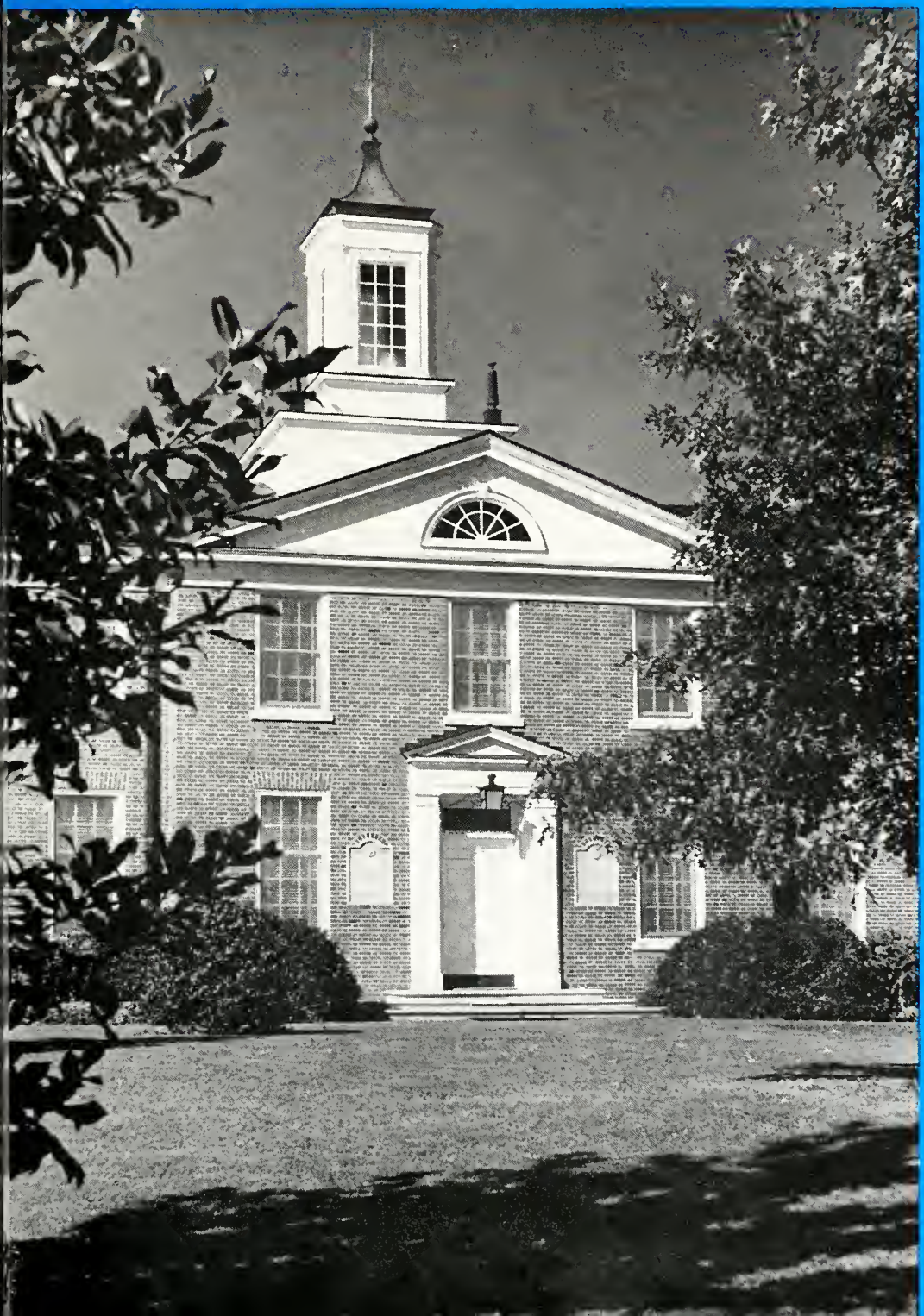
POPULAR GOVERNMENT

September 1964

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



In This Issue:

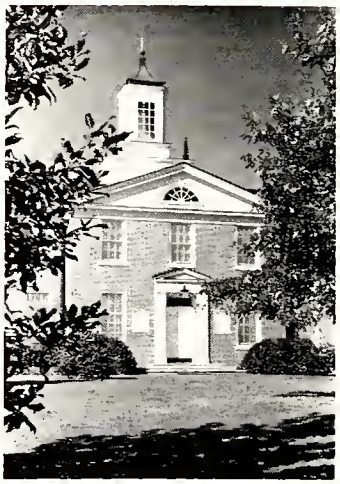
POPULAR GOVERNMENT

Published by the Institute of Government

Contents

Volume 31 September 1964 Number 1

POPULAR GOVERNMENT is published monthly except January, July and August by the Institute of Government, the University of North Carolina, Chapel Hill. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: per year, $3.00; single copy, 35 cents. Advertising rates furnished on request. Second class postage paid at Chapel Hill, N. C.



COVER

Ringing in September, a new format for Popular Government *and a view of the front entrance to the Institute's Knapp Building.*

The Supreme Court Develops Standards for Legislative Apportionment:

SIX NEW CASES

By Clyde Ball, Assistant Director, Institute of Government

I. *The New Cases*

In March 1962 the Supreme Court of the United States, in the case of *Baker v. Carr*,[1] held that a claim by a qualified voter that the apportionment of seats in his state legislature so debased or diluted his vote as to deprive him of the equal protection of the laws stated a cause of action which the federal courts would hear and determine. At that time the Court provided no special standards by which the equal protection principle could be applied to legislative apportionment, but simply stated that the general principles evolved under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution forbade action or inaction which amounted to invidious discrimination. Any scheme of legislative apportionment which gave substantially greater representation to one group of voters than to another group of the same size would be invidiously discriminatory unless the scheme rested on some rational basis.

Baker v. Carr was followed immediately by suits testing the validity of the legislative apportionment schemes in about three-fourths of the states. A number of these cases reached the Supreme Court of the United States, and on June 15, 1964, that Court handed down its decisions and opinions in cases from six states—Alabama, Colorado, Delaware, Maryland, New York, and Virginia.[2]

The opinions in the six cases run to 220 pages in the *U. S. Reports*.[3] Although none of the cases was from North Carolina—no suit having been brought in this state—the opinions have great significance to North Carolina. Because of this significance and the widespread interest in the cases, the Institute of Government has prepared this brief analysis of the holdings in the group of cases. The analysis is limited to what the Court held, and what it means to North Carolina. No attempt is made here to discuss the points raised in the strongly worded dissent by Mr. Justice Harlan, who dissented in all of the cases, or in the shorter dissenting and concurring comments by Justices Clark and Stewart. It may be worth noting, however, that six Justices joined in the majority opinion in each of the cases. The language of the Opinion of the Court in each case represents, therefore, the views of two-thirds of the membership of the Court.

II. *The Standards Announced*

The various cases posed some individual problems, but the opinions are heavily cross-referenced to each other, so that they in effect amount to a composite opinion covering a number of different factual situations. The Alabama cases—there were three of them—provided the vehicle for the most critical holding by the court. In that case the Court sets out the standard as follows:

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."[4]

Later in the opinion the Court elaborates on its meaning:

> "By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement."[5]

The Court, speaking through Mr. Chief Justice Warren, goes on at some length to discuss various arguments and various factors which may possibly be taken into account in apportionment so long as they do not destroy the "overriding objective" of "substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State."

In each of the cases following *Reynolds v. Sims* (the Alabama case), the Court began its statement of its holding by repeating that in that case the Court had held "that the Equal Protection Clause requires that seats in both houses of a bicameral state legislature must be apportioned substantially on a population basis."[6] Thus, this statement is a judicial refrain reappearing periodically throughout the

1. 369 U.S. 186 (1962).
2. *Alabama:* Reynolds v. Sims; Vann v. Baggett; McConnell v. Baggett. *Colorado:* Lucas v. General Assembly. *Delaware:* Roman v. Sincock. *Maryland:* Maryland Committee for Fair Representation v. Tawes. *New York:* WMCA v. Lomenzo. *Virginia:* Davis v. Mann.
3. 32 U.S. L. Week 4535-4602 (June 16, 1964).
4. *Reynolds v. Sims*, 32 U.S. L. Week 4535, at 4544.
5. *Id.* at 4547.
6. 32 U.S. L. Week at 4556, 4563, 4578, 4582, and 4587.

group of cases and serving to keep the mind focussed on the critical point of the holdings. With this point constantly in mind, the ramifications of the holdings may be explored by means of a series of questions which may come immediately to mind:

1. *Do the opinions set out precise mathematical tolerances which are permissible variations from exact equality of population per legislator?*

No. The Court expressly declined to prescribe any precise mathematical tests.[7]

2. *Do the opinions provide any guides as to the degree of permissible variation from exact equality of population?*

Yes. The Court used two statistical tests in evaluating the apportionment plans in each of the cases: (a) the "minimum controlling percentage"—that is, the percentage of the total population of the state which resides in the least populous districts which together can elect a majority of each house of the legislature; and (b) the "population variance ratio"—that is, the ratio between the most populous district and the least populous district in the state. For purposes of calculating the population variance ratio, the population of a district which elects more than one member to a house of the legislature is deemed to be the average population per member for that district. Obviously the nearer the minimum controlling percentage approaches 50%, and the nearer the population variance ratio approaches 1 to 1, the nearer the apportionment scheme approaches the equality of population standard.

The highest minimum controlling percentage—45.1%—in any of the six states occurred in the Colorado House of Representatives. The smallest population variance ratio—1.7 to 1—also occurred in the Colorado House. The Supreme Court noted that the district court had assumed and the parties had apparently conceded that the Colorado House was sufficiently apportioned on a population basis to comport with federal constitutional requisites. Although the Supreme Court expressly declined to rule on this point, the Court did observe that "one house of the Colorado Legislature is at least arguably apportioned substantially on a population basis."[9] The next nearest equal apportionment, considering both factors, appeared in the Virginia Senate where the 1962 apportionment established a minimum controlling percentage of 41.1% and a population variance ratio of 2.65 to 1. The minimum controlling percentage in the Virginia House of Delegates was 41%. The Supreme Court affirmed the holding of the district court that the apportionment of Virginia Senate seats, as well as House seats, failed to meet federal constitutional requirements.[10]

A further indication of the Court's attitude may be found in the following language from the Alabama opinion: "And, if a State should provide that the votes of citizens in one part of the State should be given *two times* [emphasis added], or five times, or 10 times the weight of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been affectively diluted."[11]

Although the Court stated that the permissible variation from equality might vary somewhat from state to state,—"What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case"[12]—it appears from the holdings that the minimum controlling percentage must approach 45% and that the population variance ratio must fall below 2 to 1 in order to present an "arguable" case in support of the apportionment.

3. *If the state apportionment plan is avowedly patterned after the plan governing representation in the federal Congress, will this provide a rational basis and thus conform to the federal constitutional requirements?*

No. The Court expressly rejected the "little federal" argument. "We . . . find the federal analogy inapposite and irrelevant to state legislative districting schemes."[13]

4. *Does the fact that a state is still following apportionment principles which were a part of its constitution when it was admitted to the Union serve to uphold those principles as against the equal protection attack?*

No. "Congress presumably does not assume, in admitting States into the Union, to pass on all constitutional questions relating to the character of state government organization. In any event congressional approval, however well-considered, could hardly validate an unconstitutional state legislative apportionment. Congress simply lacks the constitutional power to insulate States from attack with respect to alleged deprivations of individual constitutional rights."[14]

5. *May a state which still employs the device of local legislation on a broad scale deviate from the equal population requirement to the extent of giving each county or other local unit a minimum of one representative in at least one of the two houses?*

No. Not if the result is to impair substantially the equality of population principle. The Court stated that "Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. . . . However, permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal-population principle in that legislative body. . . . Such a result, we conclude, would be constitutionally impermissible."[15]

7. *Reynolds v. Sims*, 32 U.S. L. Week 4547.
8. *Id.* at 4543.
9. *Lucas v. General Assembly*, 32 U.S. L. Week at 4562.
10. *Davis v. Mann*, 32 U.S. L. Week 4579.
11. *Reynolds v. Sims*, 32 U.S. L. Week at 4543.
12. *Id.* at 4547.
13. *Id.* at 4546. The Court made it clear that the federal plan is secure at the federal level from judicial amendment. The plan, representing a compromise indispensable to the establishment of the Union, is "engrained in our Constitution, as part of the law of the land."
14. *Id.* at 4549.
15. *Id.* at 4548.

6. *If the apportionment plan is approved by the people of the state in a referendum, will this approval serve to cure any alleged failure to meet federal constitutional requirements?*

No. The right to equal representation is a personal and individual one, said the Court. It cannot be taken away from an individual by majority action of the electorate any more than a constitutional right may be infringed by statute. This point was squarely faced in the Colorado cases. The amendment which was there struck down by the Court had been submitted to the people of Colorado in the November, 1962, general election, and had been approved by majority vote in every county of the state.[16]

7. *How much time will a state have in which to revise its apportionment plan to conform with the newly announced federal constitutional standard?*

States will have to act with dispatch. The Court clearly indicated that it is thinking in terms of immediate and completely effective action rather than in terms of long-range and gradual action. In Alabama the district court had, when suit was initially filed, declined to interfere with the conduct of the then-pending primary election, and had allowed the Alabama legislature an opportunity to act for itself. The Alabama legislature failed to produce an acceptable plan, and the district court then pieced together its own temporary plan and ordered the next election to be held from the districts thus temporarily established. The Supreme Court approved these actions of the district court and approved the district court's avowed intention "to take some further action"[17] if the Alabama legislature again fails.

It was left to the district courts in Colorado, Delaware and New York to decide whether to act before the 1964 elections or whether to give the legislatures elected in 1964 an opportunity to produce acceptable plans. But in Virginia, where the next election for legislators does not take place until 1965, the Supreme Court indicated that the district court should act before that election if the legislature fails to produce an acceptable plan.[18] And in Maryland, where legislators are elected for 4-year terms and where the next election does not take place until 1966, the Court stated that the Maryland legislature should act to produce an acceptable apportionment plan, but then added: "*However, under no circumstances should the 1966 election of members of the Maryland Legislature be permitted to be conducted pursuant to the existing or any other unconstitutional plan.*"[19] [Emphasis added.]

Thus, the Supreme Court has directed the district courts to allow the state legislatures a reasonable opportunity to act first, but failing appropriate action by the legislatures, the district courts are expected to take effective action themselves. What the Court considers a reasonable time emerges rather clearly from the group of cases—action before elections in 1965 is expected; action before elections in 1966 is essential. Furthermore, action prior to the 1966 election in Maryland should be sufficient to remove unconstitutional discrimination. It will not be enough for the Maryland legislature or the district court to take a tentative part-way step as the court did in Alabama. The 1966 Maryland election of legislators should not "be permitted to be conducted pursuant to *the existing or any other unconstitutional plan.*"

8. *If the legislature fails to produce an acceptable scheme, does the district court have power to put into effect its own redistricting plan?*

This question is not answered directly, but the Court approved the order of the district court in Alabama which, although admittedly a temporary expedient, did put into effect a plan which the court pieced together from parts of measures approved by the legislature. There is a strong inference that judicial action to effect a complete redistricting following legislative default would be approved.

9. *How frequently must state legislatures be reapportioned in the future?*

The common provision requiring redistricting every ten years "would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation."[20] More frequent reapportionment would, of course, be permissible. Less frequent action "would assuredly be constitutionally suspect."[21]

III. *The Standards Applied to North Carolina*

How does the existing scheme of apportionment in North Carolina comport with the standards set out in this latest group of cases?

The North Carolina Senate, as the result of the 1963 redistricting act, is now so apportioned that the minimum controlling percentage is 47.6, probably safely within the permissible variation. The population variance ratio is 2.3 to 1, possibly outside the permissible limit. It should be noted, however, that this high variance ratio exists in only one instance—the one-county 15th District of Cumberland. If something can be done about Cumberland, the ratio drops to 1.9 for the one-county 30th District of Gaston, and the one-county, two-senator 21st District of Guilford. With the exception of these three districts, the population variance ratio over the rest of the state is 1.3 to 1, surely reasonable in the light of the fact that "mathematical exactness is hardly a workable constitutional requirement." The North Carolina General Assembly may, then, take the risk that the present Senate districting conforms to federal constitutional requirements, or it may make certain of that fact by modifying three districts plus such other districts as may be necessary to effect the modification of the three. The modification could come about by combining each of these single-county districts with some adjoining counties into multiple-county multiple-senator districts, or by dividing these counties into parts and attaching one or more of the parts to adjoining districts. The attachment of a part of a county to another county to form a legislative district would violate the Constitution of North Carolina, but if such action were necessary to effectuate the equal-population principle, the

16. *Lucas v. General Assembly*, 32 U.S. L. Week 4557, at 4559, n. 6.
17. *Reynolds v. Sims*, 32 U.S. L. Week at 4550.
18. *Davis v. Mann*, 32 U.S. L. Week at 4583.
19. *Maryland Committee for Fair Representation v. Tawes*, 32 U.S. L. Week at 4578.
20. *Reynolds v. Sims*, 32 U.S. L. Week at 4549.
21. *Ibid.*

state constitutional prohibition would have to yield to the paramount federal requirement. Indeed, there is a suggestion in the Alabama opinion that the sanctity of local subdivision (county) lines may not be preserved in some situations.[22]

The existing North Carolina House apportionment, which conforms precisely to the North Carolina Constitution, clearly fails to meet the federal standard. The average population per representative in the state is 37,968. Tyrrell County with a population of 4,520 has one representative, as does Wayne County with a population of 82,059. If, as the Supreme Court held, a minimum controlling percentage of 41.1% and a maximum population variance ratio of 2.65 to 1 in Virginia fails to meet the standard, it cannot be persuasively argued that the existing minimum controlling percentage of 27.1% and a population variance ratio of 16 to 1 will do so in North Carolina.

Suggestions have appeared from various sources that North Carolina can preserve a House seat to each county by increasing the membership of the House to 150. An increase to 150 House seats would reduce the population variance ratio, but would still leave it far outside the arguably acceptable figure. Fifty-seven, or more than half of the North Carolina counties have a population below the average of 37,968 for each of 120 representatives. Fifty-one counties have less than 1 150th part of the population of the state. Our least populous county, Tyrrell, has a population of 4,520, which is less than one-thousandth of the 4,556,155 total population of the state. To guarantee a seat to Tyrrell and counties of comparable population, North Carolina would surely have to plan on a minimum House membership of more than 500, and ideally of 1,008. It seems inevitable, then, that many of the less populous counties of North Carolina must lose the right to elect one Representative each in every legislative election. If the General Assembly fails to accept this as an operating premise, the General Assembly will almost surely fail to produce an acceptable scheme of House apportionment; the ultimate decision will pass to a three-judge federal district court—a court likely to be composed of two district judges and one circuit judge.

