** The coroner is eliminated from the list of officers mentioned in the constitution. This does not mean that the office of county coroner is eliminated. The office continues to exist under statutory authorization.

II. Changes which are dependent upon legislative implementation

(A) Permissive changes

Most of the significant changes in the court system will come when the General Assembly discharges its express duties under the new amendment. Not all of the directions to the General Assembly are mandatory, however. The General Assembly may increase the number of Associate Justices of the Supreme Court to eight, but it is not required to do so. The General Assembly may delegate to the Supreme Court the authority to make rules of practice and procedure for the Superior and District Court divisions. And the General Assembly may if it chooses authorize the Supreme Court to hold sessions at some location other than Raleigh.

(B) Mandatory changes

Within the permissible time limit—prior to January 1, 1971—the General Assembly must do two things: (1) it must establish a statewide, uniform system of lower courts, and (2) it must establish an administrative office of the courts.

(1) **District Courts.** All existing courts inferior to the Superior Court must be replaced by District Courts having uniform jurisdiction, procedures, and costs throughout the state. This is the heart of the amendment. If the district courts are not established by the deadline, North Carolina will find itself without any courts below the Superior Court, as the amendment expressly provides that "As of January 1, 1971, all previously existing courts inferior to the Superior Court shall cease to exist. . . ."

Subject to the requirement of uniformity, the General Assembly is free to fashion the district courts to suit itself. It will be necessary, therefore, that the General Assem-

bly produce a comprehensive act supplying all of the detail necessary to the effective functioning of the district courts, or that within its constitutional authority it delegate to the Supreme Court, administrative office of the courts, or other agency within the judicial system, the duty of supplying the necessary detail.

The statute or statutes supplying the detail will necessarily be complex. It will have to include provisions governing the structure of the district courts and their jurisdiction, personnel, rules of practice and procedure, financing, and administration.

The schedule was adopted to permit the system to be established gradually. This means that the original statute need not necessarily fix district lines covering the whole state. It will be possible, if the General Assembly chooses to do so, to begin with a limited number of "pilot" districts, and to use the experience gained from them to extend the system over the state.

In order to establish a single district court anywhere in the state, however, it will be necessary to enact a statute supplying directly or indirectly all of the essential details—that is, jurisdiction must be fixed; necessary personnel must be identified and classified, and their salaries fixed; some provision must be made for rules of practice and procedure; provisions must be included governing prosecution of criminal actions on behalf of the state, the kind of jury trial which will be available in the district court, and how and where appeals from the district court shall be taken; a schedule of court costs and fees must be established; the respective responsibilities of the state and local authorities with respect to court facilities must be defined; and many administrative details, such as how cases shall be routed to magistrates, and what kinds of records shall be kept by the clerks must be determined.

Even though the original statute must be complete, it can be frankly experimental. A great deal of statistical data concerning the operations of the existing courts has been compiled during the last six years. But no one can say whether or not these data will be valid under the new system. No one can forecast with assurance whether the new system of courts will lead to an increase or a decrease in total litigation. If the hoped-for improvement in quality and efficiency is realized, there may be an increasingly greater

use of the courts; on the other hand there may be a decrease in the volume of those types of cases which really should not be brought into court.

Experience in the actual operation of a few district courts, in districts of varying size, location, and character, can provide information on the basis of which necessary statutory adjustments can be made. It is quite possible that each new session of the General Assembly in the next few years will revise the district court statutes. Of course, the possibility of experimentation is always available, and the General Assembly routinely makes changes in many laws on the basis of experience. The special factor in the court situation is that the experimentation can be conducted in a limited number of areas under controlled conditions; "bugs" can be worked out of the system without troubling the whole state.

(2) **The Administrative Office of the Courts.** If pilot districts are to be set up, they must be carefully studied in order that their experience will be most useful. The administrative office of the courts can be the agency which conducts this study and reports back to the Supreme Court or to the General Assembly, depending upon the will of the General Assembly.

One basic policy decision must be made in this area—Shall the administrative office be responsible to the court system—i.e., the Chief Justice and the Supreme Court as the head of the Judicial Department or shall it be responsible directly to the General Assembly? When this question is answered, details as to method of appointment of the administrative director and the powers and duties of the office will pose no great difficulties of either policy or drafting.

In summary, the revised version of Article IV of the Constitution of North Carolina has produced no great immediate change in the court system. It has made it mandatory that the General Assembly proceed in the next eight years to establish a uniform statewide inferior court system, called the District Court Division, and that the General Assembly establish an administrative office to help make the system effective. So far as the district courts are concerned, the Constitution does not provide enough detail to be labeled even a framework; what it does provide is a guiding principle—that the administration of justice is not a matter of purely local concern, but a matter of vital interest to the entire state.

Votes Cast For and Against Constitutional Amendment Concerning Court Reform in the Election Held in North Carolina Nov. 6, 1962

COUNTY	FOR	AGAINST	COUNTY	FOR	AGAINST
Alamance	8,105	4,002	Johnston	2,507	3,650
Alexander	1,663	2,432	Jones	379	539
Alleghany	798	1,531	Lee	1,588	892
Anson	2,422	1,024	Lenoir	1,936	2,484
Ashe	1,703	2,796	Lincoln	4,527	3,417
Avery	1,665	907	Macon	2,826	1,279
Beaufort	1,128	1,006	Madison	2,424	1,447
Bertie	635	396	Martin	1,031	606
Bladen	587	1,970	McDowell	3,693	1,815
Brunswick	1,649	2,870	Mecklenburg	41,491	7,916
Buncombe	9,660	4,270	Mitchell	1,440	764
Burke	8,909	4,369	Montgomery	1,907	2,544
Cabarrus	6,536	8,454	Moore	3,884	3,291
Caldwell	6,116	4,322	Nash	1,885	1,307
Camden	115	249	New Hanover	6,089	5,447
Carteret	4,583	1,972	Northampton	1,447	383
Caswell	729	798	Onslow	1,772	1,341
Catawba	9,974	5,670	Orange	4,022	1,285
Chatham	2,250	2,022	Pamlico	609	1,052
Cherokee	2,089	1,890	Pasquotank	1,158	461
Chowan	546	154	Pender	670	875
Clay	739	581	Perquimans	343	106
Cleveland	5,467	1,337	Person	611	404
Columbus	2,283	4,092	Pitt	2,174	2,117
Craven	1,781	1,818	Polk	1,996	581
Cumberland	4,825	2,787	Randolph	4,970	7,362
Currituck	318	276	Richmond	4,490	1,688
Dare	836	328	Robeson	2,248	1,745
Davidson	9,267	7,621	Rockingham	4,767	4,925
Davie	1,960	1,623	Rowan	9,587	6,506
Duplin	1,486	2,695	Rutherford	5,582	3,642
Durham	6,773	2,285	Sampson	2,464	4,676
Edgecombe	1,339	1,135	Scotland	784	481
Forsyth	11,368	3,897	Stanly	4,419	6,653
Franklin	946	786	Stokes	2,025	2,215
Gaston	12,777	5,619	Surry	4,768	3,436
Gates	333	66	Swain	927	908
Graham	969	296	Transylvania	3,360	1,408
Granville	1,209	634	Tyrrell	323	108
Greene	408	572	Union	4,467	1,789
Guilford	16,037	9,529	Vance	1,526	2,152
Halifax	1,640	1,326	Wake	10,816	4,397
Harnett	1,466	3,384	Warren	542	549
Haywood	6,374	2,642	Washington	398	418
Henderson	5,530	3,833	Watauga	2,837	1,166
Hertford	791	196	Wayne	1,986	1,557
Hoke	656	518	Wilkes	6,279	5,106
Hyde	222	195	Wilson	1,767	588
Iredell	6,987	4,383	Yadkin	2,250	3,123
Jackson	3,049	1,366	Yancey	1,378	1,249
			Total	357,067	232,774

REPORT FROM RALEIGH

By **Elmer Oettinger**

Assistant Director, Institute of Government

Governor Terry Sanford has indicated that he will ask the 1963 North Carolina General Assembly to put into effect most of the major recommendations of the Commission on Education Beyond the High School (*see article, page 1*). The Governor approved the work of the Commission in general in a mid-November address in Fayetteville. He endorsed the Commission's proposals to set up a community college system for the State and to expand and unify the role of the consolidated University of North Carolina, including authority to establish other campuses and enlarge degree-granting powers. The legislation to effectuate the goals set forth by the Commission apparently would include a delegation of authority to the State Board of Education to determine the location and timing of the establishment of fifteen new community colleges and to the University to deal with its expansion needs. It also would provide standards for the community college system and definition of the University's position in the unified system of higher education.

Although the Governor did not refer to the Commission proposal that the board of higher education be augmented by the inclusion of the president of the consolidated University and three other presidents of state-supported institutions, he later brought together the board members, presidents, and other leaders in higher education at a meeting and invited the presidents of both public and private colleges and universities in the State to attend future meetings of the board of higher education. Said Sanford: ["The board's] most important mission is the shaping of policy which will make our colleges and universities the best in the nation."

The Governor added these words of caution regarding the community college proposal: "You will require more comprehensive community colleges than we can immediately establish. It will take several years to do the job properly because we cannot start everywhere at once. Priority should be given to communities where there is a demonstrated need, where there is clearly demonstrated community interest, and where the public schools are already adequately supported by local supplements." The Governor added that he would request the State Board of Education to prepare "tentative criteria and procedures" for setting up the colleges and "would trust that the 1963 General Assembly would provide legislative standards for the establishment of these colleges, leaving the locations to the Board of Education."

* * *

The Cuban crisis galvanized North Carolina officials and citizens into emergency planning action for civil defense. Governor Sanford called two meetings of the State's Emergency Planning Council at the Institute of Government. The Governor himself addressed the first meeting, noting the emergency planning needs of the State and calling upon the assembled officials and private citizens to

assume appropriate roles in the emergency preparations. North Carolina Civil Defense Director General Edward F. Griffin spoke to the group on the State's Civil Defense planning.

The Emergency Resources Planning Committee has the responsibility for planning and organizing the distribution of resources in the State in the event of national emergency. Hugh Cannon, Director of Administration, is the director of State emergency planning. Hargrove Bowles, Jr., chairman of the State Board of Conservation and Development, is chairman of the Emergency Planning Committee. Thirteen task groups reported back to the full committee at the second meeting on November 17. The underlying importance of the committee as indicated by Governor Terry Sanford in these words: "We cannot afford the risk of being underprepared. It is important that we must think out in advance what to do in an emergency situation. Preparation leads to civilian confidence, which in turn is the civilian strength which this country needs."

Meanwhile, pertinent and intense interest in air-raid shelters and civil defense survival planning was evidenced by citizens in communities throughout the State. The press was full of answers by officials to the flood of inquiries. Public shelters were designated and their capacities indicated. Much governmental and individual thinking and planning were crystallized during the weeks of crisis. Although the heightened interest in civil defense was a phenomenon especially evident in the southeastern states which were within range of the Soviet missiles in Cuba, the general upsurge in concern was nationwide. And the emergency planners experienced new awareness of the roles and needs of government and citizens alike in the world.

* * *

Disclosure that some North Carolina drivers have been buying automobile liability insurance from unlicensed agents and under unauthorized point handicaps may lead to corrective legislation. Commissioner of Insurance Edwin S. Lanier announced that he is preparing recommendations for the General Assembly to cover the loopholes in the present laws on financing car insurance. A hearing conducted by Lanier brought out that at least 23 insurance agents operating in the State either wrote insurance without a license or added "phony" points to the insurance applications of auto owners, thus increasing their rates. Lanier has the power to penalize the agents by suspension or revocation of licenses. He also is investigating action against the offending insurance companies. On what he calls the "rotten, stinking mess," Lanier says: "I think the investigations have clearly developed a pattern. I will give a summation to the General Assembly and probably the Insurance Department's recommendations . . . to prevent any continuation or recurrence of this sort of thing."

THE CLERK OF SUPERIOR COURT: HIS OFFICE AND DUTIES



by **W. E. Church**

*Clerk of Superior Court of
Forsyth County*

EDITOR'S NOTE: "Bill" Church's experience in the Superior Court Clerk's Office exceeds 38 years. He served as a Deputy Clerk for approximately 6 years prior to being elected Clerk in 1930. He first took oath of office as Clerk, December 1, 1930 and has been Clerk of Superior Court ever since. Always very active in the Superior Court Clerk's Association, he served as its President from 1937 to 1938. He is well known among the Bar, the Legislature and the Law Schools for his thorough devotion to, and knowledge of, the law governing his office.

This article should be of particular interest to County Commissioners, Assistant and Deputy Clerks of Court, and all who transact business with the Clerks of Superior Court.

Whenever I am called upon to describe the work of the Clerk of Superior Court, in terms of duties and responsibilities and funds administered, and I sit down to outline those duties and responsibilities, I am impressed anew with the variety of the duties and the complexity of the functions performed in the Clerk's office. I do not presume to be an author, but I hope this paper will afford the reader a better understanding of the importance of rendering the many services expected by the public—and to which they are justifiably entitled.