Until a new apportionment is accomplished by either the General Assembly or by court order, the existing apportionment of seats in both houses will prevail. Primary elections have already been held in North Carolina. In the light of the Supreme Court's action in leaving it to the district court in each state to determine whether or not any court action should take place prior to the 1964 elections, it seems safe to predict that the 1965 General Assembly of North Carolina will be elected from the present constituencies; that is, each county will have at least one seat in the House.

It seems equally safe to predict that the 1967 General Assembly of North Carolina will not be elected from the present constituencies. The language of the recent Supreme Court opinions is too blunt and clear to support any reasonable expectation that any state can successfully delay proper apportionment for several years. The Court is not likely to accord much weight to the argument that the cases already decided apply to other states and not to North Carolina, and that therefore North Carolina should have several years after a suit is filed to work out this state's compliance. The Court apparently feels that its opinions in the six cases provide sufficiently specific standards and a sufficiently clear mandate to put state legislative machinery into effective action without judicial prodding. One week after the opinions in the six cases discussed in this paper were delivered, the Court disposed of cases from 11 other states[23] by *per curiam* opinion, simply dismissing, reversing or affirming, and remanding to the district court where necessary for further proceedings consistent with the Court's opinion in *Reynolds v. Sims* and the other apportionment cases decided along with it. Thus the Court has spoken in cases involving one-third of the states. It is not likely that North Carolina will present any new questions not encountered in substance in at least one of the cases already decided.

IV. *Possible Approaches to House Reapportionment in North Carolina*

If the present apportionment of North Carolina House seats conforms precisely to the requirements of the North Carolina Constitution but at the same time fails to meet the requirements of the United States Constitution, it follows that those parts of Sections 5 and 6 of Article II of the Constitution of North Carolina which guarantee each county a House seat and which distribute the additional 20 seats among the larger counties are invalid under the federal supremacy principle. A permanent solution to the apportionment problem, then, should include amendment of the state constitution to conform to the federal standard of substantial equality of population as the basis of representation in both houses. Even in the absence of constitutional amendment, however, the General Assembly has the power to disregard the invalid portions of the state constitution and enact legislation apportioning the House seats on a population basis, grouping and perhaps dividing counties as necessary or expedient. In the absence of amendment, the legislature would probably be bound by the 120 total number of House seats.

Apparently it would be permissible to combine counties into multi-member House districts with all representatives elected at large—just as multi-member Senate districts are now constituted. The Supreme Court, in the Colorado case, described a scheme which provided for at-large election of a number of legislators from a county as "undesirable," but expressly noted that "We do not inti-

(Continued on page 26)

22. *Id.* at 4547.

23. *Connecticut:* Penny v. Butterworth, affirmed and remanded; Town of Franklin v. Butterworth, affirmed. *Florida:* Swann v. Adams, reversed and remanded. Lucas v. Adams, affirmed. *Idaho:* Hearne v. Smylie, reversed and remanded. *Illinois:* Germano v. Kerner, reversed and remanded. *Iowa:* Hill v. Davis, affirmed and remanded. *Michigan:* Marshall v. Hare, reversed and remanded. *Mississippi:* Glass v. Hancock County Election Commission, dismissed for want of jurisdiction. *Ohio:* Nolan v. Rhodes; Sive v. Ellis; both reversed and remanded. *Oklahoma:* Williams v. Moss; Oklahoma Farm Bureau v. Moss; Baldwin v. Moss; all affirmed and remanded. *Tennessee:* West v. Carr, dismissed for want of jurisdiction. *Washington:* Meyers v. Thigpen, affirmed and remanded. 32 U.S. L. Week 3441-3442 (June 23, 1964).

The Courts Commission Reports

By State Senator Lindsay C. Warren, Jr.

Editor's note: The following is the substance of an address by State Senator Lindsay C. Warren, Jr., Chairman, N. C. Courts Commission, at the Annual Meeting of the North Carolina Bar Association, Myrtle Beach, South Carolina, June 18, 1964.

The Courts Commission was created by the 1963 General Assembly. The resolution providing for the establishment of the Commission charges it with the tremendous responsibility of preparing and drafting the legislation necessary for the full and complete implementation of Article IV of the Constitution of North Carolina. Its membership consists of 14 lawyers and one layman. Ten of the members have had legislative experience. Although its existence extends until December 31, 1970, it is directed to proceed as expeditiously as practicable and to make its initial recommendations to the 1965 General Assembly. Needless to say the Commission is anxious to work itself out of a job as soon as possible.

In reading the minutes of the Bar Association's last annual meeting I detected signs of pessimism and disappointment because the 1963 General Assembly failed to pass any implementing legislation. As a member of the Senate I too was disappointed as I expected some action to be taken. You must recall, however, that only 3 months elapsed between ratification of the amendments and the convening of the General Assembly. No official group was in being to prepare the necessary legislation. I am personally convinced that the Commission approach pursued by the General Assembly is the right one. I believe the type of planning the Commission is doing will enhance the chances of success.

Perhaps at this point it would be well to tell you something about the Commission and how it is proceeding. Since December, 1963 the Commission has been engaged in discharging its responsibility. We have been meeting every other week since December. Our sessions are being held in the State Legislative Building in Raleigh. Although the Commission is authorized to appoint an Executive Secretary it chose to contract with the Institute of Government for the important staff services required to do the job. C. E. Hinsdale, an Assistant Director of the Institute, is in charge of our staff which is rendering valuable services to the Commission. Our meetings are public and any citizen is free to come and sit in on our deliberations.

The Commission membership is composed of able, and I believe, dedicated citizens of our state. As chairman of the Commission, it has been a gratifying experience for me to work with the members. We have developed a feeling of comradeship and, I like to believe, a sense of mission and purpose in our work. It is not trite to say that each of the members is making a personal sacrifice to serve. As we move closer to the 1965 General Assembly the pace will quicken and the pressure on the Commission will become greater. And I use the word "pressure" advisedly. Not pressure in the sense that it is being exerted by some outside force or group, for there has been none of this variety; but pressure that springs from the knowledge that the Commission's job calls for recommendations which will completely reshape our system of lower courts in this state. I can assure each of you that we do not take this responsibility lightly. The challenge is great. The opportunities are unlimited. It is the Commission's fervent hope that it can measure up to the task which it has accepted.

Now, what is the major problem of the Courts Commission? The new judicial article of the Constitution provides, among other things, for the establishment of a uniform state-wide system of district courts below the Superior Court. Proposing enabling legislation to establish the district court division of the new General Court of Justice is without question the most challenging and important part of the Commission's task.

Although all of the preliminary decisions made to date are tentative in nature, in my judgment we have progressed to the point where I think it proper to let the public know something about how we are thinking. Therefore, I intend to outline for you, in a rather general way, a proposed district court division as now envisioned by the Commission. But, first this admonition. No final decisions have been made. Much research, study and practically all of the drafting remains to be done. Undoubtedly, many new problems will be encountered which will dictate or require changes in present positions. Also it must be remembered that the Commission is a legislative commission. Our first duty is to the General Assembly and our final written recommendations will be presented to that body. So, therefore, it is upon this basis that I share with you the present thinking of the Commission with the hope that it may prove to be mutually profitable.

As I stated earlier, the major task of the Commission is to recommend establishment of the district court division. The present inferior court sys-

tem in North Carolina, or lack of system, defies description. It consists of justice of the peace courts, mayor courts, "special act" courts, "general law" courts, juvenile courts and domestic relations courts, approximately 1400 in all, established in different places, at different times and for different purposes. Suffice to say that the lack of uniformity existing in these courts was one of the major reasons leading to the Constitutional revision of 1962. It is here where there is much room for improving and expediting the administration of justice in North Carolina; and it is here where the main thrust of the Constitutional changes is directed.

Senator Warren, center, listens while C. E. Hinsdale, Institute Assistant Director, briefs Bar Association attorneys on the local Bar surveys being conducted for the Courts Commission.

At the threshold of our problem is the need for a plan of implementation. How is a new district court division to be put into operation? The Constitution provides that the system shall be established not later than January 1, 1971. There are several alternatives open to the Commission:

(1) Immediate geographical districting of the entire state with activation of all courts at once.

(2) Immediate geographical districting of the entire state, but with activation of only a few pilot districts.

(3) Immediate geographical districting and activation of a few pilot districts only.

(4) Immediate creation of the district court division, accompanied by a detailed statute setting forth the jurisdiction, organization and other specifics of a prototype district court with legislation specifically providing activation dates for each district.

It is our present intention to recommend the last alternative. Although it may be possible to establish the district court in every county at one time we do not believe it feasible to follow such a course. It is our belief that the system can be established upon a firmer foundation by pursuing a policy of gradual activation. Such a course of action should help to minimize the transitional problems which are certain to result.

In establishing the division the Commission would like to activate a minimum of four districts initially. We believe that possibly seven or eight could b put into operation initially without too much effort. The remainder of the districts would be earmarked for operational status at later times up to 1971. Present plans call for activation dates in December of 1966, 1968, and 1970 following the general elections of those years.

In planning a district court the question of establishing the geographic boundaries of each district is a difficult one. The Commission has given much thought to this problem. The present consensus is to recommend geographic district court lines coterminous with Superior Court judicial district lines. We believe this to be a sensible and practical approach. Present Superior Court judicial district lines were established by the General Assembly in 1955. No changes have been made since that time. Presumably, for the most part the Bench, Bar and public are satisfied with the present arrangement. Drawing district lines in the legislature is a potentially controversial and risky business to say the least. We believe we can minimize this problem by making district court districts the same as Superior Court judicial districts. To be sure there will be vast differences in the volume of judicial business conducted in individual districts. This problem can be solved, however, by authorizing more district court judges in those districts where business needs dictate.

What will be the jurisdiction of a new district court? This is another tough decision and one the Commission has probably spent more time discussing than any other. Before outlining for you present plans it might be well to make a point here about jurisdiction.

Except in the trial of impeachments and for those judicial powers vested in administrative agencies by the General Assembly, Article IV now provides that all the judicial power of the state is vested in a General Court of Justice. The General Court of Justice is to be a unified judicial system for purposes of jurisdiction, operation, and administration. It consists of an appellate division which is the Supreme Court; and two trial divisions which are the Superior Court division and the District Court division. The point to be made here is that there is to be "one court" and only one. Since there is only one court (with different divisions) it would seem that the only real jurisdictional question is whether the Court—any part of it—has jurisdiction. If any division has jurisdiction, then all divisions should have

jurisdiction, though it might be error for some divisions to exercise it in a particular case. Notwithstanding this fact, practical administration requires that each division must know exactly what cases it is to try and what cases it must transfer elsewhere. There is no problem with the Supreme Court; it will hear appellate cases. The Superior Court presents few problems once it is decided what cases are to be tried in the district courts. The primary problem, therefore, is to provide a clear guide as to what cases are to be tried in the district courts. Without getting into the technical problems confronting the Commission from a drafting standpoint the present plan is to allocate to the district court division the following type cases:

(1) All misdemeanors;
(2) Preliminary hearings in felony cases;
(3) Civil actions for the recovery of money not in excess of $5,000, exclusive of interest and costs;
(4) Divorce, alimony and child custody matters;
(5) Domestic relations cases now vested in domestic relations courts by G.S. 7-103 which includes the authority and jurisdiction vested in juvenile courts.

For the most part this allocation of jurisdiction represents the type of cases now being tried by the courts below the Superior Court. The Superior Court would be affected by this allocation primarily to the extent it would be relieved of trying civil actions now originating there involving smaller amounts in controversy. We believe this to be desirable as it would then give the Superior Court more time to handle more important litigation both on the civil and criminal sides of the docket.

It would be our hope that the district court division would provide a forum for the speedy and expeditious handling of civil matters involving small contract and tort claims.

Probate matters, adoptions and special proceedings would be retained in the Superior Court. At the same time the Clerks in 91 of our counties would be relieved of their responsibility as juvenile court judges.

The most important person in the district court and the one who will have the major responsibility for making the system work will be the district court judge. A number of questions must be answered. First, how will the district court judges be selected? Article IV, Section 8 of the Constitution specifies that district court judges shall be *elected* for each district for a term of four years. The legislative history of this section leaves little doubt that the General Assembly intended this to mean *election by popular vote.* While arguments can be made that judges should be selected by a different method the question is moot as far as the Commission is concerned. Present plans call for recommending the popular election of judges on a district wide basis. Though subject to assignment outside of their district most of their work will be conducted within the confines of the districts from which they are elected.

How many judges will be authorized in each district? For the most part these decisions will depend on a study of the caseload, population and geography of each district. With the cooperation of certain members of the Bar we are now preparing to make intensive surveys of all judicial districts. The information derived from these surveys will help to answer questions such as this. I think it is safe to say, however, that no district will have less than 2 judges. Some districts will probably require 4 or 5 judges.

Will judges specialize by subject matter? Specialization is an ideal to work toward. This is especially true in domestic relations and traffic cases. It will be encouraged wherever practicable. Our plan to provide multi-county, multi-judge districts is a deliberate effort to promote specialization. In the more populous districts specialization will be possible, particularly in the one county multi-judge districts. It would be my own personal judgment that specialization would be feasible in most districts where 3 or more judges have been allocated. In each district one of the judges will be named by the Chief Justice as Chief Judge. It will be his responsibility to make assignments and to handle other administrative duties in his district.

Shall the district court judges be full-time or part-time, or both? We are in agreement that full-time judges are a necessity if the district court is to assume a responsible place in our judicial system. In order to attract to the bench lawyers of ability and dedication it will be necessary to offer salaries commensurate with the responsibilities of the office. The Commission intends to recommend a salary scale and other benefits which will encourage members of the Bar to seek judicial office.

How will vacancies be filled in the office of district judge? This detail is left to the General Assembly. We will probably propose that vacancies be filled by the Governor for the unexpired term. This is somewhat similar to the practice now with respect to Supreme Court vacancies.

An important office which must be established is that of district solicitor or prosecutor. Perhaps it would be well to use a name other than solicitor to eliminate confusion with the Superior Court solicitor. In any event, we propose to recommend that there be a full-time prosecutor in each district. He will have the complete responsibility for the prosecution of the district court criminal docket in his district. He will have such assistants as the work load requires. An independent judgment will have to be made in each district. The Constitution does not specify how the prosecutor is to be selected. This again is left to the General Assembly. No firm decision has been made on this question. It is generally believed that by making this office appointive it would tend to remove it from the pressure of local politics and elections. It has been suggested that the prosecutor be appointed either by the Governor or by senior resident superior court judges. Most of the lower court prosecutors are now appointed to office.

The prosecutor would also be paid a salary and travel allowance commensurate with his duties. It is the consensus of the Commission that the prosecutor should appoint his own as-

sistants within the district once the need is established.

What about the clerical functions of the district court? There is only one oblique reference to the district court clerk in the Constitution. It provides that the General Assembly shall determine how the clerk shall be removed. Shall there be a separate district court clerk maintaining a separate and distinct office apart from the superior court clerk? Can the Clerk of Superior Court constitutionally perform the duties of the district court clerk? These and other questions must be answered by the Commission. We feel, however, that if we are to have a truly unified court system, we should have a unified clerk's office in each county. The Clerk of Superior Court and his deputies and assistants will be assigned and would perform all of the clerical functions of the district court. In many of the counties this is the case now, since the clerk serves *ex officio* as clerk of the county court. In many of the counties no additional personnel would be required to absorb these additional duties. In other counties help would be needed. If a separate office was maintained this would mean separate record keeping, separate facilities and, in most situations, additional personnel. On balance, we believe a unified clerk's office will best serve the system .

Will there be jury trials in the district court? Again, if the district court division is to assume a role of importance in the system, it is my own personal judgment that jury trials ought to be available. It is a costly and wasteful system that gives a party two trials on the merits. This is what we now have in many of our counties both on the civil and criminal sides of the docket. Despite my personal feelings I realize there are difficult obstacles to surmount. Our present inclination is that there will be no jury trials on the criminal side of the docket in the district court. Appeals will be *de novo* in the Superior Court. Present statistics indicate that most of the criminal case load will be disposed of in the district court without appeal. We do plan to recommend 12 man jury trials in civil cases. A jury would be deemed waived if not demanded by either party in his first pleading. Appeals would be to the Superior Court on questions of law only. I am fearful that if jury trials cannot be had in civil cases the district court will not render much relief to the congested civil dockets of the Superior Court. If there are to be no jury trials, suits where juries are demanded will have to be transferred to Superior Court. It goes without saying that if jury trials are to be had in the district court a reliable system of court reporting must be provided. Good court reporters are in short supply. We are considering alternatives including electronic reporting systems.

What shall be the role of the magistrate in the new system? In many ways this has been the most perplexing and bewildering problem of all. Perhaps this is because we tend to associate this office with its counterpart of the present and past, the justice of the peace. In fact, the magistrate will be a different office under the new Constitution. In the first place, magistrates will be appointed by the resident superior court judge upon recommendation of the Clerk of Superior Court. Secondly, they will be paid a salary. The old fee system is abolished by the Constitution. And finally, they will be under the direct supervision of and accountable to the district judge. As a matter of fact, the office of magistrate should no longer be thought of as a fourth level of courts in our system. The magistrate will be an arm of and an integral part of the district court division. It is the present thinking that he should have authority to accept guilty pleas in the simple misdemeanor cases, determine probable cause in other misdemeanor cases, and try any civil case assigned to him by the district judge where the amount in controversy does not exceed $300. He would also have authority to issue arrest and search warrants, and perform a variety of civil and non-judicial functions presently assigned by statute to the justice of the peace. All appeals from magistrates must be heard *de novo* in the district court.

Despite the general nature of my remarks you should now have an indication of the Commission's approach to its task. I realize that my report gives only superficial treatment of the subject. In addition, there are many areas of our work that I have not even mentioned. For example, to name a few, what special provision should be made to minimize the problem of "hold-over" judges once the system is activated in a judicial district? Shall the district court try civil cases where the relief sought is equitable in nature? To what extent should the principle of waiver of jurisdictional limits in civil cases be provided? What special rules should be provided for removal from office of judges, prosecutors and magistrates? Where shall the district court sit? How shall courtroom facilities be arranged in order to minimize conflict with Superior Court sessions? What provisions, if any, shall be made for courtrooms for magistrates? And last, but certainly not least, what provision shall be made for financing the system through uniform fees and costs? These and countless other questions eventually must be answered by the Commission. And once all of the decisions have been made and the division is ready for operational status how will it be managed? Will it be a loosely knit system operating without any directions and without any feel of its role in a unified court? Section 13 of Article IV directs the General Assembly to provide for an administrative office of the courts to carry out the provisions of the Article. Perhaps the function of this office is the least understood of any in the system. First, let me say that the administrative office is non-judicial in nature. The duties to be performed by it are non-judicial. They are as the name implies administrative. The day to day operation of the General Court of Justice will require the skill of an able administrator. This will be particularly true during the period the district court division is being phased into operation. While the Commission has not made any decisions with reference to this office, I think it has become apparent to all of us that many of the administrative, financial and business details of the system must be left to the discretion of this office.

(Continued on page 33)

William Koch, the Fund's Community Director, talks to a rapt audience of Volunteers during one of the training sessions.

THE NORTH CAROLINA FUND:

A Productive Summer

By Billy E. Barnes

News Director, The North Carolina Fund

The North Carolina Fund, as it refines its comprehensive community projects for launching in the fall, this summer has started three programs representing new approaches to the state's poverty problems.

North Carolina Volunteers

In mid-June, the Fund brought 100 carefully-selected college students, members of the North Carolina Volunteers, to the Duke University campus for three days of orientation.

Reasoning that these college students first need to have their goals set and their knowledge of community services and problems enriched, North Carolina Volunteer officials planned a series of classes and discussions.

Each of three daily, 3-hour sessions featured a lecture by an expert in a given field (welfare department operations, community development, public health services, child education, etc.).

After each lecture the Volunteers group broke into nine teams (actual teams in which they were working this summer) to discuss problems and ideas about poverty, and ways they might help in the fight against it, through community services.

Then, the entire Volunteers group reassembled to summarize their discussion ideas, and ask questions of the expert who gave the original lecture.

Featured speakers were Dr. Hal Pope, assistant professor Sociology, University of North Carolina at Chapel Hill; Louis Christian, Director, Division of Community Services, North Carolina State Board of Welfare; Dr. Doug Sessoms, assistant professor of Sociology and Anthropology, University of North Carolina at Chapel Hill; Dr. Burns Jones, assistant director, Communicable Diseases Division, North Carolina State Board of Health; Dr. Carl Brown, professor of education at the University of North Carolina at Chapel Hill; George Esser, Jr., executive director of The North Carolina Fund; and Mary Hatley and William Koch of The North Carolina Fund staff.

The six communities (communities picked for four-year experiments by The North Carolina Fund) were Watauga, Avery, Mitchell, and Yancey counties—a joint project in the mountains; Mecklenburg, in the south piedmont; Forsyth, in north piedmont; Durham, in north piedmont; Richmond-Robeson-Scotland, a three-county project in the south coastal plain; and Craven county, in the tidewater area.

Fund Director George Esser meets with the Volunteers.

Informal discussion sessions followed each lecture.

Miss Georgie Hughes, below, briefs Volunteers on location.

At the close of the three days of orientation, the Volunteers boarded busses, station wagons, and cars and headed for their work areas—six of the projects picked for four-year community experiments by the Fund.

The students stayed in the field a total of 11 weeks, each student receiving room and board during that time, plus a $250 honorarium at the end of the summer.

Pre-School Readiness Classes

Another program that began this summer is a pre-school readiness experiment, involving classes in 100 locations in the state. These classes involve children from disadvantaged homes, giving them training and care to make up for the absence in their home environments of experiences such as story reading, coloring, drawing, and counting — experiences that prepare a child for maximum achievement in the first grade.

These pre-school readiness classes are designed to slow the dropout rate. Current studies indicate that the causes behind high school dropouts develop even before a poverty-level child enters his first year of school.

Reading—Writing—Arithmetic

Another special education program starting this fall involves 100 public schools in a project designed to improve the teaching of reading, writing, and arithmetic in the first three grades. An all-important influence on a child's achievement throughout his school years, is his ability to read, write, and figure at the end of the third grade. After third grade, a child is likely to go uphill or downhill according to his ability in those three areas. The "Three-Rs" program will feature team teaching, ungraded classes, and will tie in with the pre-school readiness program starting this summer.

Both the three-Rs program, and the pre-school readiness experiment, are being administered by the State Board of Education. The $4 million program is financed jointly by the Board of Education and The North Carolina Fund. At least one of each of these classes will be located in each of the seven experimental projects supported by The North Carolina Fund.

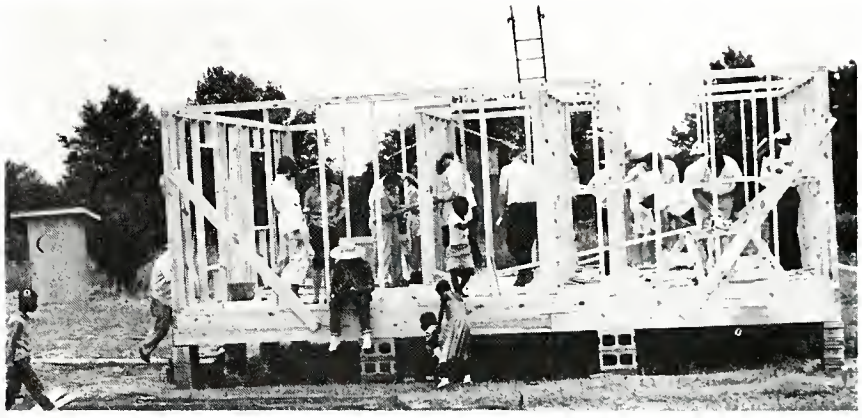
Research

Another major effort started by the Fund this summer is a research project covering the seven experimental communities. An experiment is meaningless if its results aren't properly measured. So, the Fund's research director Michael P. Brooks, has teams in the field developing base data on current poverty conditions. This data will indicate a starting point against which future progress data can be measured to indicate the experiment's overall achievement in its efforts to show ways of breaking the cycle of poverty.

The research effort takes two forms—profile data, which comes from existing records in the communities agencies such as health, welfare, police, etc.; and survey data, gained by actual interviews with residents of the experimental communities.

It takes a lot of cement blocks . . .
and a lot of hammering and sawing . . .
to build a house.

The Volunteers at Work



Hot sun,
hard work,
and the final
reward.

PLANNING in GREAT BRITAIN — A Series

Part V: Regulation of Outdoor Advertising

By Philip P. Green, Jr.
Assistant Director, Institute of Government

Introduction

One of the more impressive achievements of the British planning laws has been the almost complete cleansing of billboards from the countryside. While success has not been so striking within built-up areas, the pattern of control even there has been more successful than in many American cities, and an extension of regulatory powers for such areas appears likely in the near future.

Efforts to control outdoor advertising in North Carolina have had a stormy career, but such recent developments as the state Supreme Court's decision in the case of *Schloss v. Jamison*, 262 N.C. 108 (1964), may well presage an improvement in the general climate. In light of this possibility, perhaps North Carolina officials will be interested in a rather detailed account of the British system. In its breadth and attention to detail it is a masterful example of such regulation.

History and General Approach

The current British system for controlling outdoor advertising dates from the Town and Country Planning Act of 1947. This provided that "provision shall be made by regulations . . . for restricting or regulating the display of advertisements so far as appears to the Minister to be expedient in the interests of amenity or public safety, and without prejudice to the generality of the foregoing provision, any such regulations may provide—

"(a) for regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which such advertisements may be displayed, and the manner in which they are to be affixed to land;

"(b) for requiring the consent of the local planning authority to be obtained for the display of advertisements, or of advertisements of any class specified in the regulations;

"(c) [for applying in relation to such consent proceedings any of the provisions considered appropriate relating to the procedures for granting planning permission to develop land];

"(d) for enabling the local planning authority to require the removal of any advertisement which is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site which is being used for that purpose in contravention of the regulations . . . .

"Regulations made for the purposes of this section may make different provision with respect to different areas, and in particular may make special provision with respect to areas defined for the purposes of the regulations as areas of special control (being either rural areas or areas other than rural areas which appear to the Minister to require special protection on grounds of amenity); and without prejudice to the generality of the foregoing provision may prohibit the display in any such area of all advertisements except advertisements of such classes (if any) as may be specified in the regulations.

". . . regulations made under this section may be made so as to apply to advertisements which are being displayed on the date on which the regulations come into force, or to the use for the display of advertisements of any site which was being used for that purpose on that date:

"Provided that any such regulations shall provide for excluding therefrom—

"(a) the continued display of any such advertisement as aforesaid; and

"(b) the continued use for the display of advertisements of any such site as aforesaid, during such period as may be prescribed in that behalf by the regulations, and different periods may be so prescribed for the purposes of different provisions of the regulations."

These provisions, in essence, have continued unchanged up to the present, despite several amendments and a recodification of the planning laws as a whole.

The statutory provisions were effectuated by the Ministry of Town and Country Planning with a rather complete set of regulations, which became effective on August 1, 1948. Although amended from time to time to meet specific situations and recodified in 1960, these regulations too have survived almost unchanged since their initial issuance.

The pattern of control thus established was as follows. First, all existing signs were given an initial period of grace. Those which had been in existence on January 7, 1947, when the Town and Country Planning Bill was first published, were given a three-year period; all others in exist-

ence on August 1, 1948, were given a one-year period. Thereafter they were to be treated in the same manner as any other signs.

Second, as indicated in the basic law, certain areas within the country were to be designated as "areas of special control" within which restrictions would be more severe than in other areas.

Third, certain types of signs were excluded completely from coverage by the regulations.

Fourth, certain other types of advertisements ("specified classes") were to be permitted automatically, without application for consent, in the absence of specific action to the contrary by the Ministry or local planning authorities.

Fifth, all other types of advertisements were to be permitted only after application to, and consent by, local planning authorities (with appeals to the Ministry being permitted).

Sixth, while consent was to be granted for a definite time period, any sign once legitimately in existence could continue in existence until "challenged" by the local planning authority. The "challenge" was to take the form of an order requiring submission of an application for consent for the sign, which would then be treated like any such application for a new sign; if consent was denied, the sign would have to be removed.

Seventh, provision was made for enforcement of the regulations against existing and future violations, both through the levy of fines and through orders requiring any necessary action; the local planning authority could, if its orders were ignored, enter the property and take action itself, recovering the costs from the owner of the property.

Eighth, unlike some other types of English planning controls, there was to be no compensation for refusal to permit erection of a new sign. Compensation was to be paid for expenses of removing any sign existing on January 7, 1947, or for discontinuance of the use for advertising of any site in such use on August 1, 1948. In all other cases, compensation was payable only where an express consent was modified or revoked, and it was limited to losses directly attributable to such action.

Apparently local planning authorities embarked with enthusiasm upon the task of enforcing the new regulations. By February, 1951, the Ministry was complaining in a circular to such authorities that it had already received more than 2,000 appeals relating to signs and that this number was expected to increase substantially once the three-year grace period for pre-1947 signs expired on July 31, 1951. He urged that there be more consultations between local authorities and advertisers, in an effort to work out disagreements before they reached the status of appeals.

Later in 1951 the Ministry in another circular suggested that local authorities proceed "in an orderly and gradual way" as they sought elimination of existing advertisements, concentrating initially "on the areas in which improvement is most urgently needed." Rather than issuing "sporadic challenges over wide areas," he urged that they systematically review compact areas and clear such areas, one at a time, of dangerous or obnoxious signs. "Nothing will be lost by proceeding gradually," he pointed out. "The power of challenge does not lapse."

Whatever the effectiveness of these admonitions, most planning authorities made great and rapid progress in clearing out undesirable signs. During the initial grace period they concentrated on controlling new signs. Then came an era of clearing away existing signs. And finally the emphasis shifted back to control of new signs once more, with a steadily rising workload.

In 1962, local planning authorities in England and Wales reported that they took action on 38,793 sign cases. Of these, 37,538 concerned applications for new signs and 1,255 represented challenges of old signs. Consent was granted in 31,155 cases (30,710 of which were new proposals) and denied in 7,638. It is interesting to note that within the areas of special control, which comprise 30 per cent of the land area of Great Britain, there were only 1,234 cases, of which 757 were refused consent.

Meanwhile, the number of appeals to the Ministry has reached about 1,500-1,700 a year and is slowly rising. Ministry spokesmen attribute this in part to the fact that most of the obviously permissible sites have been taken up with advertising signs, and the sign companies are now testing Ministry response with applications for a great many "marginal" sites.

So much for the general approach. Now let us turn to some of the details.

Definition of Advertisements

The Ministry regulations follow the approach of defining "advertisement" very broadly but then excluding certain specific types of signs from coverage. This approach is intended to leave as few loopholes as possible. The basic definition is as follows:

" 'Advertisement' means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertisement, announcement or direction (excluding any such thing employed wholly as a memorial or as a railway signal), and without prejudice to the foregoing provision includes any hoarding or similar structure used or adapted for use for the display of advertisements. . . ."

The regulations apply to the "display on land" of all advertisements, with the following exceptions:

(a) advertisements displayed on land enclosed within a hedge, fence, wall, etc., which are not readily visible from land outside the enclosure or from any area within the enclosure over which there is a public right of way or to which there is public right of access;

(b) advertisements displayed in any railway station or its yards or forecourt;

(c) advertisements within a building not used principally for their display (other than illuminated advertisements visible from outside);

(d) advertisements displayed on or in a vehicle;

(e) advertisements "incorporated in, and forming part of, the fabric of a building" (other than a building used principally for such display);

such engraved, inlaid, or carved advertisements are dealt with as part of the building when the necessary planning application for the building is under consideration.

Automatic Consent

As a means of reducing the volume of work involved for planning authorities, as well as the inconvenience to advertisers, the regulations provide that consent will be "deemed" to have been granted in reference to a number of types of advertisements. The Minister has power to require express consent for any of these types in any particular area of the country. All are subject to certain standard conditions. And in most cases the local planning authorities are empowered to require that an application for express consent be submitted in any particular case, in which event the application will be treated on its individual merits.

These types of advertisements which are normally exempt from the requirement of securing express consent are as follows:

(a) "functional" advertisements of local governments, public utilities, and public transport authorities which are reasonably required in order to carry out the functions of such authorities safely and efficiently;

(b) advertisements not exceeding two square feet in area for the purpose of identification, direction, or warning with respect to the land or buildings on which they are displayed;

(c) advertisements not exceeding three square feet relating to a business or profession on the premises, limited to one per business or profession (or one at each of two entrances if on different road frontages);

(d) advertisements not exceeding 12 square feet "relating to any institution of a religious, educational, cultural, recreational or medical or similar character, or to any hotel, inn or public house, block of flats, club, boarding house or hostel situate on the land on which any such advertisement is displayed," limited to one advertisement on the premises (or two displayed on different road frontages of the premises);

(e) advertisements not exceeding 20 square feet (or two joined boards, together not exceeding 24 square feet) relating to the sale or letting of the land on which they are displayed (which cannot be displayed earlier than 28 days prior to any specific sale date and must be removed within 14 days after the sale), limited to one advertisement on the premises;

(f) advertisements not exceeding 12 square feet announcing a sale of goods or livestock, situated on the land where the sale is to be held (provided it is not a normal site for such sales) and on the land where the goods or livestock are situated (which cannot be displayed earlier than 28 days prior to the sale and must be removed within 14 days after the sale), limited to one advertisement at each such place;

(g) advertisements not exceeding 20 square feet relating to building or other work on the land on which they are displayed (provided it is not a normal site for such work), displayed only while the work is in progress, limited to one sign for each contractor or sub-contractor on each road frontage of the premises;

(h) advertisements announcing any non-commercial local event of a religious, educational, cultural, political, social or recreational character (which cannot be displayed earlier than 28 days prior to the event and must be removed within 14 days after the event), limited to six square feet of advertising on any premises;

(i) advertisements not exceeding four square feet in any one sign or 12 square feet in all relating to any demonstration of agricultural methods or processes on the land on which they are displayed (provided such display does not exceed six months in any 12-month period);

(j) advertisements "displayed on business premises wholly with reference to any or all of the following matters: the business or other activity carried on, the goods sold or services provided, and the name and qualifications of the person carrying on such business or activity or supplying such goods or services, on those premises;" in an area of special control, the total area of such advertisements (whether flat or projecting) may not exceed one-twelfth of the area of the external face of the building on which they are displayed up to a height of 12 feet from ground level;

(k) advertisements in the form of a flag attached to a single flagstaff fixed in an upright position on the roof of a building and bearing no inscription or emblem other than the name or device of a person or persons occupying the building;

(l) advertisements relating specifically to a pending parliamentary or local government election (which must be removed within 14 days after the close of the polls);

(m) legal advertisements (which must be removed within a reasonable period after their purpose is satisfied);

(n) traffic signs displayed in accordance with authorisation of the Ministry of Transport or appropriate local authorities;

(o) advertisements displayed within a building so as to be visible from outside which are not otherwise excluded from coverage of the regulations;

(p) advertisements by a local planning authority (but in areas of special control, no advertisement for which the authority could not give express consent).

Almost all of the above types of advertisements for which consent is "deemed" are restricted in certain standard respects. Such advertisements and the land on which they are situated must be "maintained in a clean and tidy condition to the reasonable satisfaction of the local planning authority." Any structures must be maintained in a safe condition. No advertisement shall be sited "so as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any highway, railway, waterway (including coastal waters) or airfield."

In most cases no such advertisements may contain "letters, figures, symbols, emblems or devices of a height exceeding two feet six inches" (or in an area of special control, one foot), nor exceed 15 feet in height above ground level (12 feet in an area of special control), nor be illu-

(Continued on page 28)

MOTION OF VEHICLE

as an Element of the Offense of Drunken Driving

By Robert L. Gunn, Assistant Director, Institute of Government

Law enforcement officers are frequently confronted with the question of whether to arrest a person who is observed in an intoxicated condition in a stopped automobile on the highway for driving while under the influence. In such a situation the person is usually charged with the statutory offense of public drunkenness or with violating a local ordinance. He is less frequently charged with driving while under the influence. Perhaps this is due to the difficulty of proving a vital element of the offense—motion of the vehicle. This article is concerned with a discussion of a recent ruling of the Attorney General and some recent cases on this subject which hold that motion may be shown by circumstantial evidence.

In *State v. Hatcher*[1] the defendant was convicted of operating a motor vehicle while under the influence of intoxicants. Upon appeal, Hatcher was awarded a new trial because the trial judge's instructions to the jury would have allowed a finding of guilty even if there had been *no movement* of the vehicle.[2] When observed by the police officer, the defendant was sitting behind the steering wheel of a truck with his foot on the brake pedal to prevent it from rolling backward. The Court awarded a new trial because it felt "[T]hat it was never the intention of the Legislature to make it unlawful for a person to prevent an automobile from moving on the highway, although such person may be intoxicated at the time."[3] The Court held that "operate" when used in connection with an automobile, imports *motion* of the vehicle. Since *State v. Hatcher* the Court has consistently held that motion is required as an element of the offense of operating a motor vehicle upon the highways while under the influence of intoxicants, in violation of G.S. §§ 20-138, -139 (Supp. 1963).