The Clerk is a Constitutional Officer

The public office of Clerk of Superior Court is provided for in the North Carolina Constitution, in Article IV, which deals with the Judicial Department of our State government:

Section 7 (3). *Clerks.* A clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Duties and Responsibilities of the Clerk

*Probate Judge: The Administration
of Estates*

The gravest responsibilities of the Clerk of Superior Court are attendant upon his function as Judge of Probate and in the administration of trusts and of the estates of deceased persons, minors and incompetents. The total number of estates and testamentary trusts (set up by will) within the jurisdiction of my office in Forsyth County currently is over 1,500, and the total *minimum* value of the property under administration in estates, trusts and guardianships in my county currently is a few dollars shy of 133 million dollars!

The October, 1961 issue of *Reader's Digest* contains an article about probate courts and other courts having jurisdiction over the administration of estates throughout the United States. The gist of the article, which is entitled "Sticky Fingers in Our Probate Courts," is that, in some states, large fees are allowed fiduciaries and appraisers for little or no effort on their part. Implicit in the article, based upon the experiences in a few of the most populous states, is the sobering knowledge that the examples given are not isolated. To guard against these inherent dangers, a closely administered organization of dedicated, high-caliber personnel is needed in the clerk's office.

The office of Probate Judge in North Carolina was created by the Constitution of 1868. The powers of the Probate Judge were extensive and his jurisdiction embraced many of the vital transactions of the business community. It covered the proof of wills, deeds, and official bonds; the appointment and revocation of guardians of infants and lunatics; the granting and revocation of letters testamentary and administration; and auditing of the accounts of guardians, executors, and administrators. The Probate Judge could also bind out apprentices, cancel indentures and exercise jurisdiction in many other matters which might be prescribed by law. Although the office was abolished by the Constitution of 1883, the legislature saw fit, on the score of economy and practical administration, to shift the jurisdiction of matters of probate, plus certain other specified matters, to the Clerk of the Superior Court. This was done by the enactment of what is now G.S. 2-1:

G.S. 2-1. *Judge of probate abolished; clerk acts as judge.*—The office of probate judge is abolished, and the duties heretofore pertaining to clerks of the superior court as judges of probate shall be performed by the clerks of the superior court as clerks of said court.

In the exercise of his duties in matters relating to his probate jurisdiction, any clerk of the superior court may sign his name as "Clerk Superior Court, Ex Officio Judge of Probate."

There have been a number of significant decisions handed down by the North Carolina Supreme Court dealing with the Clerk's duties. Under this section the duties of the Probate Judge devolve upon the Clerk of the Superior Court, and in such case he has a special jurisdiction which is distinct and separate from his general duties as Clerk. *Brittain v. Mull*, 91 N.C. 498 (1884); *Helms v. Austin*, 116 N.C. 751 (1895).

The Clerk acts not as the servant or ministerial officer of the Superior Court, or "as and for" the court, but as an independent tribunal of original jurisdiction. *Edwards v. Cobb*, 95 N.C. 5 (1886).

The exercise of judicial powers by the "clerk of the court" is the exercise of them by the "court" through the Clerk; and the action of the Clerk stands as that of the court, if not excepted to and reversed or modified on appeal. *Brittain v. Mull*, 91 N.C. 498 (1884).

The Clerk has jurisdiction of a proceeding by a ward against his

guardian for an account. *McNeill v. Hodges*, 105 N.C. 52 (1890). See also *Rowland v. Thompson*, 65 N.C. 110 (1871).

The Clerks of Superior Court have jurisdiction of proceedings for the removal of executors and administrators. *Edwards v. Cobb*, 95 N.C. 5 (1886).

Although the Clerks of the Superior Court have no equity jurisdiction, they are given probate jurisdiction by G.S. 2-1, and in the exercise of their probate jurisdiction they may hear and rule on a petition of an executor for authorization to operate the estate's farms to preserve the property pending the determination of caveat proceedings. *Hardy & Co. v. Turnage*, 204 N.C. 538, 168 S.E. 823 (1933).

The Probate Court for Forsyth County is separate and distinct from the Superior Court and under the law of North Carolina the Clerk of the Superior Court, as *ex officio* Judge of the Probate Court, has exclusive, original jurisdiction over the probate of wills, appointment of administrators, executors, administrators C.T.A. (with will annexed), guardians for minors, trustees for incompetents, trustees to administer trusts under wills, and collectors, etc. to administer estates of missing persons. There are only 4 people in Forsyth County who can probate a will—the Clerk and his 3 assistants. An exception occurs when the Clerk himself is a beneficiary named in the will. Then that will must be probated either by a Clerk of the Superior Court in an adjoining county or by the Resident Judge of the Superior Court. A Judge of the Superior Court cannot probate a will under any other circumstances.

The Clerk or an Assistant is the only person in the county who can appoint an administrator. Even if someone should appeal from the Clerk's order appointing an administrator and a Judge of the Superior Court should reverse the Clerk on the appointment and remove such administrator, the Judge must remand the case back to the Clerk for the appointment of another administrator, for the Judge, under the law, does not have the authority to appoint a new administrator to take the place of the one he removed.

A Judge of the Superior Court cannot appoint a guardian, and, unless the matter is appealed, has no jurisdiction over the administration of a guardianship for minors or a trusteeship for incompetents.

There are a few instances with relation to the administration of estates when an order of the Clerk must be approved by a Judge of the Superior Court, but these are very rare cases and when a Judge is required to approve an order signed by the Clerk, the Judge, to a great extent, relies on the Clerk passing on the matters; that is, for the Clerk to see that the laws have been followed.

The following statement shows the number of estates pending settlement in Forsyth County on September 1 and October 31, 1961.

	Sept. 1 1961	Oct. 31 1961
Estates of minors and incompetents	531	543
Estates of deceased persons who left wills	366	386
Estates of deceased persons who died without leaving wills	232	243
Trusts under wills	360	365
	1,489	1,537

The minimum value of real and personal property being administered in the above-mentioned estates, trusts and guardianships is \$132,847,594.88. This is the minimum value of the property being administered in these estates because, in most cases, before someone qualifies to administer an estate of a deceased person, the property has not been appraised. Consequently, the values given at the time of qualification are the minimum values of the real and personal property and not an appraised value or market value of stocks. Each representative, within 90 days from date of qualification, must file a detailed, descriptive inventory of all real and personal property belonging to the estate and in most instances, when the fiduciary files a 90-day inventory, the assets have been appraised and the proper appraised value is given in the 90-day inventory.

When a person who has access to a safe deposit box dies, the Clerk must have a Deputy or an Assistant make an inventory of all the valuable papers in such deposit box. This box may be in any bank which rents safe deposit boxes. In my county, this inventory process entails trips to Kernersville and Rural Hall, and to ten banking establishments in Winston-Salem.

Funds Administered for minors and incompetents. The Clerk of the Superior Court of Forsyth County, pursuant to the provisions of Chap-

ter 400, Session Laws of 1945, as amended by Chapter 1297 of the Session Laws of 1957, may administer funds for minors and incompetents domiciled in Forsyth County when such minors and incompetents do not own any real estate or any interest in any real estate and do not own any other property, but are entitled to money, either from an estate, or by reason of a recovery in a personal injury action, or insurance payable to such minor or incompetent on the life of a deceased person, and when the total money due such minor or incompetent does not exceed the sum of \$2,100.00. At the close of business on October 31, 1961, my office had 557 trust accounts for minors and incompetents with a total value of \$317,911.58.

Compensation to Fiduciaries and Attorneys for Fiduciaries

The allowance of fiduciaries' commissions is a judicial function. Therefore, all commissions allowed executors, administrators, guardians for minors, trustees for incompetents, trustees who administer trusts under wills and other fiduciaries appointed by the Clerk to administer estates, and fiduciary's attorney's fees must be passed on by the Clerk or an Assistant Clerk.

The Work of the Superior Court

Two of the General Statutes are very important, particularly with relation to the duties imposed upon a Clerk of Superior Court and with the jurisdiction of the Clerk of Superior Court, and they are as follows:

G.S. 1-13. *Jurisdiction of clerk.*—The clerk of the superior court has jurisdiction to hear and decide all questions of practice and procedure and all other matters over which jurisdiction is given to the superior court, unless the judge of the court or the court at a regular term is expressly referred to.

G.S. 1-7. *When court means clerk.*—In the following sections which confer jurisdiction or power, or impose duties, where the words "superior court," or "court," in reference to a superior court are used, they mean the clerk of the superior court, unless otherwise specially stated, or unless reference is made to a regular term of the court, in which cases the judge of the court alone is meant.

There are hundreds of sections in Chapter 1 of the General Statutes (dealing with procedure in civil cases) which use the term "court"

or "Superior Court" and "court or Judge" and of course when the term "court" is used, those Statutes mean the Clerk of the Superior Court.

Civil Actions

When a summons in a civil action is issued, it is signed either by the Clerk, an Assistant Clerk or a Deputy Clerk. The summons directs the defendant or defendants to appear before the Clerk of Superior Court of Forsyth County and file a written answer; otherwise the plaintiff will apply to the Clerk for the relief prayed for in the complaint filed in the action. The summons is not returnable before a Judge of the Superior Court, nor before a term of Court; under the laws of North Carolina, civil actions are before the Clerk of Superior Court.

In divorce actions, the law decides the allegations of the complaint. It is necessary when the time for the defendant to file an answer has expired for the Clerk to transfer the case to the Superior Court for trial of the issues before a jury. Issues in a divorce action cannot be answered by a Judge.

In civil actions other than divorce actions, when a defendant is sued for a stated sum and the defendant does not file an answer within 30 days from and after the date he is served with the summons, the plaintiff may obtain a judgment against the defendant for the amount sued for in the complaint, and the judgment may be signed by a Clerk or an Assistant Clerk. If the plaintiff is sued for an undetermined amount—that is, damages are unliquidated—and the defendant does not file an answer as required by law, then the Clerk may sign a judgment by default and inquiry. The case is then transferred to the Superior Court for an issue to be submitted to a jury to determine the amount the plaintiff is entitled to recover of the defendant.

The Clerk and his Assistants sign many judgments by default final and by default and inquiry. It does not make any difference what amount a plaintiff sues for, if it is for a stated sum, such as on a note, and the defendant does not file an answer denying the allegations of the complaint, the Clerk signs a judgment by default final and it is just as valid as if it was signed by a Judge of the Superior Court.

Under the laws of North Carolina the Clerk of the Superior Court is supposed to see that the issues raised by the pleadings filed in the action are properly joined, and when they

have been properly joined, then the Clerk transfers the case to the trial docket of the Superior Court for an issue or issues to be submitted to a jury, except in some cases when the parties may agree for a judge to hear and decide the issues of fact raised by the pleadings. The Judge hears the evidence, passes on all matters in the action, and signs the judgment.

The Clerk has authority to make new parties to an action, hear motions to strike, motions to amend pleadings, motions to remove cases to other counties, motions to dismiss actions, and any other motions which may be filed in civil actions. In other words, since the action is pending before the Clerk, it is his duty to pass on these things before sending them to a Judge of the Superior Court.

New civil actions instituted in the Superior Court of Forsyth County during the fiscal year 1956-1957 through the fiscal year 1960-1961 were as follows: 957 in 1957, 1,054 in 1958, 1,152 in 1959, 1,235 in 1960, and 1,342 in 1961. According to the number of cases instituted the first four months of this year, there will be about 1,450 new civil actions instituted during the fiscal year 1961-1962.