While requiring motion as a prerequisite to finding operation for purposes of the drunk driving statutes,[4] the Court has allowed motion to be shown by circumstantial evidence. Thus, in *State v. Haddock*[5] it upheld a conviction where the evidence indicated that defendant was found in an intoxicated condition sitting in his automobile which was stopped on the shoulder of the highway with the motor running and the bright lights on. The arresting officer testified that he had patrolled the road approximately fifteen minutes earlier and that no car was parked where the defendant was found. This tended to show that the defendant's automobile had been driven there within fifteen minutes prior to its discovery by the arresting officer. The Court said that by this evidence, the State had sustained its burden of proof sufficiently to carry the case to the jury.[6]

A more recent case with a similar holding is *State v. Stephens*.[7] In this case the Court also allowed motion to be shown by circumstantial evidence. A witness for the state testified he came upon the defendant whose car was upon the railroad tracks at a grade crossing and that in his opinion the defendant was "drunk." He also testified that the defendant while sitting under the steering wheel "was 'cranking' his automobile and trying to back off the railway tracks, but his automobile sat there spinning."[8] This witness did not testify that the car actually moved during the time which he observed it. Another witness for the state, the arresting officer, testified that the defendant told him that he had driven the car upon the railway tracks. The Court held that this evidence was sufficient to withstand a motion for nonsuit and take the case to the jury. In *Haddock* and *Stephens* it will be noted that the Court required motion of the vehicle, but allowed it to be shown by circumstantial evidence.

In a letter to Honorable B. Vance Somers, Solicitor, Recorder's Court, Asheboro, North Carolina, dated 24 April 1964, the Attorney General expressed an opinion that the defendant could be convicted of operating a vehicle while under the influence, upon the following facts: Defendant sat in the automobile under the steering wheel with the motor running and

(Continued on page 38)

1. 210 N. C. 55, 185 S.E. 435 (1936).
2. *Id.* at 56, 185 S.E. at 436. The court charged the jury that "[I]f you are satisfied from the testimony in this case that he drove the car there, that he was intoxicated, or had consumed liquor or drugs or opiates to the extent that his normal functions were interfered with, or if he backed the car partially down the hill, *or if he held the car there on the hill, that was an operation of the car within contemplation of the law* and if he was drunk at the time he did it, or under the influence of liquor or drugs, and you shall be so satisfied, beyond a reasonable doubt, it would be your duty to return a verdict of guilty." The Court sustained the exception to the portion of the charge italicized and awarded a new trial.
3. State v. Hatcher, 210 N.C. 55, 57, 185 S.E. 435, 436 (1936).
4. N.C. Gen Stat. §§ 20-138, -139 (Supp. 1963).
5. 254 N.C. 162, 118 S.E.2d 411 (1961).
6. *Id.* at 166, 118 S.E.2d at 414.
7. 262 N.C. 45, 136 S.E.2d 209 (1964).
8. *Id.* at 47, 136 S.E.2d at 210.

360 Student Leaders Study Government at Institute

Enthusiasm Marks 1964 Boys' State

Three hundred and sixty high school student leaders from all over North Carolina gave their minds and hearts to an intensive week of governmental study and training at the 24th annual Boys' State program, June 14-20. North Carolina Boys' State, sponsored by the N. C. Department of the American Legion and conducted by the Institute of Government since its inception in 1939, brought new faces and some new subject matter to Chapel Hill, together with notable enthusiasm and happy results. Under the direction of Institute of Government Assistant Director Elmer Oettinger, the program gave the boys an opportunity to hear and question top state officials, Institute staff, and other University of North Carolina faculty members on matters of government and to conduct their own government through elected officials and legislative sessions. The boys also edited their own daily newspaper, held an oratorical contest and selected their own final banquet speakers, participated in competitive athletic programs—ranging from baseball and basketball to tennis and horseshoes—and made their own tentative decisions on governmental issues.

The program included presentations on "The Executive Branches of City, County, State and Federal Governments" by Professor Gordon B. Cleveland, Department of Political Science, UNC; "The Legislative Branches of City, County, State and Federal Governments" by Assistant Director Clyde L. Ball, Institute of Government; "The Judicial Branches of City, County, State, and Federal Governments" by Assistant Director C. E. Hinsdale, Institute of Government; "The Role of Political Parties in City, County, State, and Federal Governments" by Secretary of State Thad Eure;

"The Structure of State Government and the State Fiscal Policy" by State Treasurer Edwin Gill; "The Public School System in North Carolina—Roles of City, County, State, and Federal Governments" by State Superintendent of Public Instruction Dr. Charles F. Carroll; "Law Enforcement—Federal Agencies" by Special Agent Joseph L. Kissiah, Federal Bureau of Investigation; "Law Enforcement—City, County, and State Governments" by Director Walter F. Anderson, State Bureau of Investigation;

R. Eugene Brown, State Commissioner of Public Welfare, chats with two Boys' State delegates.

State Commander L. J. Phipps of the North Carolina Department of the American Legion welcomes a group of 1964 Boys Staters.

"Elections and Election Laws" and "Functions of County Government" by Assistant Director Henry W. Lewis, Institute of Government; "Functions of City Government" by Assistant Director Leigh Wilson, North Carolina League of Municipalities; "Public Welfare Responsibilities of City, County, State, and Federal Governments" by Acting Commissioner of Public Welfare R. Eugene Brown; "Public Health Work—Roles of City, County, State, and Federal Governments" by State Health Director Dr. J. W. R. Norton; "Conservation and Development of Resources—Responsibilities of City, County, State, and Federal Governments" by Department of Conservation & De-

Dave Grimes, Greensboro, presides as Lt. Governor during a Boys' State Senate session above.

Left, Gordon Cleveland, UNC political science professor, holds an informal discussion session with a group of Boys Staters.

velopment staff members Ted Davis and Robert W. Whitfield; "Agriculture and a Growing Economy in North Carolina" by Public Affairs Specialist Dr. Walton Jones, N. C. State of the UNC at Raleigh; "The Place of the Newspaper in a Modern Democracy" by Editor - Publisher Steed Rollins, Durham *Morning Herald*.

New subjects included "Human Rights Development in North Carolina," presented by David S. Coltrane, Chairman of N. C. Good Neighbor Council; "The Present and Future of Education Television" by Vice President Fred Weaver of the Consolidated University of North Carolina; "The North Carolina Fund and the State Volunteer Corps" by Billy E. Barnes, News Director of the North Carolina Fund; and the "Training Center For Youth Crime and Delinquency" by the Center Director V. L. Bounds, Assistant Director of the Institute of Government. The Boys' Staters also heard from UNC basketball coach Dean Smith and Assistant football coach Bob Thalman. Chancellor William B. Aycock of the University of North Carolina at Chapel Hill made a special evening appearance.

The boys elected as their governor Charlie Farris of Wilson and as Lieutenant Governor Dave Grimes of Greensboro. Others elected to state offices included Bill Faison, Knightdale, Secretary of State; Jim Porter, Charlotte, Superintendent of Public Instruction; Bill Lee, Raleigh, Commissioner of Agriculture; Robert Leigh, Chapel Hill, Chief Justice of the Supreme Court; Charlie Mercer, Smithfield, John Hatcher, Morehead City, Mike Southern, Raleigh, George Kite, Ayden, Gary Chadwick, Wilmington, Terry Kiger, Winston-Salem, John Ross, Reidsville and Ted Murphy, Hickory, Supreme Court Justices; Zack Lowe, Lowgap, Attorney General; Scott Wallace, Chapel Hill, Commissioner of Labor; Jerry Thursby, Jacksonville, Commissioner of Insurance; and Wayne Price, Monroe, Auditor.

Eddie Embree served as editor of *The Boys' Statesmen*. Farris and Embree were selected to represent the North Carolina Boys' State at Boys' Nation. The boys themselves wrote up the highlights of the governmental information imparted to them by the speakers in their daily paper. Other accounts were carried in the state newspapers (see Institute in the News, page 19).

For the first time Boys' State was carefully limited to a maximum of 360 in attendance. This limitation resulted in an even higher over-all calibre of Boys' Staters than in other years. It also made possible greater cohesion and individual attention. Serving as Assistant Director to Mr. Oettinger was Ben U. Allen, Henderson Attorney. The chief counselor was Dallas Cameron. Other counselors, almost all of them University law students, included John Hanft, Elliott Bourne, Anthony Rand, Thomas Harris, Reuben Moore, Jr., Harry Lawrence, Ralph McDonald, John Renger, William Robinson, William McCuiston, Kenneth Oettinger, James Morton, John Walker, and Tommy Johnson.

A number of awards of merit for outstanding achievement in government, leadership, or athletics were made at the final banquet. Many of

(Continued on page 22)

Charlie Farris, left, 1964 Boys' State Governor, confers with Federalist Party Chairman David Bevacqua, following elections.

THE INSTITUTE

in the News

Editor's note: This column is a cross-section of press clippings concerning activities of the Institute of Government and its staff. This month's column covers a period extending from April through July. This four-month coverage is the result of press deadlines: the June Popular Government *went to press before mid-May and this issue was in the printer's hands by mid-August.*

Raleigh *Times*, April 28

Salaries now paid to City of Raleigh personnel are substantially below the pay for comparable jobs in the other major North Carolina cities, an Institute of Government survey shows.

In making the salary study, *Dr. Don Hayman* of the Institute has compared Raleigh's pay scale for various positions with the scales in Charlotte, Greensboro, Winston-Salem and Durham and, in some cases, other smaller cities.

* * *

Morganton *News-Herald*, April 30

Judge H. J. Hatcher will preside at Saturday's organizational meeting of the Association of Municipal and County Judges at Chapel Hill, sponsored by the Institute of Government. *C. E. Hinsdale*, Institute staff member, will discuss "Court Reorganization—Work of the Courts Commission."

* * *

Hickory *Daily Record*, May 8

At a meeting of the civic affairs subcommittee of the Hickory Chamber of Commerce the co-chairmen reported on a recent meeting with *Henry W. Lewis*, assistant director of the Institute of Government at Chapel Hill.

They said Lewis "strongly urged the committee to take certain prescribed steps to eliminate voting and registration problems existing within Hickory Township."

* * *

Raleigh *News and Observer*, May 10

The Leadership Training Workshop of the North Carolina Council of Women's Organizations, held annually in Chapel Hill, will be July 13-16. Among the lecturers will be *Clyde Ball* of the Institute of Government who will speak on "Leadership Mechanics: Parliamentary Procedure."

* * *

Greensboro *Record*, May 13

Henry W. Lewis, assistant director of the Institute of Government at Chapel Hill, will speak to Piedmont Chapter 153, Society of Residential Appraisers on property revaluation laws.

* * *

Chapel Hill *Weekly*, May 17

Speaking of pictures, the magazine *Popular Government* came forth in the present [May] issue with a photograph of ballet dancers on the cover.

Editor *Elmer Oettinger* must be stepping out in a circulation promotion campaign; at any rate, it should have that effect.

Dancers of the Winston-Salem Civic Ballet are going through their paces. "Some aspects of government can be glamorous," writes Mr. Oettinger. The picture illustrates an article on Winston-Salem—"Culturopolis of the South."

* * *

Winston-Salem *Sentinel*, May 18

North Carolinians who fear either urban or rural domination of the General Assembly will find comfort in a recent study of voting patterns in the 1961 House of Representatives.

The study was conducted by *Clyde L. Ball*, assistant director of the Institute of Government of the University of North Carolina at Chapel Hill. The findings appear in the May issue of *Popular Government*.

Mr. Ball's most salient conclusion was that there is little indication of any clear urban or rural view in the General Assembly on statewide issues.

* * *

Editorial, Greensboro *Record*, May 20

In line with the state's intent to modernize its penal system, a unique rehabilitation project has been established near Chapel Hill on property owned by the University of North Carolina. It is the Chapel Hill Youth Development and Research Unit [CHYDARU], described as a new design in model rehabilitation of youthful offenders.

The project is designed to train and guide youthful offenders in how to live properly with other people, as well as to learn new careers. Another objective is the primary theme of the project: to select and train the young inmates so that they may become apprentices in similar programs for the prevention of crime and treatment of offenders.

CHYDARU is sponsored by the state penal system with the cooperation of the University of North Carolina Institute of Government's *Training Center on Delinquency and Youth Crime.*

* * *

Greensboro *Daily News*, May 27

Durham County Dr. D. R. Perry was re-elected president of the State Coroners Association as a highlight of a two-day seminar which has concluded at the *Institute of Government* in Chapel Hill.

* * *

Durham *Morning Herald*, May 30

Appalachian State Teachers College seniors received their degrees Friday with a warning to expect "recurring crises that will strike unexpectedly, affecting communities and

people who least expect difficulty."

The commencement speaker, *George H. Esser, Jr.*, director of the North Carolina Fund and assistant director of the Institute of Government, said the recurring crises will require the "painful development of a national consensus before they are resolved."

* * *

Fayetteville *Observer*, June 5

The *Institute of Government* has tossed the problem of what to do about the evaluation on Highland Country Club property right back into the collective lap of the County Board of Commissioners.

Following a protest about current evaluation of the Club property, the commissioners asked the Institute for a ruling since the country club is not, in the strict meaning of the law, a non-profit organization.

The Institute promptly placed the responsibility back in the hands of the commissioners, saying the matter *was* within their discretion.

* * *

Raleigh *Times*, June 6

A jail escapee was declared an outlaw in Guilford County by two justices of the peace Monday. Because of this declaration, any person attempting to stop Hilton may shoot and kill him without fear of prosecution or impeachment.

The law, passed in 1866, enabled any two justices of the peace to declare a man an outlaw if he were a felon and believed to be hiding in the county of the j.p.'s residence.

Officials at the *Institute of Government* in Chapel Hill expressed varying opinions on the issue of outlaw declarations.

One official, a man with considerable law enforcement experience, said he felt the law was "necessary in some instances, but should be administered so that only Superior Court judges or persons of higher rank" should be able to issue outlaw proclamations.

Another official, a lawyer, said he felt the law "had no place on the books. There may have been a time," he said, "when we were without ample law enforcement agencies and it was necessary, but that is not the case now."

Winston-Salem *Journal*, June 10

Among officers elected at a meeting of the North Carolina Registers of Deeds Association were *Allan Markham*, of Chapel Hill, an assistant director of the Institute of Government, secretary.

* * *

Raleigh *News & Observer*, June 16

The chairman of the North Carolina Good Neighbor Council, D. S. Coltrane, told a Boys' State audience at the *Institute of Government* Monday that "North Carolina cannot hide, run away, ignore or wish away the race problem, which will be with us regardless of who is Governor, mayor or President."

Coltrane told the young men, "You are tomorrow's leaders." He hit hard on the theme that economic, social and religious progress in North Carolina cannot be achieved without racial cooperation, understanding and Christian principles."

"North Carolina has now the opportunity to show the South and the nation both its capacity for orderly change and the extent of its faith in its future, to demonstrate our desire for progress rather than peril."

* * *

Raleigh *News and Observer*, June 17

Steed Rollins, editor and publisher of the *Durham Herald* said that "the Democratic system in our nation wouldn't last a week" if newspapers were taken away.

He addressed 360 high school students gathered for the American Legion sponsored Boys' State at the *Institute of Government*.

Rollins told the group that "those who may gain control of the government of a democracy and who wish to grasp dictatorial power for themselves must first abolish, in one way or another, not the newspapers necessarily, but the liberty of the newspaper."

* * *

Hickory *Daily Record*, June 17

Simplification of instructions for juries was advocated by North Carolina Superior Court judges attending a special school at the *Institute of Government*.

The judges favored standardized and easy-to-understand instructions to juries be considered in North Carolina. They also favored proposals that parole boards and judges should work closer together and that pre-trial conferences in civil suits be mandatory.

* * *

Durham *Morning Herald*, June 20

Secretary of State Thad Eure told Boys' State delegates at the *Institute of Government* that "because of the statements, charges and countercharges we read in the newspapers," it is important to know who controls political parties.

Eure named three general types of people who control parties:

1. Individual leaders who have risen through talent and ability to positions of influence;

2. "Rich men who do not mind spending money, who by their party contributions and donations share in the party's councils. Then they get themselves into positions of leadership in order to get control."

3. The mass of citizens, who usually follow the lead of the other two groups but occasionally revolt and refuse to follow."

* * *

Durham *Morning Herald*, July 4

The University of North Carolina's *Institute of Government* has prepared a brief on the responsibilities of local police in enforcing the civil rights law. The brief apparently will be distributed to municipalities throughout the state.

* * *

Durham *Morning Herald*, July 11

The University of North Carolina Board of Trustees Executive Committee Friday approved new appointments, promotions, and resignations from the University in Chapel Hill.

George H. Esser, Jr., professor in the Institute of Government was granted an additional leave of absence for one year, to continue as Executive Director of the North Carolina Fund.

* * *

Durham *Morning Herald*, July 15

The 13th annual conference of the Association of Assistant and Deputy Clerks of Superior Court of North Carolina will be held in Durham August 13-15. The Institute of Government, Chapel Hill, will be adviser

(Continued on page 37)

Editor's Perspective

A Report on the County Information Congress of the National Association of Counties

If all the county officials in the U. S. and the constituents they influence were lined up at the polls, their votes could decide an election. Add to this consideration the natural affinity and mutual interests of public officials at all levels, and Washington as a meeting place, and it is not surprising that President Johnson and Senator Goldwater were among the galaxy of federal officials who addressed or played host to the more than two thousand county officials attending the County Information Congress of the National Association of Counties August 9-12.

More important than the political overtones, however, was the opportunity for federal and local governmental officials to get perspective on one another. If, as Secretary of Agriculture Orville Freeman told the assemblage, layers of government are more like a marble cake, with the icing running down between the layers, than simply a pyramid, then cooperation should be a much more important word than competition between levels of government. And their growing interrelationships, already including shared or split responsibilities in services and funds, make imperative increasing understanding and harmonious functioning.

In this light the challenge becomes not so much federal government versus state and local government, or federal rights versus states rights, as mutual understanding of the nature of governmental concepts and operations so as to assure cooperation along coherent and logical lines for the benefit of all the people. When Senator Hubert Humphrey, the NACO banquet speaker, points out that the Bell Telephone Company has one hundred thousand more employees in its system than the federal government of the United States, he graphically illustrates not only the size and complexity of our vast industrial establishment but the absolute necessity of a federal government large and strong enough to administer all its parts and to assure the economic, political, and social welfare of a democratic people. If, as its platform states, the National Association of Counties is dedicated to "combating centralization in government," it must at the very least recognize the extent to which centralization is imperative and "prepare itself for the assumption of . . . greater governmental responsibilities" only in areas where local government can logically and best assume such responsibilities.

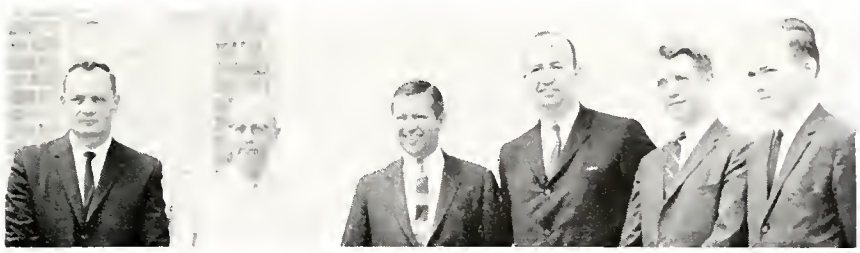
Accordingly, NACO deserves praise for the way and extent it brought in federal government officials at its Washington meeting. It also merits an accolade for its program emphasis on public information. The need for better communication between officials and public and press is exemplified almost daily. Addresses on subjects such as "The Public's Right to Know," "A Congressman Looks at County Government," "A Democracy Works Only Through An Informed Citizenry," and "A Presidential Candidate Looks at County Government," are bound to stimulate thought and broaden horizons. So are workshops on such subjects as "What a County Information Program Can Accomplish," "Public Information Programs for Rural Counties," "Sounding Off—The Press and the Public Officials Confront Each Other," "The Use of Public Relations in Promoting Economic Development," "City-County Cooperation," "State-County Cooperation," "Women in Politics," "Working With the State Legislature," "Working With Youth," "Working With Employees," and "Working With Public Authorities in Special Districts." Special affiliate sessions on "The Use of Taped Radio Interviews," and "Selecting Topics and Speakers" and on "Civil Rights," "Urban Expansion—Legal Problems," "Libel and the Public Official," and "Judicial Encroachment on the Legislature" are topical, useful and informative. This selection of topics makes clear that county officials the nation over now see the same kind of importance in public information and communication that has prompted us at the Institute of Government to increase emphasis on oral and written communication in our courses for public officials and to provide publications (including this magazine) on public law and government.

From the standpoint of our own state it was especially gratifying to find so many North Carolinians participating in the program and honored by the national group. For instance, Governor Terry Sanford made the keynote address on "The State's Role in Encouraging Regional Cooperation" (after addressing the breakfast session of Tar Heel county treasurers and finance officers). John Alexander McMahon, general counsel of the N. C. Association of

(Continued inside back cover)

At the Institute in June

Superior Court Judges Seminar



Above, a lineup of key figures in the Judges Seminar: left to right, Roddey M. Ligon, Jr., Judge Allen H. Gwyn, Professor David R. Kochery, Professor Robinson Everett, Professor Kenneth Penegar, and John L. Sanders.

At right, Judges James F. Latham, Allen H. Gwynn, and Walter E. Crissman confer during a coffee break.

Early this summer when June was bustin' out all over, North Carolina Superior Court judges met at the Institute for a three-day Trial Judges Seminar. Although the judges had held their annual conference at the Institute for many years, this Seminar was something new. Sponsored by the North Carolina Conference of Superior Court judges and the joint committee for the effective administration of justice, the occasion brought some 25 judges to Chapel Hill for an intensive seminar session in such subjects as "Causes and Cures of Congestion [of court dockets]," "Judge's Responsibility in Divorce Cases," "Demonstrative Evidence," "Instruction to Juries," and "Sentencing and Probation."

The Seminar was planned under the direction of Judge Allen H. Gwynn, president of the North Carolina Conference of Superior Court Judges. The word from the judges was that the session was extremely worthwhile.

Speakers included Judge Horace Gilmore of the Circuit Court, Detroit, Michigan; Professor Robert E. Lee of the Wake Forest School of Law; Judge Spencer A. Gard of the District Court, Iola, Kansas; Judge Robert L. McBride of the Court of Common Pleas, Dayton, Ohio; and Judge William A. Grimes, Superior Court, Dover, New Hampshire. The Dean of the College of State Trial Judges, Professor Ernest C. Friesen, Jr., of the University of Colorado Law School, was in attendance. Serving with Judge Gwynn on the Planning Committee were Judge Eugene G. Shaw, Director John L. Sanders of the Institute of Government, and Professor David R. Kochery, Director of the Eastern Region of the Joint Committee for the Effective Administration of Justice, Buffalo, New York.

A highlight of the Seminar was an address by Associate Justice Tom C. Clark of the Supreme Court of the United States. Justice Clark spoke at a dinner at the Carolina Inn. Special reports were presented by Professors Robinson Everett of the Duke University School of Law; J. D. Phillips, Jr., and Kenneth C. Penegar of the University of North Carolina School of Law; Henry C. Lauerman of the Wake Forest College School of Law; and Roddey M. Ligon, Jr., of the Institute of Government.

Serious contemplation and thoughtful attention are the order of the day during the Judges Seminar.

Institute Founder Albert Coates Given Parker Award

Albert Coates has been recognized many times and many ways for his distinguished service as founder and director of the Institute of Government. It is doubtful, however, if the University of North Carolina Professor of Law has ever appreciated an honor more than the annual John J. Parker Award, given him this summer at Myrtle Beach by the North Carolina Bar Association for distinguished service in the field of jurisprudence.

A colorful legal scholar and creative thinker, Coates promoted his idea of an Institute of Government to the point of reality about 1931 and to the point of acceptance and local, state, and national recognition through the years. He served as Director of the Institute from its inception until his retirement from administrative duties in mid-1962.

The presentation of the Parker Award to Coates was made by Beverly C. Moore of Greensboro, Chairman of the Awards Committee of the N. C. Bar Association. Press accounts stated correctly that Coates used his own classroom and university office to found the Institute and that, by the time of his retirement, the Institute had its own building, two dozen assistant directors and other personnel "carrying on a program of training, teaching and research work in public law and government for cities, counties and the State."

It might be added that Coates also used the University law school library, a church basement, and a first Institute building (now the offices of the consolidated University) as "homes" for the Institute in its progress toward its present "home," the Knapp Building. The deeping and broadening of Institute services, begun and carried on by Coates, has continued apace in the past two years.

The Parker Award is another milestone honoring a man who has honored his profession and his State.

In a letter to members of the Bar Association written in appreciation for receiving the award, Mr. Coates included the following remarks:

". . . let me say I do not forget that you gave me this John J. Parker Memorial Award in recognition of my work in building the Institute of Government . . . I do not forget the men who gave the money to help me start it . . . I do not forget the men who helped me lay its foundations . . . I do not forget the men who helped me hold buckle and tongue together in depression days . . . I do not forget the men who came to the staff in the aftermath of World War II, picking up the ragged ends of old traditions and fashioning the Institute of Government as it is today.

Court Commission Reports

(Continued from page 7)

In conclusion, let me say that the Commission plans to present the first recommendations to the 1965 General Assembly. History tells us that only three times in the life of our great state have lawmakers looked at our judicial system as a whole with a critical eye toward improvement. The first came when the Charter from the Crown authorized the Lord Proprietors to establish a system of courts in the Province of Carolina. The system established by them endured in substance from 1663, beyond 1776 and until after the War Between the States. The second critical look at our courts by the lawmakers came with the Constitutional Convention of 1868. Not again until the 1961 General Assembly were basic and fundamental changes proposed to the judicial article. These proposals were overwhelmingly adopted by the people in 1962. But these proposals for the most part are not self executing. The duty is now upon the General Assembly to implement Article IV through legislation spelling out the details. In my judgment, the General Assembly will not shrink from this responsibility. It has taken the first step by creating the Courts Commission and charging it with the responsibility of preparing the necessary legislation.

We do not expect our proposals to be perfect. No group can devise such a plan. If you have ideas to suggest we welcome them. But, please let us have them now and not after we have completed our work.

In the 1660's the English Crown instructed the Lord Proprietors to build a system of courts "to do equal justice to all men to the best of their skill and judgment, without corruption, favor or affection". It is our devout hope that the recommendations of the Courts Commission will adhere to this high principle.

Enthusiasm Marks 1964 Boy's State

(Continued from page 17)

these awards were given for the first time. In addition to Ben Hawfield of Charlotte and Zack Lowe, the Boys' State speaking contest winners, Bob Spearman, the president of the UNC Student Body addressed the gathering. The Boys' Staters wound up the occasion by giving Director Oettinger a standing ovation.

The new Boys' State selection process was put into effect by the American Legion Boys' State Committee which did notable work in this connection. The Legion co-chairman for the Boys' State committee were A. M. Scarborough of Greensboro and C. E. Jones of Pittsboro. Legion Commander Judge L. J. Phipps of Chapel Hill and Department Adjutant Nash D. McKee of Raleigh also assumed leadership in assuring a successful program. Institute of Government research assistant Jim Harper used his experience from former years in helping Director Oettinger in the preparation and planning of this program. From Boys' State in past years have come many of the present leaders of the State of North Carolina and its communities. This year's Boys' State undoubtedly will be a future source of leadership in the State and quite possibly in the Nation.

Institute Staff Changes

LOST

Roddey Ligon, Clyde Ball, and Ruth Mace are gone and the Institute of Government will miss them.

Roddey Ligon has become County Attorney for Forsyth County, with special consulting responsibilities. Clyde Ball has accepted a position on the faculty of the Law School at Memphis State University. Ruth Mace has turned to private consulting and writing.

Roddey M. Ligon, Jr. served for more than 13 years on the Institute Staff as an Assistant Director and Professor of Public Law and Government at the University of North Carolina. Although his work extended over a wide area, including Legislation and Criminal Law, he specialized in the fields of Public Health and Public Welfare. In both areas he taught and consulted with hundreds of public officials who wrote numer-

(Continued on page 37)

REGAINED

Don Hayman, Phil Green, and Milton Heath are back and the Institute of Government is the richer for it.

In more precise and formal terms Professor Donald Hayman, Professor Philip P. Green, Jr., and Associate Professor Milton S. Heath, Jr., all have returned to the Institute staff after leaves during the past year. Hayman returned the first of August from his stint as visiting Professor of Political Science at the University of Kansas. Green came back in July from his Fulbright Grant to study planning at the University of London. Heath has been spending some weekends with us already and is due to return full-time about the time this appears in print from his work as Technical Assistant to the Chairman of the Federal Power Commission in Washington.

(Continued on page 40)

GAINED

Ben Loeb, Joe Ferrell, John McMillan and Dave Warren are here and the Institute of Government is the stronger for it.

Four young attorneys-at-law have recently joined the staff of the Institute of Government, bringing with them diverse backgrounds in several disciplines.

BEN F. LOEB, JR., graduated Cum Laude from Vanderbilt University in 1955 with an A.B. in political science. He received an LL.B. at Vanderbilt's Law School in 1960. He served with the U.S. Army Intelligence Corps from 1955-57 and was a law clerk in the office of the general counsel of the U.S. Navy Department in Washington in 1959. As an associate in the firm of Crownover, Branstetter and Folk, Attorneys, in Nashville, Tennessee, Loeb practiced law in the areas of municipal corporations, municipal employees and labor organizations. He was a member of Phi Beta Kappa at Vanderbilt and is a member of the Nashville and American Bar Associations. Loeb will be an Assistant Director at the Institute and Assistant Professor of Public Law and Government.

JOSEPH STEVENS FERRELL received a B.S. degree in Education from the University of North Carolina in 1960 and an LL.B. from the UNC Law School in 1963. He received the LL.M. degree from Yale University Law School this spring. A member of Phi Beta Kappa at UNC, Ferrell has worked as Deputy Sheriff and Auditor in Pasquotank County where he specialized in tax accounts. His appointment is as Assistant Director of the Institute and Assistant Professor of Public Law and Government.

JOHN TAYLOR McMILLAN, an Assistant Director of the Institute, graduated with honors in political science from the University of North Carolina in 1960. He attended Yale

(Continued on page 25)

MACE

BALL

LIGON

HEATH

HAYMAN

GREEN

First Press Seminar Gains National Acclaim

When editors and managing editors of North Carolina daily and non-daily newspapers send their reporters who cover courts to the Institute of Government in November, they can know that the occasion will provide attending newsmen with insights and knowledge of courts not available to the press anywhere else. The occasion will be the Second Press Court Reporting Seminar. The first such seminar, held in November, 1963, spurred so much interest and brought such tangible results that increasingly large attendance is expected.

The date of the Second Press Court Reporting Seminar is November 6-7. On that Friday and Saturday distinguished judges, attorneys, and editors will join with faculty members of the University of North Carolina Schools of Law and Journalism and the Institute of Government in lectures, panel discussions, and question-and-answer periods for the benefit of the assembled newsmen. A banquet will be held Friday evening. Court reform and the work of the Courts Commission will be an important subject for the occasion. Further announcements on the program will be sent to editors and publishers throughout the State within the next few weeks.

Press Seminar Draws Praise

According to the Seminar director Elmer Oettinger, favorable comment had been received on the first Press Court Reporting Seminar from a number of prominent figures and organizations in the state and nation. Letters about the Seminar, sponsored by the Institute of Government and the N. C. Press Association, and its write-up in the February-March issue of *Popular Government*, have come from officials in the White House, the American Bar Association, and the U. S. Information Agency; leading members of the N. C. Bar and the N. C. Press Association; and such national figures as Chief Justice Earl Warren, editor Mark Ethridge, and television news commentator Howard K. Smith.

Chief Justice Warren wrote: "Certainly this is a valuable, worthwhile undertaking and the Institute is to be congratulated on its program." Howard K. Smith found the Press Seminar issue of *Popular Government* "filled with fine and very useful articles on a branch of journalism that we need much instruction in." He concluded "Please continue the good work. The nation needs it." Henry Hall Wilson, an administrative assistant to President Johnson, called the Press Seminar, "an excellent conception" and added "the Institute of Government is doing its usual excellent work in implementing the conception."

The judicial administration section of the American Bar Association expressed a hope that such seminars could be spread to other states; and the American Bar Association Journal found the Press Seminar issue "interesting" and passed it along to the ABA's public relations department "which is vitally interested in this subject." *The Coordinator*, another ABA publication, published a highly complimentary account of the Press Seminar in its May, 1964 issue. This write-up noted that this first Press Reporting Seminar in North Carolina had "won high praise from the . . . newsmen, judges, lawyers, editors and professors (both law and journalism) who took part in the three-day program." The U. S. Information Agency saw a link between the Seminar and a priority subject in its world-wide output "Rule of Law" and distributed the information about the Press Seminar for appropriate use by its mass communication media.

The State Department made known its interest in the program "with its aims of advancing press-government relations." James B. Hurd, chief of the Magazine and Special Services Division in the State Department's office of Media Services, wrote: "We certainly wish you continued success with further seminars such as the recent one on 'Free Press and Fair Trial.' "

The issue of *Popular Government* containing press seminar materials is being used in teaching the judiciary as well as the press. Dean Ernest C. Friesen, Jr. of the National College of State Trial Judges requested permission to use excerpts from the Seminar issue in the course for State Trial Judges from all over the nation at the University of Colorado School of Law this summer. The University of Missouri has placed the issue and other information about the Court Reporting Seminar in its Freedom of Information Center. Dean Earl English of the Missouri School of Journalism has requested that future material relating to such seminars at Chapel Hill also be sent to him or the Information Center. And Dean Edward W. Barrett of the Columbia University School of Journalism wrote to say that he was sharing the issue on the Press Court Reporting Seminar with "my faculty colleagues."

Others commenting on the Press Court Reporting Seminar included Secretary of Commerce Luther Hodges

(". . . great interest"); television news analyst Eric Sevareid ("Today one of my bosses, Dr. Stanton, has made a speech touching on this problem"); *Newsday* editor Mark Ethridge ("Congratulations on the success of the Seminar"); former Secretary of the Interior Oscar Ewing ("I congratulate you on such a fine piece of work"); William B. Cochran, administrative assistant to Senator B. Everett Jordan ("I am sure it was most useful to the newspapermen that took part in it"); Christopher Crittenden, director of the N. C. Department of Archives and History ("The Press Seminar issue seems especially significant"); North Carolina Bar Association executive secretary William M. Story ("Greatly interested . . . the Bar Association and I . . . delighted to cooperate with you in your endeavors"); State Auditor Henry Bridges ("Very interesting and most informative"); Congressman Charles R. Jonas ("Most interesting and informative").

In addition tangible evidence of success of the Seminar and the issue has come from the press itself. The University of North Carolina School of Journalism has placed a number of copies on reserve and made the Press Seminar issue of *Popular Government* required reading for its course on "Press Law." A number of North Carolina newspapers have ordered up to twenty extra copies of the Seminar issue and made it required reading for their staffs. Those reporters attending the Seminar have been unanimous in their accolades. The N. C. Press Association publication used as its headline "First Court Reporting Seminar Given High Praise." City editor Fred J. Flagler, Jr., of the *Winston-Salem Journal*, who attended the Seminar, used the occasion and its *Popular Government* write-up as a basis for a series of five articles by a young law student on his staff. The Executive Editor Sam Ragan of the *Raleigh News and Observer* and *Raleigh Times* arranged to place a copy of the *Popular Government* containing the Press Court Reporting Seminar material on file in the American Newspaper Publishers Association Library in New York and wrote that he "would like to see that all journalism school libraries across the country have copies." Mrs. Bernadette W. Hoyle, public information officer with the Department of Public Welfare, sent her congratulations on "initiating such a worthwhile project," and noted that similar seminars for those with public information responsibilities in state and local government would be a logical development and would "stimulate a great deal of interest among newspaper reporters as well as state government agencies." A state legislator offered "personal and official thanks" for the Seminar. Inquiries and requests for Press Seminar information and material came from as far away as the West Coast.

Significantly, the Press Court Reporting Seminar is being planned as an annual event. President Elizabeth E. Swindell of the N. C. Press Association called the first program "an outstanding success." Director Oettinger sees it as "a promising beginning for a new program to advance press-government understanding." He is now working in behalf of the Institute of Government with officials from the N. C. Press Association, in cooperation with the University Schools of Law and Journalism and such organizations as the N. C. League of Municipalities and the N. C. Association of County Commissioners, to spread the program through special seminars on local government and legislative reporting and to initiate an annual conference on press-governmental affairs at which editors and publishers would meet with top state and local officials to discuss matters of philosophical and practical importance. In the words of Winston-Salem attorney Irving E. Carlyle, a founder of the Press Seminar idea, who participated in the first Seminar and sent his "congratulations and commendation . . . for the fine presentation! It is obvious . . . that the Institute of Government has made another valuable contribution to the improvement of our State."

Staff Changes

(Continued from page 23)

University as a Woodrow Wilson Fellow and received an M.A. in political science in 1961. He received his law degree from the University of Chicago Law School this spring. A Phi Beta Kappa at UNC, McMillan served as a political intern under Congressman Ken Hechler during the summer of 1959 and was associated with the firm of Butler, High and Baer in Fayetteville during the summer of 1963.

DAVID GRANT WARREN majored in economics at Miami University (Ohio) receiving his A.B. degree in 1958. After a tour of duty with the U.S. Navy, he studied law at Duke University, graduating this spring. He has served as a research assistant at the World Rule of Law Center at Duke University; as administrative assistant and housing inspector for the general services department of the City of Durham; and as a research assistant at the Institute of Government. Warren's new position is that of Assistant Director.

James A. Graham Succeeds L. Y. Ballentine As Commissioner

James A. Graham, manager of the Raleigh Farmer's market, has been named commissioner of agriculture to succeed the late L. Y. (Stag) Ballentine.

In announcing the appointment, Governor Terry Sanford said Graham "is acquainted first hand with both the problems and potentials of the farms of our State. Farmers and citizens of towns across North Carolina have highly recommended his appointment."

Ballentine, who died of a heart attack July 19, left a long and distinguished record of public service. After being in the State Senate he was elected Lieutenant Governor in 1944 and had been Agriculture Commissioner since 1948.