Criminal Actions

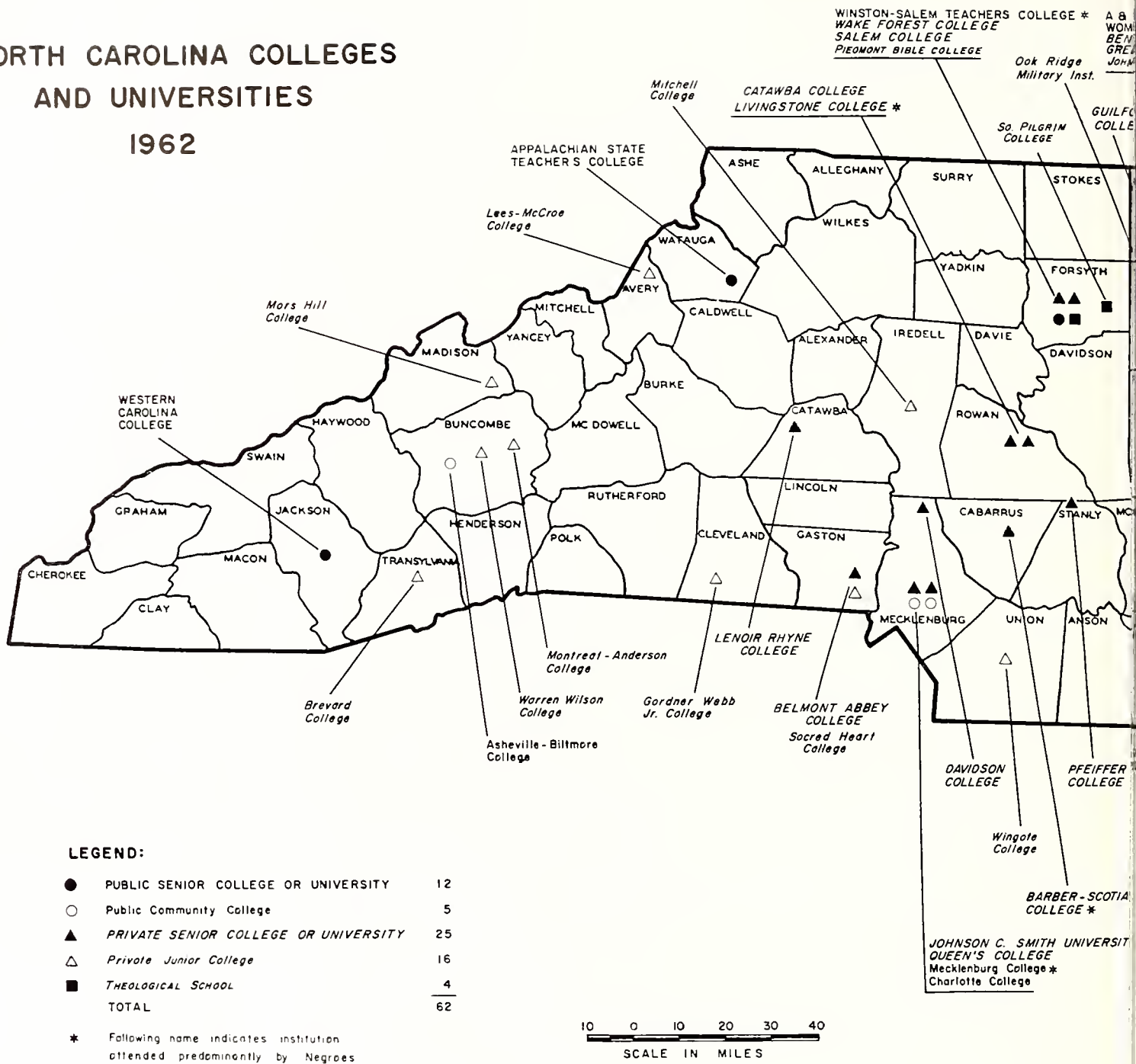
During the fiscal year 1960-1961, there were 1,492 new criminal actions filed in the Superior Court of Forsyth County.

A Clerk of the Superior Court has very little authority and jurisdiction in criminal actions. Warrants are not issued in the Superior Court by the Clerk. Warrants are issued by Justices of the Peace, and Clerks or officers of other inferior courts. The only criminal actions which may originate in the Superior Court arise when a bench warrant is issued by a Judge, or when a Grand Jury makes a presentment, and a true bill of indictment, based on such presentment, is found by the Grand Jury, after which the Clerk of the Superior Court issues a *capias* (order of arrest) for the defendant.

Most of the duties performed by a Clerk in relation to criminal actions are ministerial. A Clerk files papers in criminal actions, prepares a file for same, a docket sheet, prepares a calendar for the trial of criminal cases, records on the minute docket proceedings had before the Judge and jury in criminal actions, and prepares bills of costs when a

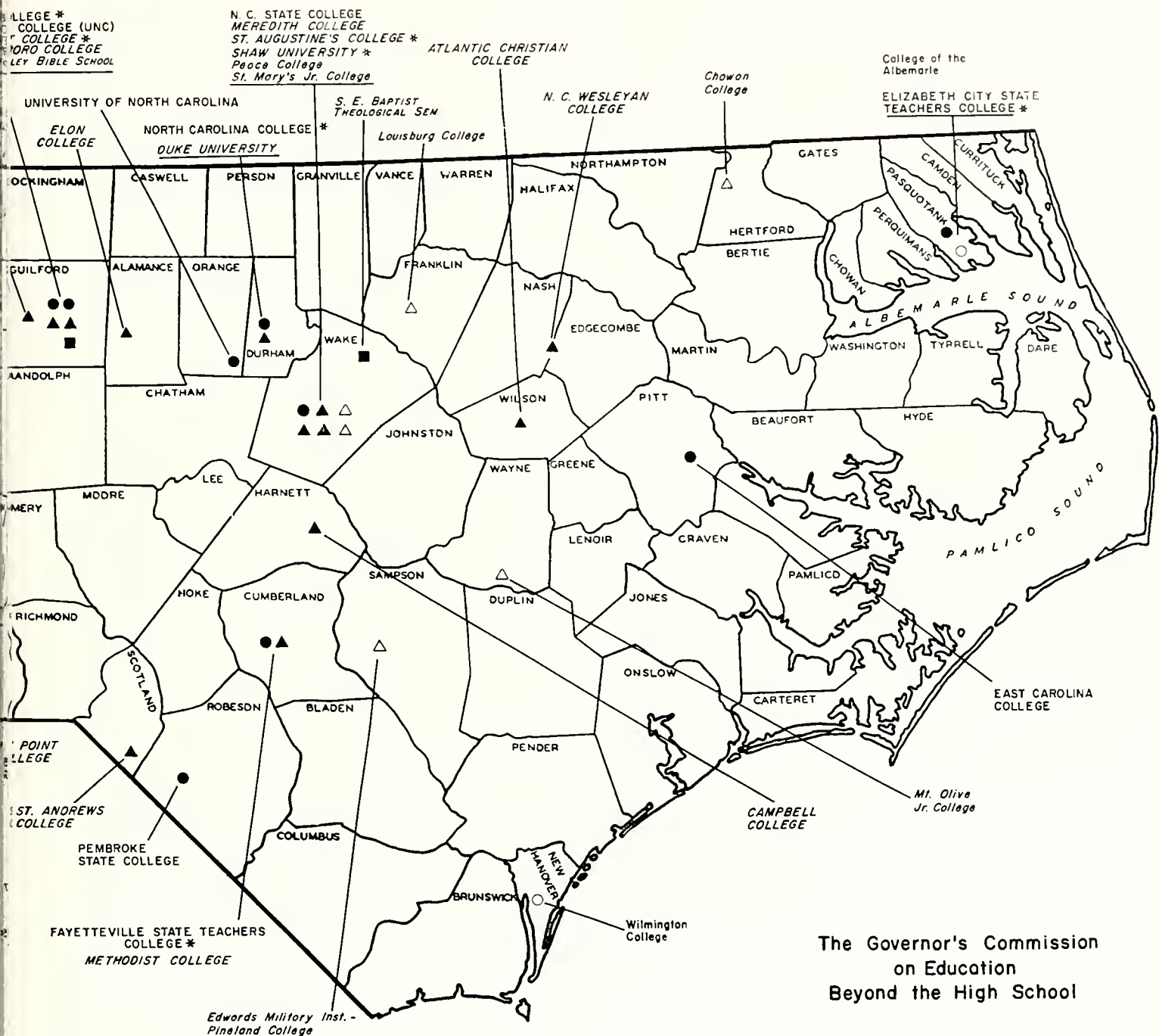
(Continued on page 24)

NORTH CAROLINA COLLEGES AND UNIVERSITIES 1962



The map shown on these pages was prepared by the Institute of Government for use by the Governor's Commission on Education Beyond the High School. It can be studied to advantage in connection with the article by Allan W. Markham analyzing the "Report of the Governor's Commission on Education Beyond the High School" (page 1) and the accompanying charts.

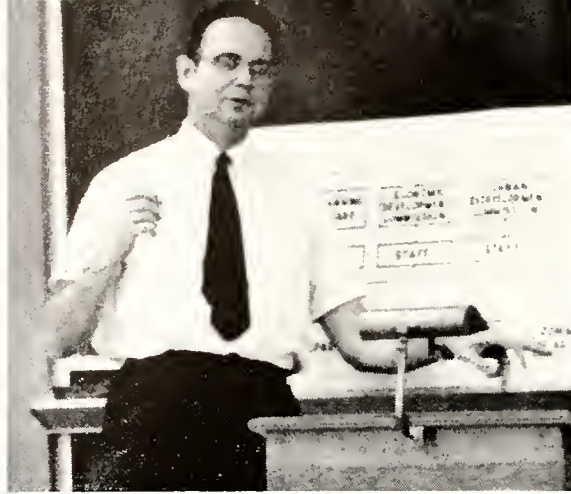
This representation provides a backdrop against which appreciation and understanding of the problems faced by the Commission may be gained. Shown are both the public and private senior and junior colleges and universities of the State of North Carolina. As the legend indicates, these institutions of higher learning number 62 in all. They include 12 public and 25 private senior colleges or universities, 5 public community colleges and 16 private junior colleges, and 4 theological schools.



The Governor's Commission
on Education
Beyond the High School

The geographical spread of these institutions is apparent. They range across the State, from Pasquotank and New Hanover Counties on the coast to Avery, Madison, Buncombe and Jackson Counties in the western mountains. Their total enrollment in 1961 was 75,200 as compared with 67,600 in 1960. A breakdown of the 1960 enrollment figures shows that 35,900 students, or 53.1%, were attending public colleges or universities while 31,700, or 46.9%, were enrolled in private institutions in the State. This map does not reveal their distribution according to institution.

It seems pertinent to note that North Carolina is among those States having the most numerous colleges and universities, public and private, within its borders in proportion to population.



Usually on these pages we bring you pictures of officials attending Institute of Government schools, meetings, or conferences. For the most part they are shown listening while others address them on governmental subjects.

This month we are reversing the perspective. Shown on these pages are assistant directors of the Institute of Government, photographed in the process of teaching and conferring with local, state, or national officials attending schools, meetings, or conferences held at the Institute's Knapp Building in Chapel Hill.

INSTITUTE SCHOOLS MEETINGS AND CONFERENCES

George H. Esser, Jr. (upper left) speaks to the Tax Impact Commission. Esser works with city and county officials on Town and City Management, City-County Relationships, and Privilege License Tax Collection.

Philip P. Green, Jr. (upper center) uses visual aids to demonstrate his points before the one-day Planning School for City Managers. Green heads up the Institute's City and Regional Planning Services.

Henry W. Lewis (upper right) gives instruction to Tax Officials. Lewis also teaches the Municipal Administration class. He is in charge of Taxation and Elections fields.

Warren Jake Wicker (middle left) gives the word to the Municipal Administration course which he coordinates. Wicker specializes in Public Purchasing and related areas.

Donald T. Hayman (mid-center) answers questions for Employment Security Commission personnel. He also has been teaching State Management, Municipal Administration, and Federal Agriculture Department courses, among others, for the Institute. He works with city, county, and state officials on Personnel matters and in related areas.

Robert E. Byrd (lower left) illustrates points on finance to County Commissioners and Accountants. Byrd teaches in Municipal Administration course and works with county officials.



Roddey M. Ligon, Jr. (upper center) considers a point he is making to a County Commissioners and Accountants School. Ligon works closely with officials in Public Health, Public Welfare, and Hospital Administration.



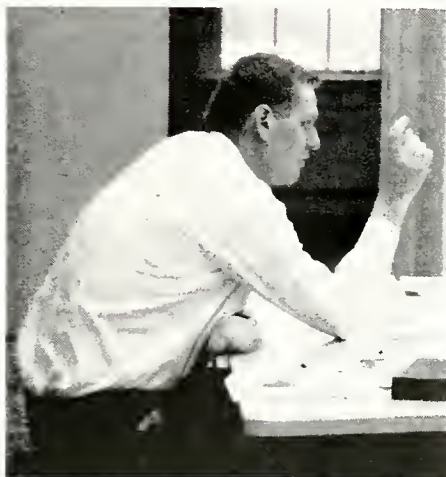
Milton S. Heath, Jr. (upper right) discusses plans and problems with an official group concerned with the State's water resources. Heath also has worked on municipal charters, but his primary responsibility relates to water problems, Industrial Water Supply, and Industrial Waste Disposal.



L. Poindexter Watts (middle right) is in charge for the Institute in training schools and meetings for Wildlife Resources personnel. Watts functions in Criminal Law.



Neal Forney (lower center) demonstrates points to law enforcement officials. Forney works in Institute's Criminal Investigation and Law Enforcement Training Programs with State Highway Patrol, local police, Forest Law Enforcement and other groups.



Robert E. Stipe (lower right) gives instruction in City Planning Short Course. Stipe has been instrumental in setting up Urban Design Seminar and a new Topographical Mapping Conference. He serves with Green in Regional Planning and Zoning and in Industrial Development. Mrs. Ruth Mace also is a staff member in this field.



**Institute Schools
Meetings and Conferences**
(continued)



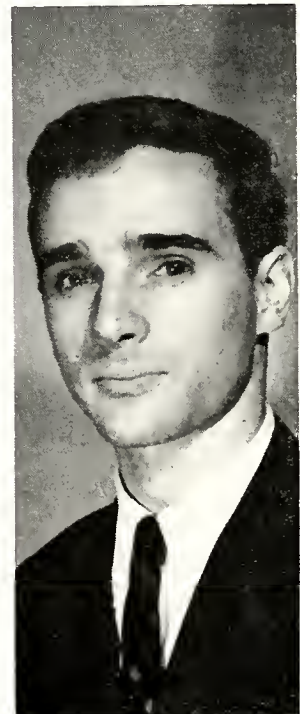
V. L. Bounds (upper right) conducts schools, meetings and conferences for Prison, Parole, and Probation personnel. He is in charge of the Institute's work in Jail Management and Prison Administration matters.

Allan W. Markham (upper left) talks with Registers of Deeds. He also serves in Education matters and works with School officials.

C. E. Hinsdale (middle right) runs the Institute program for Clerks of Superior Court. Hinsdale works with county officials. He also served in the Highway Safety and Motor Vehicles law field, currently being handled by staff member Robert L. Gunn.

Clyde L. Ball (lower left) analyzes constitutional and statutory law with the Court Study Commission. Ball works with various commissions and study groups. He heads the Institute of Government Legislative Service. His primary service is in the field of State Government.

David N. Smith (lower right) specializes in Criminal Law and Law Enforcement. Here he speaks to a Traffic Law Enforcement group.



JUDICIAL ACCEPTANCE OF SCIENTIFIC EVIDENCE

Evidence of Speed Based on Skid Marks

By David N. Smith, Assistant Director, Institute of Government

I. Scientific Evidence in North Carolina

In the course of the judicial history of North Carolina, the North Carolina Supreme Court has shown a remarkable willingness to accept scientific evidence as one mode of proof in civil and criminal litigation. In one early case the Court stated that "the law avails itself of every advance in science which renders the investigation of truth more accurate."¹ Consequently, the Court has accepted such scientific evidence as ballistics,² fingerprint analysis,³ handwriting analysis,⁴ blood tests for alcohol,⁵ photographs,⁶ tape recordings⁷ and blood stain analysis.⁸ On the other hand, however, the Court has also manifested a healthy reluctance to accept scientific evidence in certain areas. In regard to the lie detector, for example, the Court has stated that this method of investigation "has not yet attained scientific acceptance as a reliable and accurate means of ascertaining truth or deception," and the Court has consequently rejected lie detector results as evidence.⁹ This conclusion is generally supported by the experts in the field.¹⁰

One of the most difficult tasks faced by the Court is determining the point at which a particular method or device passes beyond the experimental stage into the stage of general reliability. In some situations the Court will rely on the experience and knowledge of an expert witness who testifies as to general acceptability.¹¹ In other situations, the Court will itself turn to scientific treatises and cite them

either in support or rejection of the method.¹² A second difficulty is determining when the expert witness who presents the scientific evidence should be allowed merely to state the facts observed by him and when he should be allowed to state an opinion or conclusion based on these facts. As a general rule, ultimate fact determination such as a defendant's guilt or a party's liability is the task of the jury, not the witness.¹³ Because scientific evidence may in many situations go to the crux of a particular litigation, a witness' conclusion based on his observation and analysis of facts may come close to deciding the ultimate question of guilt or liability.¹⁴ For example, in one North Carolina case a medical expert testified that "I don't think it is possible for the deceased to have fired the gun and made the wound I saw."¹⁵ The Court held that this testimony should have been excluded. The defense was suicide, and therefore the ultimate issue for the jury was whether the deceased had fired the gun or not. More recently, however, the Court has suggested a limitation on this orthodox rule.

It has been frequently stated that the testimony of an expert witness should be excluded when it expresses an opinion on the very issue before the jury, but this rule is not inflexible. It is frequently relaxed in the admission of evidence as to ultimate facts in regard to matters of science, art or skill. . . .¹⁶

One area of scientific evidence still harnessed by the orthodox rule con-

cerning "ultimate facts" is that of estimating speed based on skid marks and other physical evidence. The general rule presently governing this situation in North Carolina is that once the physical facts are described by the investigating expert, "the jury is just as well qualified as the witness to determine what inferences the facts will permit or require."¹⁷ The following discussion will suggest that this conclusion may warrant re-evaluation in light of the availability, to qualified experts, of a scientific basis for determining speed from skid marks and other physical facts.

II. Evidence of Skid Marks

It is clear under North Carolina case law that a witness—usually a police officer—may testify as to skid marks and other physical facts found at the scene of a motor vehicle accident and that the jury may take this evidence into consideration in determining the speed of the car involved.¹⁸ In *State v. Ormond*, a police officer testified as to tire marks made on the highway at the scene of an accident and indicated where these marks began. The Court made this observation:

Since the test of control of a motor vehicle is the ability to stop it quickly and easily, scars or marks on the pavement caused by skidding are admissible on the question of speed, when connected up with the defendant's automobile. If such marks show an inability to stop quickly and easily, on an occasion for so doing, the inference is obvious that the car was running too fast or that a proper effort to control it was not made. Therefore, on the question of speed at the time of the collision, it is proper to consider the skid marks to show the distance an automobile traveled after the accident and before it came to a stop.

1. *Hampton v. Railroad*, 120 N. C. 534, 533 (1897).
2. *State v. DeMai*, 227 N. C. 657 (1947).
3. *State v. Combs*, 200 N. C. 671 (1931).
4. *State v. Gay*, 94 N. C. 814 (1886).
5. *State v. Willard*, 241 N. C. 259 (1954).
6. *Davis v. Railroad*, 136 N. C. 115 (1904).
7. *State v. Walker*, 251 N. C. 455 (1960).
8. *State v. Smith*, 223 N. C. 457 (1943).
9. *State v. Fove*, 254 N. C. 704 (1961).
10. See, e.g., *INBAU AND REID, LIE DETECTION AND CRIMINAL INTERROGATION* 128 (3d ed. 1953).
11. See, e.g., *State v. Willard*, *supra*, note 5, where the Court relies on an expert in blood-alcohol tests.

12. See, e.g., *State v. Rogers*, 233 N. C. 390 (1951) where the Court cites *O'HARA AND OSTERBURG, AN INTRODUCTION TO CRIMINALISTICS AND HERZOG, MEDICAL JURISPRUDENCE*, in accepting bare footprint evidence. In *State vs. Fove*, *Supra*, note 9, the court cites *INBAU AND REID, LIE DETECTION AND CRIMINAL INTERROGATION* (2d ed. 1948).
13. *Mason v. Gillikin*, 256 N. C. 527 (1962).
14. This is especially true with such scientific devices as the lie detector and narcoanalysis.
15. *State v. Carr*, 196 N. C. 129 (1928).
16. *State v. Powell*, 238 N. C. 527 (1953).

17. *Shaw v. Sylvester*, 253 N. C. 176 (1960).
18. *State v. Ormond*, 211 N. C. 437 (1937). See also, *Goss v. Williams*, 196 N. C. 213 (1928).

It should be observed that this case establishes only that evidence of the skid marks is admissible. The case does not hold that the police witness may himself give an estimate of speed based on his observation of physical factors. On the contrary, the present North Carolina rule appears to be that such estimation of speed by law enforcement officers will not be admissible in evidence.¹⁹ In light of the important role that such testimony might play in motor vehicle accident litigation, both civil and criminal, and in light of cases from other jurisdictions admitting such testimony, an analysis and evaluation of the North Carolina law in this area of scientific investigation is warranted.

The leading North Carolina case holding that a witness may not give an estimate of speed based on physical facts, when he did not observe the accident, is *Tyndall v. Hines*.²⁰ A highway patrolman had investigated an accident in which a truck ran into two pedestrians. He gave testimony in a trial for damages as to the marks the truck made on the shoulders of the road and upon the grass. He testified that these were not brake marks but were marks made when the truck involved made a sudden turn, thus shifting the weight to one side or the other. The officer was asked his opinion as to the rate of speed at which the truck was driven at the time of the accident. He offered an estimation of a speed of 50 to 60 m.p.h. On appeal, the North Carolina Supreme Court held that this opinion was inadmissible. The Court's conclusion was this:

He gave a plain, clear, and distinct description of the signs, marks and conditions he found at the scene of the collision so that ordinary jurymen could readily understand and appreciate just what he saw. Hence the jury was just as well qualified as he to determine what inferences the facts about which he testified permitted or required.

Read strictly, this decision means that when a police witness does not observe the occurrence of a motor vehicle accident, but only investigates the accident, he may not give an estimate of speed based on physical facts observed by him. The reason is that the jury, which has the same facts available to it through the officer's testimony, is equally competent as the officer to determine the rate of speed. Later cases have upheld this interpretation. In the

19. *Tyndall v. Hines*, 226 N. C. 620 (1946).
20. *Ibid.*

recent case of *Shaw v. Sylvester*,²¹ for example, the Court stated that

one who does not see a vehicle in motion is not permitted to give an opinion as to its speed. A witness who investigates but does not see a wreck may describe to the jury the signs, marks, and conditions he found at the scene, including damage to the vehicle involved. From these, however, he cannot give an opinion as to its speed. The jury is just as well qualified as the witness to determine what inferences the facts will permit or require.

At least two other cases, relying on the authority of *Tyndall v. Hines*, have held that a police officer who does not witness an accident, but only investigates, may not give an estimate of speed based on physical facts.²² All of these cases rest on the premise that the jury is as well qualified as the police witness to make a determination of speed based on physical facts.

The validity of this premise in all cases is questionable. It seems clear that the testimony of a qualified witness, experienced in the investigation of traffic accidents, would shed much more light on the relevance of certain physical facts found at the scene of an accident than a jury would be able to do.

Modern scientific training in accident investigation may provide near precision in the estimation of speed. J. Stannard Baker, a traffic engineer and Director of Research and Development at the Traffic Institute of Northwestern University, has stated that "In the case of simple skid marks showing that the car slid to a stop without hitting anything, speed may be estimated to within approximately 8 per cent."²³ The police witness has at his disposal mathematical formulae not available to the average juror. Baker sets out the skid mark formula in the following terms:

Speed is estimated from sliding distance by a relatively simple formula. Speed equals 5.5 times

21. 253 N. C. 176 (1960). The *Shaw* case was concerned with reconstruction of a traffic accident rather than with mere estimation of speed. While the witness' testimony was not allowed in this case, there is a suggestion that he had been sufficiently qualified to give an opinion regarding the reconstruction of an accident an opinion would have been allowed. There is a distinction between the expert with practical investigative experience who estimates speed from skid marks and the expert whose scientific training qualifies him to analyze and reconstruct a traffic collision. A jury is much less qualified to compete with the second expert. See *Bolstad v. Egleston*, 326 S.W. 2d 506 (Tex. Crim. App. 1959).

22. *State v. Roberson*, 240 N. C. 745 (1954); *Webb v. Hutchins*, 228 N. C. 1 (1947).

23. *Ins. Counsel J.* 438, 439 (1959).

the square root of the distance slid times the coefficient of the friction of the paving. For example, in the formula if we use 67 feet for the distance slid, and 0.68 as a coefficient of friction of hard, smooth, worn pavement, we must multiply these together which gives 45.4, take the square root which gives 6.75, and multiply by 5.5 which gives 37 m.p.h. In this example, if the car slid to a stop without striking anything, 37 m.p.h. would probably be within about three m.p.h. of true speed at the beginning of the slide.²⁴

While it has been noted that an investigating officer cannot tell precisely how fast the car was going before the accident, he can determine that the car must have been going faster than some estimated minimum speed.²⁵

Courts of many other jurisdictions have yielded to the assertion that speed estimations by qualified experts can be of significant value in motor vehicle accident litigation. In the recent case of *Dillenschneider v. Campbell*,²⁶ the court stated that

certainly the general weight of authority in this country recognizes that a witness qualified as an expert may give his opinion, based upon the length of skid marks and other pertinent data, as to the minimum speed at the time the brakes were applied to a motor vehicle involved in an accident.

The Missouri Court added that

Expert opinion evidence of minimum speed based upon the length of skid marks of an automobile . . . is in a sense but the corollary of expert testimony as to the distance within which a motor vehicle can be stopped if going at a speed of x miles per hour.

It is significant to note that the North Carolina Court has itself held that testimony as to the distance in which a motor vehicle can be stopped is admissible in evidence.²⁷

In another recent case,²⁸ the New Mexico court faced the very argument put forth by the North Carolina Court in the *Tyndall* case for not admitting evidence of speed estimation:

It is strongly contended that to permit expert testimony as to speed of the automobile based on

24. *Ibid.*

25. *TRAFFIC ACCIDENT INVESTIGATOR'S MANUAL FOR POLICE*, The Traffic Institute of Northwestern University, 425-426 (1957).