Supreme Court Standards for Legislative Apportionment

(Continued from page 4)

mate that . . . [such a scheme] is constitutionally defective."[24] The multi-member district, coupled with a rotation agreement, might serve to preserve a representative to most counties most of the time. For example, it would be possible to combine two contiguous counties—one of which is too large for a single seat and the other of which is too small—into a 2-member district, and by agreement to elect one member from each of the two counties.[25] Legally, there are indications that rotation agreements, whether statutory or by party action, will be declared invalid if challenged in the courts. Custom, supported by party leadership, is however a very effective political force and may succeed where law fails.

The multi-member, multi-seat district, coupled with a customary agreement as to the residence of the various members, provides a basis upon which it is relatively easy to erect an apportionment plan which will bring the minimum controlling percentage above 45%, the population variance ratio below 1.5 to 1, and at the same time guarantee about 65 of the state's counties at least one regular seat in the House. The remaining 35 counties can be assured of only intermittent representation by a resident.

There are other possible solutions, of course. One simplified solution would be to increase the House membership to 150, leaving the Senate membership at 50. The Senate and House districts could then be made co-terminous, with the number of House members being just three times the number of Senators from each district. In this manner, it would be possible to group the Senate seats with the House seats in a customary rotation plan which would make a minimum of four seats available to every district. Under this plan, only three of the Senate districts established by the 1963 Extra Session would include more counties than the total number of legislative seats to be allocated to the district.[26]

Another alternative which would assure each county of a seat in the House and at the same time avoid the proscribed dilution of the votes of residents of the larger counties is the fractional voting principle. In its most simplified form, this principle would assign one vote to the representative from Tyrrell (4,520), two votes to the representative from Gates (9,254), ten votes to the representative from Wilkes (45,269) and 60 votes collectively to the representatives from Mecklenburg (272,111). The number of representatives from any county could be determined by some maximum number of votes which could be vested in a single member; thus Mecklenburg might be allocated six representatives, each having ten votes. Obviously, this scheme could employ various kinds of fractional votes. It would mark a radical departure from past practice and would require some kind of computer-type voting machinery to make voting totals immediately apparent.

V. The Time for North Carolina Action

Just as there are several approaches to a permanent solution to apportionment, so there are several possible stages at which the solution may be reached:

(1) The Governor may call another Extra Session of the 1963 General Assembly. Such a session would have to convene and complete its work prior to the November general election, as the terms of the present legislators expire when their successors are elected.[27] Of course, any action taken by this legislature could not reasonably be made applicable earlier than the 1966 elections.

(2) The 1965 General Assembly may deal with the matter at its regular session.

(3) The Governor may call an Extra Session of the 1965 General Assembly.

At any one of these sessions the legislature could submit a proposed constitutional amendment with implementing legislation to the people, or it could enact a statute to govern the 1966 and succeeding elections, or it could do both.

If the legislature at one or more of these possible sessions does not apportion House seats in conformity with the standards announced in *Reynolds v. Sims* and the accompanying cases, the federal courts will in all likelihood promulgate their own apportionment plan and order the 1966 primaries and elections to be held in court-designated districts. It is, of course, possible that no court proceeding will ever be filed in North Carolina, but in view of the great public interest in the question, it hardly seems likely that out of the hundreds of thousands of qualified voters in the state, not one will sue to require apportionment. The primaries will be held in May, 1966, and candidates for legislative office must file some six weeks earlier. It seems likely, therefore, that unless the legislature acts appropriately by about the beginning of 1966, the court will conclude that it must itself act.

Of course, there is always the possibility that the rulings of the Supreme Court in *Baker v. Carr* and *Reynolds v. Sims* will be reversed by amendment of the United States Constitution, in which event none of the problems raised in this paper would have to be faced.

The problem which faces North Carolina is one which is shared by virtually every state, and many of the states have a greater problem than does North Carolina. In only seven states is the minimum controlling percentage for

(Continued on page 30)

24. Lucas v. General Assembly, 32 U.S. L. Week at 000.
25. For example, County A has a population of 48,000, and contiguous County B has a population of 26,500. These two counties could be combined into a district with two representatives, each representing 37,250 persons, very close to the statewide average of 37,968 persons per representative. If the political leaders and the people in the two counties were willing to do so, one representative from each of the counties could customarily be nominated by each party, and thus each of the counties could continue to be represented by one of its own residents. There are at least eleven such two-county combinations in North Carolina at present which would result in a population per representative of not less than 34,312 and not more than 39,952. Similar 2-county groupings involving more than two seats are possible, with the smaller county having the possibility of filling one of the seats by custom.
26. District 1: Currituck, Camden, Pasquotank, Perquimans, Chowan and Gates; District 2: Dare, Tyrrell, Washington, Hyde and Beaufort; District 36: Cherokee, Graham, Clay, Swain, Macon and Jackson.
27. N. C. Constitution, Article II, §25.

APPENDIX

	County	Population	Seats	Average Population Per Seat
1.	Tyrrell	4,520	1	4,520
2.	Clay	5,526	1	5,526
3.	Camden	5,598	1	5,598
4.	Hyde	5,765	1	5,765
5.	Dare	5,935	1	5,935
6.	Graham	6,432	1	6,432
7.	Currituck	6,601	1	6,601
8.	Alleghany	7,734	1	7,734
9.	Swain	8,387	1	8,387
10.	Perquimans	9,178	1	9,178
11.	Gates	9,254	1	9,254
12.	Pamlico	9,850	1	9,850
13.	Jones	11,005	1	11,005
14.	Polk	11,395	1	11,395
15.	Chowan	11,729	1	11,729
16.	Avery	12,009	1	12,009
17.	Washington	13,488	1	13,488
18.	Mitchell	13,906	1	13,906
19.	Yancey	14,008	1	14,008
20.	Macon	14,935	1	14,935
21.	Alexander	15,625	1	15,625
22.	Cherokee	16,335	1	16,335
23.	Hoke	16,356	1	16,356
24.	Transylvania	16,372	1	16,372
25.	Davie	16,728	1	16,728
26.	Greene	16,741	1	16,741
27.	Madison	17,217	1	17,217
28.	Watauga	17,529	1	17,529
29.	Jackson	17,780	1	17,780
30.	Montgomery	18,408	1	18,408
31.	Pender	18,508	1	18,508
32.	Warren	19,652	1	19,652
33.	Ashe	19,768	1	19,768
34.	Caswell	19,912	1	19,912
35.	Brunswick	20,278	1	20,278
36.	Stokes	22,314	1	22,314
37.	Hertford	22,718	1	22,718
38.	Yadkin	22,804	1	22,804
39.	Bertie	24,350	1	24,350
40.	Anson	24,962	1	24,962
41.	Scotland	25,183	1	25,183
42.	Pasquotank	25,630	1	25,630
43.	Person	26,394	1	26,394
44.	Lee	26,561	1	26,561
45.	McDowell	26,742	1	26,742
46.	Chatham	26,785	1	26,785
47.	Northampton	26,811	1	26,811
48.	Martin	27,139	1	27,139
49.	Franklin	28,755	1	28,755
50.	Lincoln	28,814	1	28,814
	[Median county	28,841]		
51.	Bladen	28,881	1	28,881
	[1/150th of state population	30,374]		
52.	Carteret	30,940	1	30,940
53.	Vance	32,002	1	32,002
54.	Granville	33,110	1	33,110
55.	Beaufort	36,014	1	36,014
56.	Henderson	36,163	1	36,163
57.	Moore	36,733	1	36,733
	[1/120th of state population	37,968]		
58.	Richmond	39,202	1	39,202
59.	Haywood	39,711	1	39,711
60.	Duplin	40,270	1	40,270
61.	Stanly	40,873	1	40,873
62.	Onslow	82,706	2	41,353
63.	Rowan	82,817	2	41,408
64.	Alamance	85,674	2	42,837
65.	Orange	42,970	1	42,970
66.	Robeson	89,102	2	44,551
67.	Union	44,670	1	44,670
68.	Rutherford	45,091	1	45,091
69.	Wilkes	45,269	1	45,269
70.	Sampson	48,013	1	48,013
71.	Surry	48,205	1	48,205
72.	Harnett	48,236	1	48,236
73.	Columbus	48,973	1	48,973
74.	Cumberland	148,418	3	49,473
75.	Caldwell	49,552	1	49,552
76.	Burke	52,701	1	52,701
77.	Edgecombe	54,226	1	54,226
78.	Mecklenburg	272,111	5	54,422
79.	Lenoir	55,276	1	55,276
80.	Durham	111,995	2	55,997
81.	Wake	169,082	3	56,360
82.	Wilson	57,716	1	57,716
83.	Craven	58,773	1	58,773
84.	Halifax	58,956	1	58,956
85.	Nash	61,002	1	61,002
86.	Randolph	61,497	1	61,497
87.	Guilford	246,520	4	61,630
88.	Iredell	62,526	1	62,526
89.	Johnston	62,936	1	62,936
90.	Forsyth	189,428	3	63,143
91.	Gaston	127,074	2	63,537
92.	Buncombe	130,074	2	65,037
93.	Cleveland	66,048	1	66,048
94.	Cabarrus	68,137	1	68,137
95.	Rockingham	69,629	1	69,629
96.	Pitt	69,942	1	69,942
97.	New Hanover	71,742	1	71,742
98.	Catawba	73,191	1	73,191
99.	Davidson	79,493	1	79,493
100.	Wayne	82,059	1	82,059
	Total	4,556,155	120	37,968

PLANNING in GREAT BRITAIN

(Continued from page 14)

minated (except to indicate that medical or similar services or supplies are available on the premises, or as necessary to achieve the purpose of the "functional" advertisements of local, public utility, and transport authorities).

Standards for Express Consents

Although a very great number of the more usual types of advertising signs come under the categories for which consent is "deemed," the statistics we have quoted show that there is a heavy volume of other applications. These include, for example, most of the proposals to erect billboards on which products not sold on the premises may be advertised, or to erect illuminated signs.

In deciding how to handle these individual requests for express consent, the local planning authority is guided by (a) the basic statute, (b) the Ministry regulations, (c) Ministry circulars, and (d) the Selected Planning Appeals which are published by the Ministry. Read together, these give a fairly explicit set of standards.

First, the statute (as we have seen) provides that regulations may be promulgated "for restricting or regulating the display of advertisements so far as appears to the Ministry to be expedient in the interests of *amenity* or *public safety*." [Emphasis supplied.]

The Ministry regulations reinforce this limitation:

"(1) The powers conferred by these regulations with respect to grant or refusal of consent for the display of advertisements, and to the revocation or modification of such consent, shall be exercisable only in the interests of amenity and public safety.

"(2) When exercising such powers a local planning authority,

(a) shall, in the interest of amenity, determine the suitability of the use of a site for the display of advertisements in the light of the general characteristics of the locality, including the presence therein of any feature of historic, architectural, cultural or similar interest; and when assessing the general characteristics of a locality the authority may disregard any advertisements therein being displayed;

(b) shall, in the interests of public safety, have regard to the safety of persons who may use any road, railway, waterway (including any coastal waters), dock, harbour or airfield affected or likely to be affected by any display of advertisements; and shall in particular consider whether any such display is likely to obscure, or hinder the ready application of, any road traffic sign, railway signal, or aid to navigation by water or air; but without prejudice to their power to have regard to any other material factor.

"(3) In the determination of an application for consent for the display of advertisements . . . or where the revocation or modification of a consent is under consideration, regard may be had to any material change in circumstances likely to occur within the period for which the consent is required as granted.

"(4) Save as hereinafter provided . . . express consent for the display of advertisements shall not contain any limitation or restriction relating to any particular subject matter or class of subject matter or to the content or design of any subject matter to be displayed, but shall take effect as consent to the use of a site for the purpose of displaying advertisements in the manner authorized by the consent whether by the erection of structures on the site or otherwise . . .

"Provided that where an application for consent relates to the display of a particular advertisement the local planning authority may have regard to the effect on amenity and public safety of the display of such advertisement."

In its circulars to local planning authorities the Ministry has repeatedly stressed that the only permissible grounds for refusing consent are "amenity" and "public safety" and that local authorities must specify precisely how these would be affected by the proposal. In one such circular he noted that the regulations do *not* permit refusal, for example, because "(i) there is no need for an advertisement, or (ii) the advertisement advertises a particular kind or brand of commodity, or (iii) it is not the council's policy to permit advertising in a particular way or in a particular area."

A fuller statement of Ministry views was contained in one of its booklets of Selected Planning Appeals:

"Most advertisement appeals raise questions of amenity only, i.e. the decision turns on the visual effect of the advertisement in relation to its surroundings. No precise rules can be formulated about the types of advertisement acceptable in different environments, but the following is some indication of the Minister's approach.

"(a) Any advertisement which by reason of its size or siting is unduly obtrusive or dominant in its surroundings will spoil the appearance of the area where it is displayed. Large and conspicuous advertisements are unlikely to be acceptable in the country or in residential areas; they may not be out of place in commercial or industrial surroundings.

"(b) It is important to avoid an unsightly clutter of excessive or badly arranged advertising on shops and other business premises.

"(c) If an advertisement is displayed on a building, it must not spoil the appearance of the building, e.g., through being out of scale with the building or with the part of the building on which it is displayed, or through breaking the symmetry of the architectural features.

"(d) Illuminated signs, if well designed, can give an effect of gaiety in shopping areas at night. They can be unsightly in the day-time if sited without regard to the scale and ar-

chitectural detail of the building to which they are attached. They should not be placed where they can shine into houses or flats. Illuminated signs are generally out of place in the country.

"Where an advertisement is open to objection on the grounds of public safety it is usually because it may endanger road users, e.g., because it is likely to be confused with traffic signs or traffic lights, or because it might distract the attention of a driver at a point where special care is needed.

"The Minister has asked local planning authorities to ensure that on land adjoining motorways [throughways] no advertisements which are against the interests of amenity or constitute a danger to traffic will be allowed."

Public Safety

A very elaborate memorandum of considerations to be taken into account with regard to public safety has been prepared by the Ministry of Housing and Local Government, in consultation with the Ministry of Transport and the Ministry of Aviation. In issuing this circular, the Ministry stressed that it "should not be regarded as hard and fast rules, since authorities are obliged under the regulations to determine each application on its merits and in relation to the circumstances of the locality." The circular includes the following statements:

"ROADS

"1. The main types of advertisement which are likely to cause danger to road users and are open to objection on public safety grounds include the following:

"(a) advertisements which obstruct the line of sight at a corner or bend or between roads at a junction, or at any point of egress;

"(b) advertisements which obstruct or confuse road users' view of a traffic sign or signal;

"(c) advertisements which have insufficient clearance above any part of a highway or insufficient horizontal clearance from vehicles on the carriageway (due allowance being made for the camber of the road surface);

"(d) floodlit advertisements where the means of illumination are directly visible from any part of the road;

"(e) flashing illuminated advertisements, on or near the line of sight, likely to dazzle or confuse road users or to be mistaken for traffic lights or other authorized signals;

"(f) coloured non-flashing illuminated advertisements likely to be mistaken for or be confused with traffic lights.

"*Note*: As far as these six types of advertisements are concerned, it may in some cases be possible for objectionable features of the display to be removed by imposing conditions (e.g., for resiting, screening of floodlights, changing colour of lights) upon any consent given. Conditions cannot be imposed, however, to limit or restrict subject matter or the content or design of subject matter. Where conditions are imposed, the form of consent must include an adequate explanation of the danger envisaged and how the condition or conditions would obviate it.

"(g) advertisements which, because they would provide a confusing or dominating background, would be likely to reduce the clarity or effectiveness of a traffic sign or signal;

"(h) illuminated advertisement displays of such magnitude as to be likely to give rise to glare and dazzle to a dangerous degree in misty or rainy weather;

"(i) arresting or large animated advertisements, if sited where they are likely to distract road users' attention at dangerous points:

"(j) advertisements requiring close study (such as Public Information Panels), so situated that those looking at them are insufficiently protected from passing traffic;

"(k) advertisements which resemble traffic signs . . . and which may therefore be subject to removal action . . . , e.g.:

(i) advertisements which resemble any official traffic sign or international traffic sign;

(ii) advertisements embodying red circles, crosses or triangles; or advertisements in combinations of colours which might be mistaken for traffic signs;

(iii) signs incorporating large arrows with only the arrow reflectorized or illuminated, causing confusion with similar signs in use at roundabouts [traffic circles];

"(l) advertisements which embody directional or other traffic elements, and which need special scrutiny because of possible resemblance to, or confusion with, traffic signs. E.g., advertisements which:

(i) contain a large arrow (or have a pointed end) and have only a few words of message;

(ii) contain reflectors and therefore are likely at night to be confused with traffic signs (but see paragraph 2 below);

(iii) invite drivers to turn right [equivalent to an American left turn] on a main road, or where there is fast-moving traffic;

(iv) invite drivers to turn but are sited so close to the turning that there is no time to signal and to turn safely;

(v) are so close to similar advertisements or official traffic signs that road users might be confused in the vicinity of a road junction or other traffic hazard.

"In the latter two cases the same or similar signs might frequently cease to be open to objection if placed further away.

"2. Advertisements are not necessarily open to objection on safety grounds merely because they incorporate reflectors or are reflectorized signs. However, there may be danger if the advertisement looks like a traffic sign or if its reflectors are so intense as to dim a traffic sign in the immediate neighborhood.

"3. All advertisements are intended to attract attention and it is unlikely that in modern conditions the conventional type of advertisement will so distract as to increase traffic dangers. This is particularly so if the advertisement is on a site in a town centre or a shopping, business or commercial locality, or if it is a normal hoarding or poster panel, or a shop fascia sign, name board, trade or business sign, or is illuminated other than as in (d), (e), or (f) above.

"4. The position is different, however, where special features are present, e.g., where there are large moving parts which might draw away the

driver's eye. Particular consideration should be given to proposals to site advertisements at points where drivers need to take exceptional care, for instance at junctions, roundabouts, pedestrian crossings or other places where local conditions may present special traffic hazards. * * *

"RAILWAYS

"Advertisements, whether illuminated or not, can under certain conditions interfere with railway safety in the following ways:

"(a) by interfering with the visibility or interpretation of fixed signals;

"(b) by causing the illusion of a signal where no actual signal is situated;

"(c) by being mistaken for hand signals;

"(d) by interfering with warning boards, speed restriction signs, tail lights or other signs or lights.

Green, yellow or red illuminated advertisements are particularly liable to cause such difficulties. * * *

"INLAND WATERWAYS, DOCKS, HARBOURS AND COASTAL WATERS

"Local planning authorities should consider whether any particular advertisement is likely to obstruct or cause confusion in the interpretation of navigation lights, beacons and similar signs and warnings to vessels using (a) inland waterways, (b) docks and harbours and (c) coastal waters. Advertisements should not overhang or obstruct a waterway; nor should they be displayed or erected in such a manner as to obstruct or interfere with navigation by hindering a clear view of the waterway from a vessel, particularly at bends.

"AIRFIELDS

"An illuminated advertisement may interfere with the safety of aircraft in the following ways:

"(a) its glare may endanger aircraft taking off or landing at an aerodrome;

"(b) it may be mistaken for an aeronautical light."