26. 350 S. W. 2d 260 (Mo. App. 1961).

27. *State v. Gray*, 180 N. C. 697 (1920). It is significant that, in fact, the witnesses who testified stated that "in order for this truck to have been skidded 33½ feet after the brakes were put on, it must have been running at a rate of speed exceeding 20 miles an hour." This is the type of evidence rejected in the *Tyndall* case.

28. 68 N. M. 298, 361 P. 2d 451 (1961).

evidence already before the jury [skid mark evidence] invaded the province of the jury. . . . We do not agree.

Similarly, the Kansas Court has recently admitted a speed estimate based on physical facts,²⁹ although it recognized that

courts throughout the land are not in complete agreement on the question of admissibility of opinion evidence as to speed based on physical facts such as skid marks, damage to vehicles and the like.

Two recent federal decisions have also recognized the admissibility of speed estimates based on physical facts.³⁰

Among the courts which have accepted testimony of estimated speed based on skid marks, emphasis appears to be placed on two factors: the expertise of the witness and the quantity and quality of physical factors taken into consideration.

*Jackson v. Trogan*³¹ provides an excellent illustration both as to the type of expertise required and the type of factors the officer should take into consideration in reaching his estimate of speed. The investigating officer, a member of the state police, testified that he had been on the force a little over a year and had investigated "a few accidents." The Court noted critically that "There was . . . no explanation as to the character or extent of . . . training." The cross-examination of the officer and the court's comments illustrate the difficulty:

"Q. Now, you have had no special training—or have you had special training in determining the speed of an automobile from skid marks?" A. I have been taught how to figure it out mathematically, however, we have, as I said a graduated chart that we use to determine, but I have forgotten the form.

"Q. Do you have the chart with you? A. No I don't.

"Q. Did you use any mathematical computation to figure this? A. I used the chart we have.

"Q. Can you do it now? A. No, I don't have it with me.

"Q. Well, I would like to have you bring the chart and see if you can figure that out; that's the basis for your opinion; you did figure it out before you came to court? A. As I say, the skid marks left by the Ross car, as I recall on the chart, would indicate that the car

would have been going fifty-five miles an hour sideways; I believe, to get the car going fifty-five miles per hour, it would have been hit at eighty miles per hour.

"Q. Can you prove that by mathematical computation? A. No, I can't, that is my own reasoning.

The court criticized this testimony on seven points: (1) there was no explanation of the character and extent of the patrolman's training; (2) the chart was not produced in evidence; (3) there was no indication as to the type of chart used or to what it was meant to apply; (4) there was no indication that the officer had the chart with him at the time of the investigation; (5) the officer conceded that he could not prove the speed by mathematical computation but used his "own reasoning." (6) there was no evidence that the officer had investigated accidents of this type before; (7) there was no evidence of other physical facts such as the weight of the cars and the surface of the pavement. Basically there were three weaknesses in the presentation of the officer's testimony: he was not a qualified expert; he did not take into consideration a sufficient number of physical factors; he relied on hearsay evidence (the chart) to support his conclusions.

A. Expertise

On the question of expertise, both study and experience are important. In *McManus v. Buskirk*,³² the court emphasized that the investigating officer had ten years of experience in investigating highway crashes. In *Foreman v. Heinz*,³³ the captain of the sheriff's patrol testified that he had investigated 1500 to 2000 traffic accidents with the sheriff's office and 2500 to 3000 as a police officer. He had served as patrolman, motorcycle traffic officer and traffic accident investigator. A second officer who also investigated had eighteen years experience as a police officer and had attended the Traffic Institute at Northwestern University.

In *Dillenschneider v. Campbell*,³⁴ the investigating officer testified that he had been a police officer for six years and had taken many different types of automobiles and laid down skids, measured their length and figured the coefficient of friction from the skid marks. The court accepted him as an expert but noted that the officer's experience was "tersely stated, and well could have been given in more detail."

B. The Physical Factors

The cases appear to suggest that the most effective testimony will include evidence of make and weight of car; measurement of skid marks; surface of the pavement; location of car after accident and speed tests made by officers at the scene of the accident.³⁵

It is important for the law enforcement officer to recognize that whether he is merely giving testimony of facts from which the jury is to estimate speed, or whether he is laying a foundation for his own conclusion as to speed, he should be prepared to give testimony of as many pertinent physical facts as possible. Courts exercise caution in allowing an estimate of speed by the officer and where sufficient physical facts are not related such an estimate will not be allowed.

In a recent Arkansas case,³⁶ a state trooper with thirteen years of experience estimated the speed of a vehicle by tests conducted with another automobile. He testified only as to (1) the distance the car travelled out of control and (2) the severity of impact. The court reversed the judgment based on this evidence.

The witness' test was made with a car other than the one involved in the accident and there is no showing that his test was made under the same conditions that prevailed at the time and the place of the accident. The testimony of a policeman as an expert carries great weight but when it is predicated on conditions different than those under scrutiny it is inadmissible.

In a recent Wisconsin case,³⁷ a witness testified that he heard, but did not see, the car involved in the accident and he estimated, from the sound, that it was speeding. The court held this testimony inadmissible.

The noise produced by automobiles will vary significantly depending on such factors as wind condition, the condition of the muffler and the character of the tires.

A recent Georgia case³⁸ gives a detailed discussion of the problem. There a police witness testified that his investigation showed that the front of one automobile struck the right side of the other; that the impact turned one of the cars over; that one car was a 1941 Oldsmobile and

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29. 185 Kan. 715, 347 P. 2d 451 (1959).

30. *White v. Zutell*, 263 F. 2d 613 (1959);

Swink v. Colcord, 239 F. 2d 518 (1956).

31. 364 Mich. 148, 110 N. W. 2d 612 (1961).

32. 183 N. E. 2d 473 (Ohio 1962).

33. 185 Kan. 715, 347 P. 2d 451 (1959).

34. 350 S. W. 2d 260 (Mo. App. 1961).

35. *Alford v. Drum*, 68 N. M. 298, 361 P. 2d 451 (1961).

36. *Henshaw v. Henderson*, 359 S. W. 2d 436 (Ark. 1962).

37. *Carstensen v. Faber*, 116 N. W. 2d 116 (Wis. 1962).

38. *Carroll v. Hayes*, 98 Ga. App. 450, 105 S. E. 2d 755 (1958).

The New Legislature

When the North Carolina General Assembly convenes in Raleigh on February 5, 1963, the names on these pages will comprise its membership. A substantial number of the names will be familiar, for the new Legislature includes many individuals with experience in public office. The 120-member House of Representatives will have 68 members returning from the 1961 General Assembly. The 50-member Senate will contain 16 Senators who served in the 1961 Legislature. In addition, a number of members of each House, who were not legislators in the most recent Session, have served in prior Assemblies. Rotation of some Senate seats among different counties in the senatorial districts accounts, in part, for the greater turnover in the Senate.

The Republicans gained six seats in the House, but the ratio of Democrats to Republicans remains constant in the Senate. The House membership will include 21 Republicans as against 15 in 1961. The number of Republicans in the Senate stays at two. Thus, the General Assembly will be organized and controlled by the Democratic party, dominant in the state since 1900. The ratio of women to men remains the same. There are no women serving in the Senate and four in the House, the same number as in 1961. Two of the lady members are new this time. In occupations, attorneys-at-law and businessmen continue to be best represented.

The 1961 redistricting of the House in accordance with the 1960 census has resulted in a gain of one seat each for Alamance, Cumberland, and Mecklenburg Counties and a loss of one seat each for Cabarrus, Johnston, and Pitt Counties. Senatorial redistricting is expected to be at issue again in the 1963 Assembly.

1963 North Carolina General Assembly

MEMBERS OF THE SENATE

[Democrats unless name is followed by (R) to denote Republican]

Senatorial District	Name and County	Residence
1st	N. Elton Aydtlett (Pasquotank) J. J. Harrington (Bertie)	Elizabeth City (1006 W. Church) Lewiston
2nd	Edgar J. Gurganus (Martin) P. D. Midgett, Jr. (Hyde)	Williamston Engelhard
3rd	Perry W. Martin (Northampton)	Rich Square
4th	W. Lunsford Crew (Halifax) Henry G. Shelton (Edgecombe)	Roanoke Rapids Speed
5th	Robert Lee Humber (Pitt)	Greenville (117 W. Green St.)
6th	Wilbur M. Jolly (Franklin) J. Russell Kirby (Wilson)	Louisburg Wilson (304 Mt. Vernon Dr.)
7th	Luther Hamilton, Sr. (Carteret) Thomas J. White (Lenoir)	Morehead City Kinston
8th	Lindsay C. Warren, Jr. (Wayne) Adam J. Whitley, Jr. (Johnston)	Goldsboro Smithfield (Rt. 1)
9th	LeRoy G. Simmons (Duplin) Cicero P. Yow (New Hanover)	Albertson Wilmington (143 W. Renovah Cir.)
10th	Carl Meares (Columbus) Ray H. Walton (Brunswick)	Fair Bluff Southport
11th	Hector MacLean (Robeson)	Lumberton
12th	Robert B. Morgan (Harnett) William P. Saunders (Moore)	Lillington (Box 397) Southern Pines
13th	Harry Horton (Chatham) John R. Jordan, Jr. (Wake)	Pittsboro Raleigh (2214 Dixie Trail)
14th	Claude Currie (Durham) Richard G. Long (Person)	Durham (1118 Sedgefield St.) Roxboro
15th	T. Clarence Stone (Rockingham)	Stoneville
16th	Ralph H. Scott (Alamance)	Haw River
17th	Charles W. Strong (R) (Guilford)	Greensboro (2406 Madison Ave.)
18th	Garland S. Garriss (Montgomery) Dr. W. D. James (Richmond)	Troy Hamlet
19th	Fred M. Mills, Jr. (Anson) Staton P. Williams (Stanly)	Wadesboro Albemarle (331 N. 9th St.)
20th	Irwin Belk (Mecklenburg)	Charlotte (400 Eastover Rd.)
21st	Clyde L. Propst, Jr. (Cabarrus) Thomas W. Seay, Jr. (Rowan)	Concord (Box 321) Spencer
22nd	Gordon Hanes (Forsyth)	Pfafftown
23rd	George K. Snow (Surry)	Mt. Airy
24th	T. E. Story (R) (Wilkes)	Wilkesboro
25th	David Clark (Lincoln) Jimmy V. Johnson (Iredell)	Lincolnton (Rt. 3) Statesville (437 Walnut St.)
26th	L. B. Hollowell (Gaston)	Gastonia
27th	Robert F. Morgan (Cleveland) B. T. Jones (Rutherford)	Shelby (1114 N. Washington St.) Forest City
28th	H. J. Hatcher (Burke)	Morganton (Box 666)
29th	Ira T. Johnston (Ashe)	Jefferson
30th	J. Yates Bailey (Yancey)	Bald Creek
31st	James G. Stikeleather, Jr. (Buncombe)	Asheville (221 Kimberly Ave.)
32nd	R. E. Brantley (Polk) Oral L. Yates (Haywood)	Tryon (Box 127) Waynesville
33rd	W. Frank Forsyth (Cherokee)	Murphy

MEMBERS OF THE HOUSE OF REPRESENTATIVES

[Democrats unless name is followed by (R) to denote Republican]

County	Name	Residence
Alamance	Jack M. Euliss M. Glenn Pickard	Burlington (505 Country Club Dr.) Burlington (1119 Sherwood Dr.)
Alexander	Thomas E. Bebbler, Jr.	Taylorsville
Alleghany	Robert L. Johnson (R)	Piney Creek
Anson	H. P. Taylor, Jr.	Wadesboro
Ashe	Austin Jones	West Jefferson
Avery	Mack Isaac (R)	Newland
Beaufort	Wayland J. Sermons	Washington
Bertie	Emmett W. Burden	Aulander
Bladen	James C. Green	Clarkton
Brunswick	Odell Williamson	Shallotte
Buncombe	I. C. Crawford Gordon H. Greenwood	Asheville (10 Hampshire Circle) Black Mountain (Box 8)
Burke	Dan R. Simpson (R)	Morganton (Box 128)
Cabarrus	Dwight W. Quinn	Kannapolis (Box 314)
Caldwell	Earl H. Tate	Lenoir
Camden	George M. Wood	Camden
Carteret	Thomas S. Bennett (R)	Morehead City
Caswell	Edward H. Wilson	Blanche
Catawba	J. Henry Hill, Jr.	Hickory (850-4th St. Dr., N.W.)
Chatham	Jack Moody	Siler City
Cherokee	Herman H. West (R)	Marble
Chowan	B. Warner Evans	Edenton
Clay	Wayne G. West (R)	Warne
Cleveland	Jack Palmer, Jr.	Shelby (900 Montrose Circle)
Columbus	Arthur W. Williamson	Cerro Gordo
Craven	Sam L. Whitehurst	New Bern (RFD)

Cumberland	John T. Henley L. Sneed High I. H. O'Hanlon	Hope Mills Fayetteville (1406 Summit Ave.) Fayetteville (Box 975)
Currituck	Milburn E. Sawyer	Powells Point
Dare	M. L. Daniels, Jr.	Manteo
Davidson	J. Eugene Snyder (R)	Lexington
Davie	Lester P. Martin, Jr.	Mocksville (N. Main St.)
Duplin	Hugh S. Johnson, Jr.	Rose Hill
Durham	Eugene C. Brooks, III Nick Galifianakis	Durham (1012 Lakewood Ave.) Durham (2748 University Dr.)
Edgecombe	Joe E. Eagles	Macclesfield
Forsyth	Fred F. Bahnson, Jr. Dan L. Drummond Claude M. Hamrick	Winston-Salem (2035 Georgia Ave.) Winston-Salem (3225 Buena Vista) Winston-Salem (1228 Watson Ave.)
Franklin	James D. Speed	Louisburg (Rt. 3)
Gaston	Steve Dolley, Jr. Hoyle T. Efrd	Gastonia (101 S. Belvedere) Gastonia (1215 Oakwood Ave.)
Gates	Philip P. Godwin	Gatesville
Graham	W. V. Cooper	Robbinsville
Granville	Joe A. Watkins	Oxford
Greene	I. Joseph Horton	Snow Hill
Guilford	Donald Badgley (R) Hardy A. Carroll (R) Philip L. Lacy (R) William L. Osteen (R)	Greensboro (5307 Friendly Rd.) Guilford (Rt. 1) Greensboro (Rt. 7) Greensboro (1503 Independence Rd.)
Halifax	Thorne Gregory	Scotland Neck
Harnett	Dr. H. D. Mabe, Jr.	Erwin
Haywood	Ernest B. Messer	Canton
Henderson	John T. Randall (R)	Hendersonville (708 Spartanburg)
Hertford	Roberts H. Jernigan, Jr.	Ahoskie (402 W. Main St.)
Hoke	Neill L. McFadyen	Raeform
Hyde	W. J. Lupton	Swan Quarter
Iredell	William R. Pope	Mt. Mourne (Box 23)
Jackson	Lacy H. Thornburg	Sylva
Johnston	W. R. Britt	Smithfield (Box 526)
Jones	Mrs. Ina T. Hargett*	Trenton (Rt. 2)
Lee	J. Shelton Wicker	Sanford (Box 668)
Lenoir	Dr. Rachel Darden Davis, III	Kinston
Lincoln	C. E. Leatherman	Lincolnton (Box 361)
Macon	J. H. Stockton (R)	Franklin
Madison	Liston B. Ramsey	Marshall
Martin	Elbert S. Peel, Jr.	Williamston
McDowell	Paul J. Story	Marion (Monte Vista Ave.)
Mecklenburg	Mrs. Martha W. Evans Elmer H. Garinger Ernest L. Hicks J. Herman Saxon (R) James B. Vogler Ernest H. Poteat	Charlotte (2441 Hassell Place) Charlotte (2625 Briarcliff Pl.) Charlotte (500 Clement Ave.) Charlotte (3751 Arbor Way) Charlotte (2011 Randolph Rd.)
Mitchell	J. Paul Wallace	Bakersville
Montgomery	H. Clifton Blue	Troy
Moore	Allen C. Barbee	Aberdeen
Nash	Robert E. Calder	Spring Hope
New Hanover	J. Raynor Woodard	Wilmington (304 N. 15th St.)
Northampton	Hugh A. Ragsdale	Conway
Onslow	Carl V. Venters John W. Umstead, Jr. Ned Delamar	Richlands Jacksonville (Box 391) Chapel Hill (619 E. Franklin St.)
Orange	C. Alden Baker	Oriental
Pamlico	Ashley M. Murphy	Elizabeth City (1013 Riverside Dr.)
Pasquotank	Archie T. Lane, Sr.	Atkinson
Pender	James E. Ramsey	Hertford (Rt. 1)
Perquimans	W. A. Forbes	Roxboro
Person	W. Fred Swann (R)	Winterville (Box 94)
Pitt	C. Roby Garner (R)	Tryon
Polk	Thomas B. Hunter	Asheboro (509 E. Salisbury St.)
Randolph	David M. Britt	Rockingham
Richmond	R. D. McMillan, Jr.	Fairmont
Robeson	Earl W. Vaughn	Red Springs
Rockingham	Clyde H. Harriss	Draper
Rowan	George R. Uzzell	Salisbury
Rutherford	Hollis M. Owens, Jr.	Salisbury
Sampson	Tom Newman	Rutherfordton
Scotland	Roger C. Kiser	Clinton (Rt. 1)
Stanly	Clyde H. Whitley (R)	Laurinburg
Stokes	Mrs. Grace T. Rodenbough	Albemarle (2310 Charlotte Rd.)
Surry	William G. Reid	Walnut Cove
Swain	Robert Leatherwood, III	Pilot Mountain
Sylvania	William Leonard (R)	Bryson City
Tyrrell	W. J. White	Brevard (108 Overlook Dr.)
Union	S. Glenn Hawfield	Columbia
Vance	A. A. Zollicoffer, Jr.	Monroe
Wake	Thomas D. Bunn Jyles J. Coggins A. A. McMillan	Henderson (Meadow Lane) Raleigh (2507 Wake Drive) Raleigh (3691 Ridge Rd.) Raleigh (406 Chesterfield Rd.)
Warren	John Kerr, Jr.	Warrenton
Washington	Carl L. Bailey, Jr.	Plymouth
Watauga	J. E. Holshouser, Jr. (R)	Boone
Wayne	Mrs. John B. Chase	Enreka (Box 226)
Wilkes	Robert L. Strickland (R)	North Wilkesboro
Wilson	Thomas H. Woodard	Wilsom (611 Raleigh Rd.)
Yadkin	F. D. B. Harding (R)	Yadkinville
Yancey	Mark W. Bennett	Burnsville

* Appointed to succeed John Hargett, deceased.

The New State House

For the first time since 1839 the North Carolina General Assembly will be meeting in a building other than the State Capitol. The new Legislative Building, already referred to as the State House, will be ready for use for the 1963 session. The General Assembly is required (by 1961 Resolution) to open the session in the old chambers in the State Capitol. But when the Legislature gavels bang down on the days following, they will reverberate from new rostrums through new chambers of a brand new building, north from the old capitol building across Halifax Street. According to plans, the two buildings will be separated someday by a mall. The legislative building has 206,050 square feet of space. Under construction since early 1961, following authorization by the General Assembly, the State House will make a handsome addition to the Capitol Square area. The building will provide an office for each member of the General Assembly, rooms for meetings of legislative committees, and offices for the various officials and employees.

For the first time the legislative, executive, and judicial branches of government will be separate physically as well as in governmental theory. The judicial branch remains in the Justice Building facing Capitol Square from the east. The executive branch stays in The Capitol and nearby buildings.

The change will be noticed but one thing certain about the 1963 General Assembly—faced with major legislative challenges in education, budget, court reform implementation, public health, public welfare, and other areas—is that it will adjust quickly to the new conditions of space and time. Another certainty is that from the 170 names on these two pages will come the 1963 legislative substance and directions which will affect the future of North Carolina.

- JUDICIAL ACCEPTANCE -

(Continued from page 21)

one was a 1949 Hudson. He also testified as to the distance traveled by each car from the intersection to the point of impact. He further noted the lane in which one of the cars was, and the weight of the other. The court held that this was an insubstantial basis for giving an estimate of speed.

The distance each vehicle traveled into the intersection before reaching the point of impact would not show speed, nor would the lane in which either was driving. While the weight of one of the vehicles involved in the collision would have been some evidence to aid the witness in arriving at an opinion as to speed, as would the distance traveled by the vehicles after the collision . . . without stating facts as to the weight and distance traveled by the other vehicle, the condition of the road (i.e., wet or dry, asphalt, cobblestone, dirt or concrete), skid marks, if any, and other facts relating to the terrain, the proposed testimony of the witness as to the speed of the vehicle operated by the defendant at the time of the collision would have been a bare conclusion which, even if admitted without objection, would not have had any probative value.

It should be observed that in the cases admitting speed estimates the expert testimony was based on skid marks made after the brakes were applied, but before the impact. In the recent case of *Jowers v. Dauphin*,³⁹ a state highway patrolman, who had not been present when the accident occurred, testified as to the speed of the vehicles involved immediately before collision, based on his observation at the scene of the wreck and skid marks made after the point of impact. The court held this testimony inadmissible. While recognizing that an expert may express an opinion as to estimated speed

39. 143 S. 2d 167 (Ala. 1962).

predicated on the distance the tires skidded before the impact, an expert may not express such an opinion based on the distance the tires skidded after impact.

. . . [W]e think it is a matter of common knowledge that when two such moving objects collide . . . they may behave in a manner which seemingly defies all laws of physics.

C. Use of Speed Charts

The police witness must, of course, make an effort to qualify as an expert in his own right. It has been suggested that an expert in estimating speed from physical facts should be prepared to derive the formulae which he uses.⁴⁰ While some courts have stated that it is not error to allow an opinion based on pre-computed charts,⁴¹ other courts stress the fact that the officer must be an expert independent of reliance on the conclusions of others. In a recent Georgia case,⁴² a police witness gave testimony as to the distance it takes a car to stop at certain speeds. His testimony was based on a speed chart and was deemed inadmissible. He was not offered as an expert with independent knowledge.

The witness' opinion must be his own; he cannot act as a mere conduit for the opinion of others. Thus the opinion is incompetent where the witness has no general knowledge of his own, but is merely transmitting information received from others.

Unless the court is prepared to accept the chart itself as substantive evidence, the officer should be pre-

40. TRAFFIC ACCIDENT INVESTIGATOR'S MANUAL FOR POLICE, The Traffic Institute of Northwestern University 426 (1957).

41. *Gittens v. Lundberg*, 3 Utah 2d 392, 284 P. 2d 1115 (1955); *Barge v. House*, 94 Ohio App. 515, 110 N. E. 2d 425 (1955).

42. *Central Georgia Ry. Co. v. Brower*, 127 S. E. 2d 33 (Ga. 1962).

pared to derive the formulae which he uses, and in any case should possess general knowledge in the area.

D. Conclusions

In light of advances made in the area of traffic investigation and the recent decisions in other jurisdictions, it seems reasonable to presume that the wholesale exclusion of estimates of speed based on physical facts will be modified in the future. It should be observed that the *Tyndall* case provides only the weakest authority for excluding estimates of speed. First, the Court made no detailed analysis of the question whether an expert police witness is better qualified than a jury to estimate speed from pertinent data. There is no reference to scientific authority. Secondly, it is important to note that the physical facts taken into account in the *Tyndall* case were not in fact skid (brake) marks. They were "marks made when the truck made a sudden turn, thus shifting the weight to one side or the other." Thirdly, these marks were apparently the only physical evidence taken into consideration. There was no evidence of skid marks, surface of pavement, weather conditions, weight of car or other pertinent data.⁴³ It may be that when such limited evidence is considered the officer is not in any better situation to estimate speed than the jury. However, when more technical factors are considered, including the coefficient of friction and length of skid marks, and when the officer can establish a relationship between skid marks and speed, estimates of minimum speed would seem significantly helpful.

43. It has been stated, however that the three major factors are length of slide, coefficient of friction and slope of pavement up or down, and that other factors have only minor effect. These minor factors "may usually be neglected because they make a difference that is within the eight per cent error of estimates." *Baker, supra*, note 23.

- THE CLERK OF SUPERIOR COURT -

(Continued from page 13)

final judgment has been entered. He also docket judgments in criminal cases on a proper judgment docket and properly indexes such judgments for future reference. The only judicial authority a Clerk has in criminal cases is to pass on a motion to re-tax the costs. When a defendant in a criminal action files a motion to re-tax the costs, such motion must first be passed on by the Clerk before a Judge of Superior Court has any authority to pass on same. Of course, any aggrieved party may appeal to the Judge on the ruling of

a Clerk on a motion to retax the costs.

Court Terms

During the first week of each criminal term of court, we must have two people in attendance upon the court in order for the proper entries of judgments to be made, minutes of the court proceedings to be written, and so that commitments may be issued promptly and the Sheriff can get those persons who have been tried and sentenced out of jail.

There are only 7 weeks during this

fiscal year when we have no court scheduled in Forsyth County. A schedule of courts for the fiscal years 1961-1962 and 1962-1963 calls for 38 weeks for the trial of civil cases only, and 24 weeks for the trial of criminal and civil cases, but these "mixed" terms are usually used for the trial of criminal cases only. This new schedule is an increase of nine weeks over the number of weeks of courts scheduled for the last fiscal year, and calls for 17 weeks of double courts; that is, 17 weeks when two courts are held simultaneously.