In all cases where it is appropriate, local planning authorities are required to consult with highway, railway, shipping, or aviation officials before issuing a consent for a sign which might impair safety.

Terms of Express Consents

As we have seen, no advertisement subject to the regulations, other than an advertisement falling into one of the classes for which consent is "deemed," may be displayed without the express consent of the local planning authority or the Ministry. Even in the case of the advertisements with deemed consent, the local planning authority may direct that an application be made for express consent.

The local planning authority may deny or grant consent in accordance with the terms of the application, or it may impose conditions on its consent. When consent is granted, except in highly unusual circumstances, it "runs with the land" rather than being personal to a particular applicant. Consent may be either for the display of a particular advertisement or for use of a site for continuing display of advertisements. The latter is the more usual, but as the Ministry has pointed out, there may be circumstances in which a planning authority will be unwilling to give broad authorization for advertising at a given location but will be willing to authorize a particular advertisement which does not impair the amenities of the area.

Originally, the standard period for consent was set at three years. In 1960 this was extended to five years. No consent can be granted for longer than a five-year period, and the period can be set at less than five years only where the application is for a lesser time or where the local planning authority specifically finds that public safety or amenities require such a shorter period.

This time period is not so significant as might appear. Unless a condition of the consent specifically requires the removal of the advertisement at the end of the period, it may continue indefinitely (or until the local planning authority requires a new application to be submitted). On the other hand, the authority may revoke or modify its consent, with Ministry

Supreme Court Standards for Legislative Reapportionment

(Continued from page 26)

either house of the legislature higher than the 47.2% which is necessary to elect a majority of the North Carolina Senate. In 19 instances the minimum controlling percentage for one house of a state legislature is lower than the 27.1% which may elect a majority of the North Carolina House. Nevada, where only 8% of the population can elect a majority of the senators, has the lowest minimum controlling percentage of any of the states, but the upheaval caused by the recent decisions will probably be greater in populous California, where 10.7% of the population can now elect a majority of the senators. Oregon and Wisconsin are the only states in which the minimum controlling percentage is above 45% for both houses; both Kentucky and Massachusetts require more than 44.5% to control each house.

Thus the problem posed by *Reynolds v. Sims* and its companion cases is nationwide. The decisions apparently will bring to a rather abrupt end an era in American state legislative history. From the beginning of the American states to the present, the rural influence has been a dominant force in the state legislative bodies. From this time forward the influence of rural legislators will depend upon their quality and personal effectiveness, rather than upon a built-in disproportionate voice. North Carolina is fortunate that there is no radical difference between rural and urban attitudes in the state.[28] We are not confronted with a few huge cities which contain the greater part of the population of the state. There is reason to hope that the transition from the old to the new scheme of legislative representation will be accomplished with no notable disruption of the established patterns of development in the state.

28. See Ball, "Voting Patterns in the North Carolina House of Representatives: 1961," *Popular Government*, Vol. 30, p. 4 (May, 1964).

confirmation, at any time before a display is begun.

All consents are granted subject to certain standard conditions: that the display begin only with permission of the landowner, that the advertisement and any structures be maintained in a clean, tidy, and safe condition, and that any removal of the advertisement required under the regulations be carried out to the satisfaction of the local planning authority.

In addition, the authority may impose any conditions

"(a) for regulating the display of advertisements to which the consent relates, or the use of land by the applicant for the display of advertisements (whether or not it is land in respect of which the application was made), or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connection with the display of advertisements authorized by the consent;

"(b) for requiring the removal of any advertisement authorized by the consent, or the discontinuance of any use of land so authorized, at the expiration of a specified period, and the carrying out of any works required for the reinstatement of land at the expiration of that period."

Provision is made for appeals to the Ministry either from refusal of consent or from the imposition of conditions on consent.

There is one special category of consents—the granting of consents "in bulk" for the temporary display of placards, posters, etc., relating to a travelling circus, fair, or similar entertainment. No such advertisements may exceed six square feet in area or be more than 12 feet above ground level; the permission of the owner is required before they may be displayed on any land; no such advertisement may be displayed more than 14 days prior to the first performance in the district; and every such advertisement must be removed within seven days after the last performance or closing of the entertainment.

Areas of Special Control

Under the enabling act and the Ministry regulations, provision is made for the designation by local authorities, with the approval of the Ministry, of "areas of special control." Such designation requires the usual types of notice and hearing for persons in the area.

Because of the strictness of control in such areas, apparently some local authorities were originally reluctant to designate them. In 1960 the Ministry amended the regulations somewhat so as to give local authorities some discretion in applying restrictions, requested that they consider what areas within their jurisdiction might be so designated, and suggested periodic review at intervals not exceeding five years of all such areas to see what modification in their boundaries might be appropriate.

As we have noted, some 30 per cent of the land area of England and Wales has been designated as areas of special control. In a number of cases entire counties other than their major cities have been so designated. Most of the areas of special control are rural areas, but there are a few inside municipalities — usually areas surrounding cathedrals.

Within an area of special control, as we have seen, advertisements of the specified classes for which consent is "deemed" must be no greater than 12 feet high, must have no letters exceeding one foot in height, and on business premises are restricted in size according to the frontage on which they are displayed.

In addition, only the following types of advertising can be granted express consent:

(a) structures for the limited purpose of exhibiting notices relating to local events;

(b) "reasonably required" roadside signs announcing the direction to buildings or land in the locality (such as hotels or garages);

(c) advertisements required for public safety;

(d) advertisements of travelling circuses and fairs;

(e) advertisements which would fall within one of the classes for which consent is deemed, except for infringement of some condition relating to size, height, number, or illumination, and which for some special reason should, in the local planning authority's opinion, be excused from conforming to such conditions.

It will be noted that these categories do *not* include ordinary commercial advertising unrelated to the premises on which it is displayed.

Normally, when an area of special control is designated, any existing advertisements other than those for which consent is deemed are permitted to continue for a period of six months (or where express consent has been granted, to the end of the period of consent if that is greater than six months). They then must be removed within the following two months if express consent has not been given for their continuance.

Clutter—Voluntary Code

For some years it has been recognized by the authorities concerned that the most difficult current problems have to do with advertising on business buildings, and specifically with "clutter." By clutter they mean the proliferation of a great number of poorly arranged signs on any one business building or on a group of such buildings. It is widely thought that the existing regulations permit too much advertising in the business districts and that they are difficult to enforce against all the miscellaneous signs that appear in such districts.

The Ministry drafted regulations dealing with this situation about 1958, but it was persuaded by advertisers to allow them to draft a voluntary code instead. This was done and the code issued in 1960. Since that time there has been a vigorous effort to bring about compliance on a voluntary basis, and in some areas this has been quite successful. However, there are indications that over the nation as a whole the effort has not accomplished all that was expected, and it appears likely that new Ministry regulations will be issued sometime in the near future.

Among the provisions of the voluntary code are the following:

"16. No advertisement shall obscure the view to any other advertisement on the same premises.

"17. The advertiser is responsible for seeing . . . that his advertisements are inspected often enough to

ensure that:

"(a) They are maintained in good, clean, safe condition.

"(b) Any damaged or defaced advertisements are promptly replaced, repaired or removed.

"(c) All out-of-date advertisements are removed.

"19. [Advertisements in private forecourts] are too often hideous examples of 'clutter': overcrowded, carelessly erected, jumbled together, ruining the appearance of the premises, and making for bad advertising. The greatest care should therefore be taken to make forecourts neat and presentable. In particular, advertisements which may be displayed in private forecourts should be:

"*Either* Securely fixed to the shop premises or forecourt boundary

or Free-standing and self-supporting (that is, not merely leant against a wall or fence).

"If portable, these should be removed from the forecourt when the premises are closed for business.

"In any case, they should never be more than are suitable for the particular forecourt.

"20. Displays of advertisements on walls, too, are sometimes overcrowded and badly arranged. They say 'clutter' at a single glance. A lot of thought should therefore go into the placing of these advertisement displays. They include advertisements on the front and side walls of business premises, and advertisements above the fascia. These advertisements should therefore:

"(a) be displayed in a tidy and orderly way

"(b) not be too many

"(c) be placed to fit in with the appearance of the building

"(d) be placed to fit in with each other

"(e) be adequately spaced from each other, and be reasonably far from the edges of the display area. The following minimum limits should be observed:

Largest size of Advertisement	*Min. distance from another Advertisement*	*Min. distance from edges of display area*
Less than 3'6"	9"	9"
3'6" to 5'0"	1'0"	9"
Exceeding 5'0"	2'0"	9"

Notes:

"1. A surround or border which contains no advertising matter can be included as part of these minimum distances.

"2. Where more than two separate advertisements are displayed in a particular display area the distance between them should be at least double this minimum.

"3. When several advertisements are to be displayed together on a structure designed for this purpose, they should all be treated as a single unit for spacing and bordering. The minimum distances between advertisements can, therefore, be relaxed; although the other provisions of the Code must be observed.

"4. Great care should be taken in designing and arranging advertisements on the space between the fascia and the 15'0" level to insure that they fit in with the appearance of the building.

"22. It is most important for projecting signs not to cause 'clutter.' Properly placed projecting signs tell the public that a particular trade or business is carried on, or goods are sold, on the premises from which the signs are hung. But a shop or row of shops whose frontage is overcrowded with projecting signs not only looks bad but does a very inferior job of advertising. People who display projecting signs should therefore make sure that these signs:

"(a) are placed at least 6' horizontally from any projecting sign on *another* property, and at least 12' horizontally from any other projecting sign on the same property.

"(b) fit in with the appearance of the building

"(c) observe the safety of passing pedestrians and vehicles.

"*Note:* Two projecting signs can be placed one vertically above the other provided that the lower sign is rigidly fixed to the building and projects less from the face of the building than the upper sign."

Typical Cases

In order to gain a better understanding of the actual workings of the British advertisement controls, it might be well to conclude with descriptions of several actual cases, as reported in the Ministry's annual publication, *Selected Planning Appeals*. In each case, the local planning authority had denied consent and an appeal was taken to the Ministry.

"*Advertisement Panel in a Cathedral City*

"It was proposed to display a large panel for general advertising high on the wall of a commercial building at 28, Melville Street, Lincoln. The building was at the side of a newly-constructed road bridge and traffic island at the main entrance to the city. Beyond the bridge there were fine views of the higher part of the city and of the cathedral.

"The Minister considered that, although the panel would be on a commercial building, its height and prominent siting would make it an obtrusive feature, detracting from the excellent views of the city and the cathedral beyond. He was therefore of the opinion that the display would be detrimental to amenity.

"Appeal dismissed.

"*Advance Sign in an Area of Special Control*

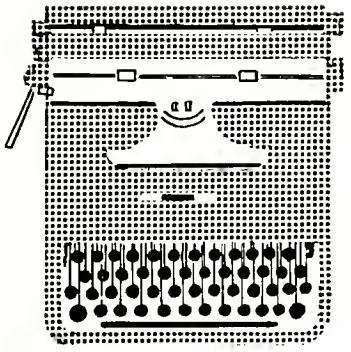
"An advance sign advertising a petrol filling station was displayed in a field off Sevenoaks Road, Pratts Bottom, which was included in an area of special control. The filling station, which was situated at some distance along the highway and outside the area of special control, was liberally advertised by illuminated and other signs on the premises. The Minister was satisfied that the filling station could be adequately made known by means of advertisements on or near the premises outside the area of special control, and he decided that no case had been made out for the purposes of the Advertisement Regulations for the continued display of the sign.

"Appeal dismissed.

"*Painted Reflector Sign*

"The sign advertised a soft drink, certain words being picked out with red and white reflector studs. It measured about 7 feet in length and was mounted on a frame so that its total height was about 10 feet. It stood on a grassy bank alongside the

(Continued on page 36)



● NOTES FROM . . . CITIES AND COUNTIES

Central Business District

Plans for harmonious development of rear store entrances around *Wilson*'s intrablock parking lot have been launched. A voluntary set of ground rules to avoid hodgepodge development of store facades around the perimeter of the 60-space facility has been suggested.

* * *

City Government

Following April action by the *Benson* Board of Commissioners, William F. Pierce was named town manager for the community which has recently been placed under the manager form of government.

* * *

Roanoke Rapids commissioners have gone on record to favor the city manager type of government. Further action will be delayed until the commissioners hear from residents concerning the recommendation.

* * *

After a 21-month trial period *Kernersville* voters defeated the city manager system by six votes. The town reverted to the mayor-aldermanic-clerk plan on July 1.

* * *

Community Improvement

In this election year *Morehead City* has taken a bold step to eliminate posters on telephone, power and town-owned poles. Violations will cost $10 per poster for each day of being posted. The ordinance was suggested in the interest of beautifying the city.

* * *

Jacksonville and *Morehead City* are among 30 municipalities in the Carolinas which have won awards from the American Automobile Association for outstanding efforts to prevent pedestrian accidents.

* * *

Chapel Hill has received the North Carolina State Motor Club's Traffic Safety Award for 1963 for having had no motor vehicle fatalities within the city limits for the second consecutive year. Chapel Hill currently holds the best traffic safety record in the state for municipalities of over 10,000 population and the seventh best for those over 5,000 population.

* * *

An ambitious 15-year master plan for the development of *Cramerton* into "the ideal model community" at a cost of some $100 million has been announced by Burlington Industries, Inc. The development project is being prepared for the 1,600 acres surrounding the Cramerton plants of the company.

* * *

Winston-Salem's Youth Work Program reviewed in the October-November 1963, *Popular Government*, was continued this summer with nearly 200 boys and a grant from local aldermen of $55,000.

* * *

Education

A special election has been authorized for *Lenoir* County to decide if the county will appropriate $150,000 to etsablish a community college. The present plan is to use the Lenoir County Industrial Education Center as a three-in-one school: an industrial education center, a technical institute, and a community college.

Dr. Warren A. Land, a University of Kansas faculty member, will serve as president of the newly created South Eastern Community College in *Columbus* County. Commissioners there have taken initial steps to place a mile square special zone around the college area, four miles west of *Whiteville*.

* * *

Officially the community college being built just south of *Dobson* will be *Surry* Community College.

* * *

Beaufort County commissioners have authorized a November vote for a $1.4 million school bond election aimed at consolidating a number of county high schools.

* * *

Lincoln County's "Operation Second Chance" program has been extended nine months—until March, 1965. The voluntary program was set up last year to give school dropouts another chance and to combat semi-illiteracy in the county.

* * *

State approval has been granted the *Stanly* County pilot vocational education program which will start this fall.

* * *

Students in *Onslow* County are sharing in a unique experience, that of a bus classroom. A speech therapist working out of *Jacksonville* uses the remodeled vehicle and the State Department of Education is eyeing the idea as a possible solution for other special education teachers cramped for space.

Finances

Appropriately set forth in a 397-page "budget book" complete with rose colored cover is the news that Winston-Salem has amassed a $410,000 surplus on municipal operations for the fiscal year 1963-64. The surplus brings the city's cash accumulation to $2,316,365.

Budget Director James J. Cook credits the rising surplus to three factors: an increase in water-sewer revenues, successful investment of city funds, and the tight reins which city department heads kept on expenditures.

* * *

Fire Prevention

Pitt County Commissioners have opened the road which would lead to establishing fire districts in the county—a plan which would result in reduced insurance rates for county residents.

* * *

Historic Preservation

March 10, 1965, is the target date for dedication of a historical museum of the Ram Neuse at Caswell Memorial Park in *Lenoir County*. The date marks the 100th anniversary of the sinking of the Ram Neuse in the Neuse River at *Kinston*.

* * *

Law Enforcement

Stationed with the *Greenville* Police Department is the brain child of Identification Officer Walter Thomas: a mobile crime laboratory. The unit is operated by the City-County Bureau of Identification and carries all equipment needed at any major crime scene.

* * *

Onslow County Commissioners filled a ten year vacancy when they appointed a constable for *Swansboro*.

* * *

Tear gas gear has been approved by county commissioners for the *Carteret* County Sheriff's Department.

* * *

Libraries

Davie County Library is now an agency of its home county. Prior to the July 1st change the library had been a corporation maintained financially by the Town of *Mocksville*, Davie County and the State. Property has been acquired for the construction of a new one-story library to be located in Mocksville.

* * *

Mooresville's library is getting an addition to augment a critical space shortage. In seven years the circulation has risen from 26,000 to 70,000 volumes annually.

* * *

East Albemarle Regional Library has been selected as the name for the new four-county library which will serve coastal *Dare*, *Currituck*, *Camden*, and *Pasquotank* counties. Until a new library is built at *Manteo* the library will operate from the Dare County library.

* * *

County commissioners, library officials, and a generous *Caswell* County citizen have agreed to finance a $60,000 library building in *Yanceyville*.

LOST: ONE "S"

First came the complications arising from the name *Fuquay-Varina* or *Fuquay Springs* and/or *Varina*, (*Popular Government*, February-March) and now it's *Teachey* vs. *Teacheys*.

The 126-year-old *Duplin* county community began as Teacheys but the U.S. Post Office Department has dropped the "s". However the town remains Teacheys in its charter from the North Carolina General Assembly until the state acts on the town board's request next year.

Municipal Bond Issues

A new town hall and sewage plant were assured for *Burgaw* when voters cast an overwhelming majority vote in favor of a $200,000 bond issue.

* * *

Nine votes made the difference in *Randleman* when voters approved issuance of $501,000 in bonds to build a sewage disposal plant and to extend sewer lines to almost all areas of town. Voters defeated a $22,000 bond issue for extension of water lines into two areas proposed for annexation.

* * *

Voters in the special *Goldston-Gulf* Sanitary District have okayed a $600,000 bond issue for construction of a water pumping station on Deep River, a filtration plant and reservoir, plus a network of water lines. The overwhelming vote tallied 353-5.

* * *

Municipal Buildings

Dunn's new city hall will contain 15,000 square feet at a cost estimated at $200,000. Although it won't contain any luxury features or fancy frills, it will have many badly needed innovations such as a lighted platform for a police line-up, a larger jail and private offices for the mayor, judge, city manager, police chief and other department heads.

* * *

Planning and Zoning

Currituck County embarked on an extensive planning program when county commissioners signed two agreements with the Community Planning Division of the North Carolina Department of Conservation and Development. The first involves a 10 county planning survey, effective with the signatures of the other nine counties. The second agreement is for county development planning.

* * *

Durham Mayor R. Wense Grabarek has been named to the five-man executive committee which will organize a Crescent 2000 Commission. Aim of the commission will be orderly planning for the 20 counties of the Piedmont Crescent during the next 35 years.

* * *

Public Health

Action has been taken in *Winston-Salem* to get equipment for a 200-bed $50,000 Civil Defense Emergency Hospital.

* * *

Chatham County has joined the roster of counties employing the medical examiner system in conjunction with a coroner.

* * *

In *Wilson* a seven-year campaign

for improved medical facilities ended September 1 with the opening of a new $4.5 million 250-bed Wilson County hospital.