Judgments and Liens Filed and Docketed

Judgments rendered by all courts in civil cases must be filed in the office of Clerk of Superior Court for enforcement by issuance of a levy of execution directed to the Sheriff by the Clerk. Transcripts of judgments and liens filed and docketed in my office during fiscal years 1956-1957 through 1960-1961 were in quantities as follows: 1,224 in 1957, 1,608 in 1958, 1,649 in 1959, 1,822 in 1960 and 1,614 in 1961. Based upon the number of transcripts filed and docketed so far during fiscal 1962, we will file and docket about 2,000 this year.

Emergency Calls in Civil Matters

The Clerk, his Assistants and Deputies are also subject to call in emergency cases when a person wishes to institute a civil action, as in claim and delivery for automobiles, household furniture about to be moved out of the state, attachments when someone is about to leave the state with all his personal property, and for the purpose of getting restraining orders and various other matters which arise after regular office hours.

Commitment of Incompetents and Incompetency Proceedings

The Clerk, and particularly his Assistants, are subject to call at all times for the purpose of confining mentally disordered persons who have become dangerous to themselves or to the public and to issue orders for confinement of inebriates when proper papers have been filed with the Clerk.

Another type of proceeding is the request for appointment of a guardian of property. When a proceeding is filed before the Clerk to adjudge a person incompetent to manage his property, it is necessary under the law for a jury to be impaneled to hear the evidence and to pass on the question of whether the respondent is incompetent to manage his or her property. The Clerk or an Assistant Clerk presides over the hearing. The Clerk or the Assistant, whoever presides, must rule on the competency of the evidence offered by all the parties and must charge the jury as to the law in the case, in the same manner as a Judge of the Superior Court presiding over a trial and submitting issues of fact to a jury.

Proceedings filed in the Forsyth County Clerk's office for the commitment of mentally disordered persons to state hospitals; proceedings for the commitment of inebriates and drug addicts; proceedings to adjudge persons competent; and

proceedings instituted to adjudge persons incompetent to manage their property during the fiscal years 1956-1957 through 1960-1961 were as follows: 182 in 1957, 251 in 1958, 241 in 1959, 221 in 1960, and 218 in 1961.

Probate of Instruments

The law provides that all deeds, mortgages, deeds of trust, powers of attorney and all other instruments required to be registered in the office of Register of Deeds be probated prior to such registration. Probate in such cases generally involves acknowledgment that the instrument is what it purports to be and that it is the instrument of the person or persons whose signatures appear thereon. If not probated in the Clerk's office, then the Clerk must still pass upon the certificate of acknowledgment taken before someone else. The number of instruments probated in my office over the past five years has varied from a low of 29,000 in 1957 to a high of 36,000 in 1959.

Miscellaneous Duties

Records Inquiries

The Clerk is called upon every day in person, by telephone and mail, to furnish information about records, such as judgments, divorce actions, wills, criminal actions, and other public records maintained in the Clerk's office. We also have to write numerous letters about public records in response to inquiries from all over the United States.

Bar Association Calendar Committee

One of my Assistants is Secretary to the Calendar Committee of the Forsyth County Bar Association and she meets with the Calendar Committee when they prepare the cases to be placed on trial calendars. This occurs over 60 times each year.

Old Age Assistance Liens

Under federal law, a lien must be docketed against every public welfare recipient of Old Age Assistance in the office of Clerk of Superior Court. During the past five fiscal years, the number of such liens docketed in Forsyth County has averaged 204 per year.

Money Handling

The Clerk's office has a set of books for keeping a record of all monies received, invested and disbursed. This is probably the most complicated set of books in the county. The cashier and bookkeeper must have sufficient knowledge of the law so that he can determine when to accept money and when to make disbursements. There are very few people who really know and understand the many complex steps in connection with keeping a set of

books in an office of the Clerk of Superior Court. It takes a person a long time to learn sufficient law for him to be an expert bookkeeper in the Clerk's office. Someone with knowledge of the books must be on duty during all hours when the office is open for business to wait on people who wish to make payments and to make disbursements for people entitled to receive money from the Clerk's Office.

The amount of money paid into my office during the past seven fiscal years has varied from a low of \$714,000 during 1956-1957 to a high of almost \$1,200,000 during 1958-1959.

Revenues of the Office

The various fees and court costs collected in Forsyth County by the Clerk of Superior Court over the past five fiscal years have varied from \$76,000 to \$121,000 (in round numbers). Net revenue produced for the county (over and above the cost of operations) has increased from \$2,600 five years ago to \$27,000 (in round numbers) this past fiscal year. In addition, there are annual earnings upon an investment of \$40,000 in building and loan association stock and \$10,000 in a certificate of deposit.

Assistance for the Clerk

To carry out his many and varied duties and to discharge his responsibilities without error, the Clerk of Superior Court must have competent and experienced help. The importance of paying these assistants salaries commensurate with their responsibilities cannot be overemphasized. Of the 37 persons who have worked in my office and who have departed for one reason or another (including death) over the past 31 years, 22 of these people left to accept better paying jobs or to otherwise improve their position in life.

After the adjournment of each legislature the Clerk, Assistants, and Deputies must study the new laws, and amendments to existing statutes affecting their daily work. The significance of this requirement may be readily appreciated when one considers that the 1959 legislature re-wrote the entire Interstate Succession Act, and that there were several amendments to those same statutes by the 1961 legislature.

Assistant Clerks of Superior Court

The Clerk of the Superior Court is a constitutional, public, judicial officer, and many of the duties to be performed by the Clerk are judicial in nature. An Assistant Clerk is a public, judicial officer who also has authority to sign judicial orders. A

Deputy Clerk is a public officer, but only a ministerial officer, and he may not sign judicial orders. Most orders presented to the Clerk are judicial. Therefore, the Clerk or an Assistant must sign such orders. A person under twenty-one years of age may not be appointed an Assistant or Deputy Clerk.

The Constitution of North Carolina requires the Court to be open at all times for the transaction of business. When a Judge of Superior Court is not presiding over a court, the Clerk is the person who must keep the court open for the transaction of legal business. Realizing that the business of the courts was rapidly increasing and that the Clerks of the Superior Court needed relief, the General Assembly of 1921 provided for the appointment of an Assistant Clerk in each county and gave the Assistant Clerk the same power and authority as the Clerk, except where the Constitution requires the Clerk to act.

The volume of business handled by the offices of the Clerk of the Superior Court of North Carolina continued to increase. In 1951 the General Assembly provided for additional Assistant Clerks. Finally, the 1959 General Assembly provided for the appointment of not more than two Assistants in counties with population of less than 50,000. In counties having a population of from 50,000 to 80,000, the Clerk could appoint four Assistants, and in counties having a population of more than 80,000, the Clerk could appoint six Assistants. G.S. 2-10.

The population of Forsyth County being more than 80,000, the Clerk of Superior Court may appoint six Assistants, but at the present time we have only three.

Authority of Assistant Clerks

With about three exceptions, noted below, the Assistant Clerk can sign any paper the Clerk of the Superior Court can sign, and such a paper has as much legal effect as if signed by the Clerk himself.

Article IV, Section 8 of the Constitution provides that a Clerk of the Superior court may nominate one or more Magistrates for appointment by the Judge of the Superior Court. Since this is in the Constitution, it does not appear that an Assistant Clerk may nominate a Magistrate under this provision (The former provision of the Constitution, with respect to appointment of Justices of the Peace, would seem to continue in effect in a particular county until such time as the new District Court is estab-

lished and functioning in that county.)

G.S. 2-10 provides that the Clerk of Superior Court of each county may appoint a certain number of Assistant Clerks, based on the population of the county; G.S. 2-13 provides that the Clerk of Superior Court may appoint Deputy Clerks.

It would appear that since the Clerk of Superior Court is liable for the acts of his Assistants and Deputies, he is the only person who may appoint an Assistant or Deputy. The appointment by the Clerk of an Assistant Clerk must be approved by the Senior Resident Judge of the District. A Clerk of Superior Court is the only person who may revoke the appointment of an Assistant or Deputy, since they are his appointees and he is liable for their acts.

Deputy Clerks

As noted above, G.S. 2-13 authorizes the appointment of deputy Clerks. Two statutes of importance dealing with Deputy Clerks are:

G.S. 2-12. *Clerks not relieved from duties; deputies.*—This article shall not in any wise excuse or relieve the clerk of the superior court from giving to the performance of his duties the same time, care, and attention as is now required of such clerks by law, nor shall it change or amend the present laws with reference to deputy clerks of the superior court: Provided, that one person may be appointed both as assistant clerk and as deputy.

G.S. 215. *Responsibility of clerk for deputy's acts.*—The several clerks of the superior court shall be held responsible for the acts of their deputies. Deputies shall be subject in all respects to all laws which apply to the clerks.

Secretaries

Every Clerk's office is in need of secretarial or stenographic-type help. In my office we have two secretaries who take dictation from eight people. Both of these secretaries spend a great deal of time answering the telephone and taking calls for the Clerk and his Assistants.

Liability of the Clerk

A person cannot take the oath and qualify as Clerk of Superior Court until he gives the bond required by law and until it has been accepted and approved by the Board of County Commissioners. His bond is made payable to the State of North Carolina. All employees of the Clerk's Office are under a blanket bond payable to the Clerk personally for his protection. The bond of the Clerk and of each employee guarantees that all money received will be properly accounted for and, *most important, guarantees faithful per-*

formance of the duties of the office.

The Clerk of Superior Court must know when and to whom to pay money, for even though an order be signed by a Judge of the Superior Court, if the Judge does not have jurisdiction as required by the laws of North Carolina, and the Clerk disburses money under a void order of a Judge because the Judge did not have jurisdiction, the Clerk is not protected with regard to the money disbursed pursuant to said order, but is liable to the person to whom the money belongs and who is entitled to receive it.

The following is quoted from the case of *State v. Sawyer*, 223 N.C. 102, 105 (1943):

"But respondent's [Clerk of Court's] position is that in this case the clerk was protected by order of the resident judge, which he was bound to obey. It is true an order of the judge, as to a matter within his jurisdiction, even though erroneous in law, is nevertheless binding on the clerk, and he is bound to obey or render himself liable to attachment for contempt. *State ex rel. Tolls v. Tolls*, 160 Oregon 317, 85 P (d), 366, 119 A.L.R., 1370. But that principle should not be applied to the detriment of the estate of an infant in his custody where the judge's order is void for lack of jurisdiction over the subject matter of the parties, or the *res*, [i.e., the property]. In order to authorize the transfer of the funds of an infant domiciled in this State to a guardian in another state, the petition and proceeding prescribed by C.S. 2195, are jurisdictional. Forged papers presented by a spurious person, fictitiously posing as a guardian appointed by a court without jurisdiction, did not authorize a valid disbursement of the infant's funds, and an order based solely on such papers was void. The whole proceeding was a nullity. A void order, though signed by a judge, gave the clerk no protection from liability to the infant for paying out money as the property of such infant to an improper person.

It follows, therefore, that the infant, then a resident of Wake County, was in no sense represented in the proceeding based on the forged papers and was not bound thereby, and that the improper payment of money to the so-called Jackson, under the circumstances of this case, may not be held to constitute a valid disbursement of the funds of Joyce Corinne Godwin.

While an ingenious fraud by means of forged papers was practiced upon the clerk—a fraud which imposed upon him and the judge alike—we do not think the comparatively small estate of this minor should be made to suffer the loss. It is a well recognized principle that where one of two innocent persons must suffer loss by the fraud of a third person he

who first reposed the confidence must bear the loss. . . . We think this was one of the casualties insured against by the surety on the clerk's bond. Neither the former clerk nor the surety is entitled to credit for this disbursement, and the judgment entitling the plaintiff relator now to recover the amount of the fund for the estate of Joyce Corinne Godwin must be Affirmed."

The Supreme Court in the case of *State v. Gant*, 201 N.C. 211, 225 (1931) (Gant was a Clerk of Superior Court) quoted from an earlier case the following statement:

"Such clerk is an important and responsible public officer, his duties are varied and serious, affecting the public and individuals. In a variety of ways moneys, rights, credits, securities and other things of value belonging to others go into his hands, and the law charges him with the same for such persons or for their benefit. The statute is careful to make the bond extend to and embrace within its scope and purpose, not only such 'moneys and effects' as may come into his hands by 'virtue' of his office, but as well, and as certainly to such as may so come by 'color' thereof, and, likewise, to such additional 'duties of his office' as may be prescribed by law after the execution of the bond. There seems to be a studied purpose to make the bond embrace and to create liability of the sureties thereto on account of all 'moneys and effects' that come into the hands of the clerk as such, whether they so come strictly according to law or not."

The Clerk must, if he wishes to protect himself and his property, know sufficient law to determine when he should disburse money, even when ordered so to do by a Judge of the Superior Court. If the Judge does not have the authority, under the law, to make such an order, the Clerk is simply *not protected* if he disburses the money.

The Clerk of the Superior Court signs more orders affecting people than a Judge of the Superior Court. He is the one official in the county whom people consult for advice regarding any subject, and the one whom they expect should and will know the answers.

He must know, at least, something of all laws throughout the world and particularly those of any state in the Union, pertaining to wills, estates, and related matters. People expect him to hear and be able to solve any problem which they present.

No one person in the court has more liabilities than the Clerk, who has the authority to sign papers affecting the rights and liberties of

NOTES FROM CITIES AND COUNTIES

Editors note: Popular Government is interested in reporting governmental happenings in counties and cities throughout North Carolina. Events, action by council or commissioners, plans, contracts, personnel changes, etc., are of interest to other governmental units throughout the State. Information like that provided by the Rowan County Health Department (below) is welcomed. To be certain that the latest information about your county or city is available to us, get in touch with The Editor, Popular Government, Institute of Government, University of North Carolina, Chapel Hill, North Carolina.

ROWAN COUNTY HEALTH DEPARTMENT has had some noteworthy changes in personnel this year. Dr. Moffitt K. Holler became Health Director on the retirement of Dr. Charles W. Armstrong who had held the position for 43 years.

Miss Ruby Lentz was appointed Director of Nursing on the retirement of Mrs. Louise McDaniel after 31 years of service, and Mrs. John B. Weatherman and Mrs. James L. Cooper were added to the nursing staff.

Also added were two new sanitarians, John P. Pendleton and Carl F. Howard, who replaced F. Arthur Hoffman, upon his retirement and Andrew Hutchinson who moved to Randolph County.

Miss Catherine Hyde filled the vacancy in the position of Health Educator.

HONORS FOR FIREMEN

The death of Salisbury fire chief, Charles L. Burkett ended a distinguished career. Among his many achievements and honors were these:

Graduate of the American Red Cross on Advance Training in First Aid.

Instructor of the North Carolina Fire College twenty-nine years.

so many innocent people. His duties are so many and complex, that no one has been able to write the procedure for the Clerk of the Superior Court to follow. The Supreme Court has stated "that there is no procedure outlined in law for the Clerk of the Superior Court to follow—he is to get the facts and do justice."

Director and Conductor of the North Carolina State Fire College and of the North Carolina Pump School each for 10 years.

Six terms as member of the advisory board of the North Carolina State Firemen's Association; Vice-President of the International Fire Chief's Association from North Carolina; and as President of the North Carolina State Fire Chiefs Association;

Twenty-six years as treasurer of the Firemen Relief Fund;

Two terms as President of the North Carolina State Firemen's Association;

First prize winner in nation and in Educational Activities on Fire Prevention.

Six times Second Prize winner in USA in Educational Activities on Fire Prevention;

Winner of 53 awards, certificates, diplomas and plaques;

Fireman of the Year (out of 15,000 firemen);

Award winner as the outstanding Fire Chief of the State given by the Southeastern Association of Fire Chiefs.

Awarded six prizes in the State of North Carolina for fire prevention work.

Chief Burkett, loved and admired by firemen everywhere, was given the name of "Mr. Fireman" in North Carolina. He was unable to attend the testimonial dinner held for him about a week before his death, having entered the hospital that day. His son, Charles L. Burkett, Jr. attended in his place.

Salisbury's new fire chief is Fred Shipton, who has served 20 years with the fire department. Assistant Chief, Garland Michael was named to the new position, Deputy Chief, in charge of fire prevention work and administrative matters.

Some 300 firemen attended the 10th Annual Pump School in Charlotte in October. Chief Cosmoe L. Cox of Durham served as director-conductor of this school which was founded and run in all previous years by Chief Charles Burkett.

* * *

Fireman of the year in North Carolina for 1962 is Captain Barry Gibson, who retired from the Charlotte Fire Department and named public relations officer for the state fireman's association.

Book Reviews

HOUSING, PEOPLE, AND CITIES. by Martin Meyerson, Barbara Terrett, and William L. C. Wheaton. McGraw-Hill Book Company, Inc., 330 West 42nd Street, New York 36. New York, 1962. 386 pp. \$9.95.

This carefully written, well-knit book should serve as a useful and comprehensive introduction to the present day problems of housing in the United States and potential solutions to these problems. The authors define the broad area of their concern by suggesting that while "the people of the United States have more housing per person and better equipped housing than do the people of other countries, . . . imbalances in the market combine with contradictory goals for urban development to make the housing of many people a less satisfying product than it can be." Thus, while they consider briefly the frequently studied problem of providing "decent, safe, and sanitary" housing for the underprivileged, their chief concern is with impedances to the provision of an adequate supply of quality housing for all. By definition, then, the issues considered in this book involves us all, as individual housing consumers and in the context of our jobs. Public officials in administrative and management posts at all levels of government should put it on their must reading lists.

The last of a series of eight volumes on housing and community improvement (sponsored by ACTION, the American Council to Improve Our Neighborhoods, and financed by the Ford Foundation), this book draws substantially on materials presented in the earlier volumes and on numerous other sources. It does not offer many brand new ideas. But it performs the equally (or perhaps more) useful job of bringing together the facts and a cumulation of the good ideas of a great many. These are clearly and concisely set forth in a readily digestible manner.

Author Meyerson is Director, Joint Center for Urban Studies of the Massachusetts Institute of Technology. Barbara Terrett is ACTION's Director of Research Activities; and William Wheaton is Director of the Institute for Urban Studies at the University of Pennsylvania.

Watts Citation

Our single picture and brief caption account of the award presented to L. Poindexter Watts, Assistant Director of the Institute of Government, in October now can be augmented from the citation itself.

The citation, read by Congressman Herbert C. Bonner at the time Watts was presented the State Governor's Award in the field of Wildlife Conservation for 1962, ran as follows:

"[Watts'] publication has not only been of incalculable aid to the wildlife protectors—and therefore the sportsmen—of North Carolina; it has set a goal toward which wildlife conservation agencies in all other states of the nation will strive.

"As an Assistant Director of the Institute of Government, you have served as an instructor to Wildlife Protection trainees and in-service groups of Wildlife protectors at the Institute and to in-service groups in the field. Your knowledge of the laws pertaining to fish, game, arrest, search and seizure, imparted through

instruction and technical writing, has been of immeasurable assistance to the North Carolina Wildlife Protection program."

Watts was one of several individuals cited at the North Carolina Wildlife Federation's second annual Conservation Awards Program in Durham on the evening of October 19. The awards are designed "to give proper recognition to those individuals and organizations who make outstanding educational and informational contributions to the conservation of the natural resources of the state of North Carolina—its soils, forests, minerals, waters, and wildlife."

Watts' award was made primarily for his recent *Guidebook for Wildlife Protectors*, a legal textbook on game, fish, and boat law. The book revised and enlarged by Watts from the original work of Willis Clifton Bumgarner, was published last month and has been well received. Watts also has been in charge of recent Institute of Government schools for Wildlife Resources personnel.

Bond Sales

From 24 July 1962 through 20 November 1962 the Local Government Commission sold bonds for the following governmental units. The unit, the amount of bonds, the purpose for which the bonds were issued, and the effective interest rate are given.

Unit	Amount	Purpose	Rate
Cities:			
Elkin	\$ 100,000	Off-street parking	3.09
Greensboro	6,790,000	Public library, public park, fire department, street improvement, bridge and culvert, water, municipal building	2.82
Jacksonville	310,000	Sanitary sewer, fire station	3.69
Lillington	280,000	Sanitary sewer	3.81
Morehead City	40,000	Armory	3.60
Mount Airy	52,000	Water and sewer	2.79
New Bern	1,750,000	Sanitary sewer	3.56
Roanoke Rapids	70,000	Fire department and vehicle	2.83
Counties:			
Cabarrus	125,000	School building	2.39
Caldwell	750,000	School building	3.04
Cherokee	500,000	School building	3.95
Granville	175,000	Hospital	2.93
Henderson	900,000	Hospital	3.77
New Hanover	1,425,000	School building	3.07
Onslow	585,000	School building	3.39
Rowan	500,000	Industrial education center	2.70
Wake	1,000,000	School building	2.66

Credits: Front cover and inside front cover photographs are courtesy of the Wilmington Star News. Other pictures and charts are by Charles Nakamura. Layout is by Joyce Kachergis.

DEADLINE SET FOR PLANNING ASSOCIATIONS' AWARDS

A deadline of January 31, 1963, has been set for entries in the joint awards programs of the North Carolina Planning Association and the North Carolina Section of the American Institute of Planners. Announced earlier this year by George M. Stephens, Sr., of Asheville, President of N.C.P.A., and Dennis E. Daye of Greensboro, N.C.A.I.P. Director, these programs are designed to honor the citizens most responsible for sound community planning programs in the state and newspapermen providing the best coverage of these programs.

Annual "Citizenship Certificates" will be awarded "in recognition of the outstanding contribution made by a private citizen in bringing about community understanding and support of the value of a comprehensive and long-range program of community planning." Local governing boards, school boards, planning boards, and similar groups may nominate any local citizen for this award. As many as three awards may be conferred in any one year. Professional planners are not eligible.

Recognition of newspaper coverage of community planning programs will take the form of a series of as many as six awards (two of which may be cash prizes of \$100 each) to reporters, feature writers, and editors for the best "series of articles, editorials or features which combine to develop an awareness in the public of a community problem or problems and of a planning program, either public or private, for the solution or alleviation of those problems." Entries from dailies and non-daily newspapers will be judged separately.

Entries should be mailed to Mrs. Ruth L. Mace, Secretary, Citizenship Award-Community Planning Press Award Committee, c/o Institute of Government, Box 990, Chapel Hill, North Carolina. Additional copies of procedures governing each award also may be obtained from Mrs. Mace.

PRESS AWARD CONTEST RULES

1. Entries must consist of a series or group of articles, editorials, or features, which combine to develop an awareness in the public of a community problem or problems and of a planning program, either public or private, for the solution or alleviation of these problems. Entries may deal with several subjects. The subject or subjects may be limited to part of a community, or to the entire community and its future development, but should explore the public's interest in these problems, the effects on the public of continued neglect or of successful solution, and the mobilization of resources necessary for such solution. Subjects may include such matters as the location or provision of public facilities; the analysis of community needs such as housing, transportation, schools, or utilities; the effect on the community or the region of industrial plants, large-scale shopping centers, airports, or public works; or public policy of the governing boards in relation to such developments. Judges will consider the quality of writing, the relative importance of the subject to the community, and the cumulative impact of such writings on the public.
2. To be eligible, entries must have been written by a staff member or members of a newspaper published in North Carolina and printed between January 1 and December 31, 1962. The newspaper may be a daily or a non-daily.
3. Entries concerning controversial issues should be fair to all concerned and should clarify the issues and the public interest involved.
4. Six awards may be granted. Of these, two may be cash awards of \$100 each. Daily and non-daily newspapers will be judged separately. Judges will consider the best editorial series, the best series of news articles, the best series of features, and any combinations of the foregoing if so submitted. Awards may be granted to winning members of the same newspaper for all three classes of entries.
5. Entries should be submitted in the form of a folder or scrapbook with clippings neatly mounted therein and labeled as to date of publication. Entries may be accompanied by supporting materials, to provide additional bases for judging, such as (1) a background statement describing the relative importance of the subject to the community and the cumulative impact of the news cover-

- age on the public; (2) letters to the editor mirroring community sentiment; or (3) any other relevant information. Each entry should be accompanied by a completed entry form. The Awards Committee reserves the right to request additional information should this be necessary.
6. Deadline for submission of entries is January 31, 1963. No entry postmarked after this date will be considered during that year. Awards will be conferred at the annual meeting of the North Carolina Planning Association to be held in April, 1963.

CITIZENSHIP CERTIFICATE FOR OUTSTANDING LEADERSHIP IN COMMUNITY PLANNING

Purpose. This award is made by the North Carolina Planning Association and the North Carolina Section of the American Institute of Planners in recognition of the outstanding contributions made by private citizens in bringing about community understanding and support of the value of a comprehensive and long-range program of community planning.

Eligibility. A nominee must be a resident of North Carolina, and must have made his contribution to community planning by extraordinary achievement, working through other citizens in his or her community to develop their awareness and understanding of sound planning procedures. Professional planners are not eligible.

Nominations. Any town, city, or county governing board or any local or regional planning board, school board, or similar public body may nominate candidates for the **Citizenship Certificate**. The nominating body should prepare a record of the achievements of their nominee, and should submit this record to Mrs. Ruth L. Mace (address above). The Award Committee consists of the executive committees of the North Carolina Planning Association and of the North Carolina Section, American Institute of Planners.

Procedures. Awards for 1962 will be made on the basis of nominations submitted prior to January 31. The **Citizenship Certificate** need not be made every year, and will be made only once to any individual. A maximum of three awards will be made in any one year. The number of nominations is not limited. The 1962 awards will be conferred at the annual meeting of the North Carolina Planning Association to be held in April 1963.

WINSTON TASTES GOOD...

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