* * *

Commissioners in *Catawba* County have approved the appropriation of $402,968.21 in funds for the purchase of Catawba Hospital facilities including a nurses' home, the hospital complex, a maintenance and storage building and an apartment dwelling.

* * *

New quarters have been opened for the *Forsyth* County Health Department: a clinic, administrative offices, nursing and environmental health services.

* * *

Orange County commissioners have passed a quartet of resolutions endorsing and offering financial assistance to the Health Planning Council for Central Carolina. The council was formed to study the medical and health needs of the tri-county area of *Durham*, *Wake*, and Orange.

* * *

Public Housing

Kinston aldermen have withdrawn the city from the proposed King Street Urban Renewal Project. Excessive cost of the project was given as a major reason for the cancellation.

* * *

A poverty-ridden slum in *Cherryville* will vanish when a federal low-rent housing project takes its place by the end of 1965. An estimated 75 units ranging from one to five bedrooms will be built.

* * *

Public Utilities

Burlington has eliminated its public works department through city council action. The shift in authority will place operation of the city's public works facilities more directly under supervision of the city manager.

* * *

Public Welfare

Tyrrell County's commissioners have voted against abolishing the present Tyrrell Welfare Board and transferring duties to the county commissioners. However, they have agreed that commissioners should have a voice in the appointment of county welfare officers and authority to approve local welfare policies.

Population: Two

About a mile north of *Cherryville* is North Carolina's smallest incorporated town — *Dellview*. It's had its share of population ups and downs and things are beginning to look bleak for the 29-year-old village which presently registers a population of two.

Incorporated in 1925 to legalize a war on stray dogs bothering the baby chicks of Tom and Henry Dellinger, Dellview then had a population of eight. The all-time high was 13 but by 1960 the population had dropped to four as Dellview turned in the first complete census count in the state, and perhaps in the nation.

Oblivion seems to be threatening Dellview now since one of its two residents, widow Mrs. Onie Dellinger is visiting out-of-state and may not return, and its second resident, Mrs. Ola Dellinger, 78, is being urged by her family to take up residence elsewhere.

Local government problems are handled in a family manner with Onie Dellinger as mayor and her sister-in-law as town treasurer. Tom, Ola's late husband, had been police chief but never made an arrest in the jail-less village. Onie's late husband Henry had been tax collector—an easy job in a tax-free community. In fact the governmental set-up in Dellview is so simple that no town ordinances exist.

Sanitation

Garbage pickup service in *Wallace* has been speeded up and improved by purchase of a new load packer. Residents are also facilitating the garbage service by using standard covered or closed containers for garbage in sizes not to exceed 35-gallon capacity. On the planning boards is a new sanitary "dispose all" sewage system to further improve sanitation.

* * *

Winston-Salem is now relying exclusively on the use of garbage trains for residential refuse collection. As noted in the February-March issue of *Popular Government*, the system was first tried on January 6 and has expanded to include six packers and 25 trains. The entire refuse fleet, including stand-by equipment, consists of eight packers, 27 tow vehicles and 81 trailers.

City Sanitation Superintendent Glen W. Kilday reports that the system has attracted visitors from 12 states, England, Australia, and Israel and has brought inquiries from municipalities in 23 other states, Canada and Mexico.

* * *

Henderson County commissioners and the county board of health have adopted a new set of regulations for refuse disposal and collection. Incineration and land-fill are the only approved means of disposal included in the ordinance.

* * *

Durham, which along with *Raleigh*, has already adopted *Winston-Salem*'s garbage train plan, is launching a new litter removal program. Aimed at beautification and maintenance of Durham's sidewalks and streets the program comprises a one-man patrol in a motor cart—a kind of motor scooter with an enclosed cab.

* * *

Taxation

Kernersville's controversial off-again, on-again privilege license tax is on again. Licenses range from $10 to $500 for businesses and professions exempt from state taxes.

* * *

October has been set as the launching date for a tax revaluation in *Pasquotank* County.

* * *

Franklin County commissioners have awarded a contract for the revaluation of all property in the county. Work on the massive project is slated to begin September 1 at a cost of $58,000, well under the original $75,000 estimate.

Planning in Britain

(Continued from page 32)

winding London-Fishguard trunk road A. 40, in a rural area about a mile from Brecon in the Brecon Beacons National Park.

"The display had been challenged by the council, and permission was refused on the grounds that the sign was in open country within a national park, was incongruous and injurious in this setting, and tended to be a distraction to traffic.

"The Minister observed that the display was alongside a sloping 'S' bend and near a minor road junction. The sign was visible to approaching drivers for about 160 yards and he formed the opinion that, although great care was undoubtedly needed when negotiating the bend, the display was not a serious source of distraction to traffic, at least in daylight. On the other hand, the site lay in very pleasant countryside, and the sign was seen against a background of trees and fields. The Minister considered that it was quite out of place in this rural setting. A smaller sign painted cream and green and without reflector studs, as had been suggested by the appellant, would, in the Minister's opinion, be no better.

"Appeal dismissed.

"Illuminated Projecting Sign

"An internally-illuminated sign, advertising a brand of cigarettes and measuring about 33 inches by 18 inches was proposed to be displayed on a newsagent's and confectioner's shop at the corner of Middle Street and Boyces Street. It was to be fixed just below the fascia on the Middle Street frontage. In consideration of its being allowed, two small projecting signs were to be removed from this frontage. The area was mainly commercial but several neighbouring buildings were of architectural and historic interest.

"Besides the two advertisements which were to be removed, there were many other signs displayed on the shop. The Minister thought that the illuminated sign under appeal would add to an unsightly clutter of too many badly arranged advertisements on the premises.

"Appeal dismissed."

JOB OPPORTUNITIES

(Ed. Note: As a service to North Carolina governmental units, Popular Government *will carry brief descriptions of vacancies in public employment within North Carolina without charge. Information about vacancies should be submitted by the first of each month for publication in the following month's issue.)*

CHIEF INSPECTOR. Salary: $592-$797. Duties: Responsible for the work of the Inspection Division including building, electrical, minimum housing, and plumbing inspection. Qualifications: Architect or engineer with administrative ability and experience in building construction relative to code and zoning requirements. Apply: Personnel Officer, City of Raleigh, N. C.

PARTY CHIEF. Salary: $410-$513. Duties: Responsible for survey party. Qualifications: Civil engineering degree with experience or four years experience in municipal civil engineering with one or more years of college. Apply: Personnel Officer, City of Burlington, N. C.

PURCHASING AGENT. Salary: $517-$698. Duties: Responsible for the purchase of all municipal materials and supplies. Qualifications: Experience as purchasing agent and some experience in public employment. Apply: Personnel Officer, City of Durham, N. C.

WATER & SEWAGE PLANTS SUPERINTENDENT. Salary: Open. Duties: Responsible for administrative and supervisory work in the operation of municipal water filtration and sewage disposal plants. Qualifications: Degree in sanitary or chemical engineering or chemistry and considerable responsible experience in water purification and sewage disposal. Apply: Personnel Officer, City of Burlington, N. C.

Smithfield Honor Noted Nationally

Smithfield received national recognition at Atlantic City, New Jersey, in the Community Improvement program of the General Federation of Women's Clubs and the Sears-Roebuck Foundation. One of ten finalists in the national competition, Smithfield's entry featured "The Smithfield Plan." Leavenworth, Washington, was the top winner followed by Grafton, West Virginia, and Indianapolis, Indiana. Other $1,000 prize winners with Smithfield were Windsor, California; Elmhurst, Illinois; Camden, Maine; East Concord, New Hampshire; Pawhuska, Oklahoma; and Balmorhea, Texas.

Senator Sam Ervin has mentioned Smithfield citizens' cooperation "in creating and carrying through the Smithfield plan for improving and beautifying their town" before the Senate in Washington. In his opinion North Carolinians are among the world's most skillful in the art of self-government and he cited Smithfield as the latest example in North Carolina's long history of local government—an example of such proportions that it has received well-deserved national recognition.

Green Is Top C&GS Graduate

Philip P. Green, Jr., Assistant Director of the Institute of Government, received the General John J. Pershing Award as "the outstanding graduate" of a five-year course of the U.S. Army Command and General Staff College this summer. He is a lieutenant colonel in the U.S. Army Reserve.

The award, consisting of a large bronze medal, was presented at graduation ceremonies at Fort Leavenworth in August. The presentation was made by Maj. General James E. Frank, Mobilization Designee, Deputy Chief, Office of Reserve Components, Department of the Army, and by Maj. General Harry J. Lemley, Jr., Commandant of the Command and General Staff College. Names of winners of the award are permanently displayed on a plaque in the College.

Green's class consisted of 335 senior U.S. Army Reserve officers from 35 states, the District of Columbia, and three European countries. It was the largest class ever to complete the U.S.A.R. School Associate Command and General Staff Course.

During World War II Green served as a forward observer with an armored field artillery battalion in Europe. His reserve duty since the war has included command of an artillery battalion and service on the division headquarters staff of the 108th Division, whose headquarters is in Charlotte.

Staff Changes

(Continued from page 23)

ous articles, guidebooks and special studies which are in current use. He also taught courses in the University of North Carolina School of Law, School of Social Work, and the School of Public Health. His *North Carolina Cases and Materials on Family Law* (1962) and his brand new *North Carolina Hospital Law* (1964) will serve to illustrate the calibre and utility of his writings.

In 1959 Ligon was awarded the Distinguished Public Health Service award by the North Carolina Public Health Association for his work in the field of Public Health. His work in the field of Public Welfare and with Juvenile Court Judges was equally distinguished. His services during five sessions of the Legislative staff of the Institute, covering the North Carolina General Assembly, and to the State Reorganization Commission and various county and city governments, has been equally distinguished. Some of his other publications include *Public Health in North Carolina, Public Welfare Programs in North Carolina, Guidebook for County Commissioners, A Report on the Juvenile Courts of North Carolina, A Report on the Domestic Relations Courts of North Carolina*, and *Model Regulations for Local Health Departments.*

Clyde L. Ball served for eight years on the Institute staff as an Assistant Director and Professor of Public Law and Administration at the University of North Carolina. Ball's contributions to the cause of better government in North Carolina have been many, including outstanding work in court reform with the Courts Commission and coordination of an extensive Institute report on possible Durham-Durham County Consolidation.

His major contribution, however, has been in the area of legislation. He served with the Institute Legislative staff, covering the General Assembly, every session from 1957-63, and headed the staff in 1961 and 1963. He also taught the course on legislation in the University of North Carolina Law School.

His accomplishments in leadership and example are primarily responsible for the esteem accorded the four Institute legislative publications in recent years. He has been called on for frequent consultation by legislative and other governmental leaders. His series of articles in *Popular Government* relating to Legislative representation and voting patterns (see page 1 ff.) received wide attention as pioneer analyses of the law as interpreted by court decisions and of North Carolina needs and directions in these troublesome fields. His knowledge of State government in all its aspects has been of inestimable assistance to colleagues and officials alike. His wit and prescience will be difficult to replace as he returns to his native Tennessee.

Mrs. Ruth L. Mace has served as research associate at the Institute of Government since 1955. Working with Phil Green and Bob Stipe, she has served in the area of planning. Her writings and consultations in this field have been especially useful. Mrs. Mace's publications include *Municipal-Cost Revenue Research in the United States, Industry and City Government*, and *Housing in North Carolina: A Preliminary Report on Housing Conditions, the Home Construction Industry, Home Financing, and the Use of Federal Aids.*

Her series of articles in *Popular Government* on central business districts, including "Downtown N. C. Scoreboard" (May, 1962) and "Shopping Center Side Effects—Who's Responsibility?" (February-March, 1963), pointed to major North Carolina urban needs and directions. *Guidelines for Business Leaders and City Officials to a New Central Business District*, which she edited, brought together leading perspectives on this vital subject.

Through the years the Institute of Government has lost valuable staff members to important public and private positions. Without exception they have become a source of enrichment to their new environments, interests, colleagues, and friends. The Institute wishes well to these colleagues who are going on to new endeavors, knowing that they will achieve as others including the present Governor of North Carolina, the present General Council for the United States Department of Commerce, and the retiring Dean of the UNC Law School, to name a few, have achieved before them. At the same time, the Institute renews its strength in the return of staff members on leave and the addition of new colleagues.

The Institute In the News

(Continued from page 19)

for the three-day meeting.

C. E. Hinsdale of the Institute, will give a talk on "Court Reorganization Development."

* * *

The Chowan Herald (Edenton), July 16

Meeting in special session the Town Council adopted an ordinance which has for its purpose the establishment of personnel rules and regulations for employees of the Town of Edenton. Councilman Luther Parks, who was assigned the task of submitting a proposal, contacted various towns and the *Institute of Government* and presented the ordinance which, with a few minor changes, was unanimously adopted.

* * *

Asheville *Citizen-Times*, July 19

The 1965 General Assembly will be asked to rewrite all laws dealing with commercial fishing in North Carolina.

Rep. Hugh Ragsdale of Onslow County, chairman of a commercial fishing study committee authorized by the 1963 General Assembly, made the disclosure. He said the *Institute of Government* at Chapel Hill is now in the process of rewriting existing commercial fishing laws. Obsolete and overlapping measures are being deleted and still others are being clarified.

BOND SALES

From May 25, 1964 through July 21, 1964 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 rates are given.

Unit		*Purpose*	*Rate*
Cities:	*Amount*		
Apex	275,000	Sanitary sewer	3.92
Asheville	750,000	Grade separation Public improvement	3.58
Dobson	297,000	Sanitary sewer	3.92
Farmville	375,000	Water, sanitary sewer	3.47
Franklin	250,000	Sanitary sewer	3.65
Highlands	300,000	Water and sewer	3.50
Kelford	65,000	Waterworks	3.50
Kings Mountain	1,000,000	School	3.38
Lewiston	64,000	Waterworks	3.50
Long View	400,000	Water	3.91
Murphy	295,000	Water and sewer	4.03
Newton	650,000	Water, sanitary sewer	3.36
Roper	97,000	Waterworks	3.50
Snow Hill	40,000	Sanitary sewer	3.91
Spruce Pine	478,000	Sanitary sewer	3.50
St. Pauls	180,000	Water, sanitary sewer	3.95
Tarboro	410,000	Fire station, electric system	3.15
Wilmington	1,190,000	Water, sanitary sewer, storm sewer	3.26
County:			
Johnston	150,000	Public Hospital	3.11
Kannapolis Sanitary District	116,000	Fire fighting equipment, District Building bonds	3.78

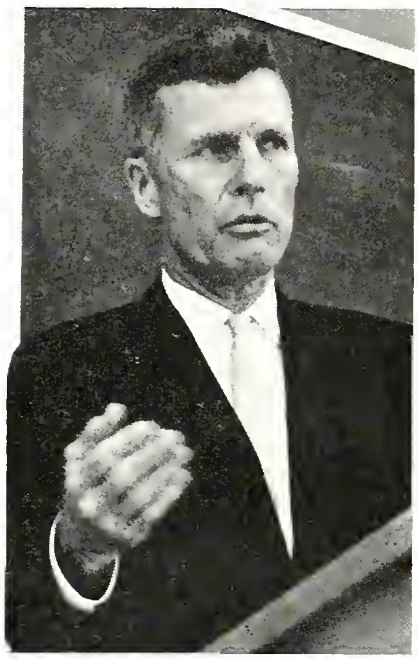
Motion of Vehicle

(Continued from page 15)

manipulated the gears so as to cause the wheels to spin backward and forward in an attempt to extricate the vehicle from a ditch which was located upon the right of way. The Attorney General said that it could be assumed that there was some movement by the automobile resulting from spinning the wheels backward and forward. Implicit in his opinion is that this evidence would be sufficient to withstand a motion for nonsuit and take the case to the jury. Of course, the question of whether there was operation of the automobile would be for the jury and the jury's answer would depend upon the evidence presented in a given case.

In summary, the Court has consistently held that some movement of the automobile must be shown as a prerequisite to a conviction for operating a motor vehicle while under the influence of intoxicants. In *State v. Haddock*, *supra*, it was shown by circumstantial evidence that the vehicle had been driven there within fifteen minutes prior to the arrest and there was no one in the car but the defendant; in *State v. Stephens*, *supra*, it was shown by testimony that defendant sat in the car and spun the wheels, and by testimony of the arresting officer that the defendant admitted driving the car. The factual situation mentioned in the Attorney General's opinion has not been before the Supreme Court. Even so, his position in the matter seems to be in accord with the Court's position in the past that motion of the vehicle is required for a conviction for driving while under the influence; but that it may be shown by circumstantial evidence. If the officer has circumstantial evidence such as appears in the situations discussed, it seems that he would be justified in arresting for driving while under the influence.

INSTITUTE SCHOOLS MEETINGS CONFERENCES



"From a Solicitor's Viewpoint" was 10th District Solicitor Daniel K. Edwards' topic for the Coroner's School.

BOOK REVIEW

GOVERNMENT IN TENNESSEE. By Lee Seifert Greene and Robert Sterling Avery. Knoxville: The University of Tennessee Press, 1962. $6.50.

In this 360-page text the authors, University of Tennessee professors, cover the structure and functioning of Tennessee state and local government. In addition they include a liberal sprinkling of the history, geography, economy and demography of the state as well as an elementary course in political science.

Despite the broad scope of the book, the authors manage to present a rather detailed treatment of the major agencies and functions of state and local government. Some of the detail is unnecessary in a reference

At right, state Superior Court Judges meet at the Institute in June. See page 21 for a full report of the session.

Below is the Coroners School directed by the Institute's Jim Harper for coroners, medical examiners, and law enforcement officers interested in the investigation of homicide. Object of the seminar was to acquaint coroners and law officers with the powers and duties of the medical examiner and the functions of the district pathologist in conducting post mortem examinations.

When the North Carolina Section of the American Institute of Planners met at the Knapp Building in June they heard George M. Stephens, Jr. discuss "The Sanford Administration and Planning." Stephens is a special assistant to the Governor and spoke on development of the Piedmont Crescent and plans for a state planning agency.

text of this type. For example, in the chapter on legislative procedures the daily order of business is set out in detail; and in the chapter on the courts the four possible methods by which cases may reach the Supreme Court are set out. This kind of detail simply does not contribute to an understanding of the structure or functioning of these two governmental institutions, any more than a description of bookkeeping methods contributes to an understanding of the state budget system.

The book should be interesting to North Carolina citizens and governmental officials as a comparison and contrast with North Carolina government. By and large, North Carolina benefits from the comparison.

THIS MONTH AT THE INSTITUTE

To better inform interested officials and the public of coming events at the Institute of Government, Popular Government *begins in this issue a monthly calendar of events scheduled to be held at the Knapp Building.*

International Association of Auto Theft Investigation Conference	August 30-September 3
Probation Officers Seminar	August 31-September 3
Public Welfare Directors Seminar—Group D	September 3-4
American Association of Motor Vehicle Administrators Seminar	September 8-18
School of Public Health—Foreign Students Seminar	September 9
North Carolina Public Librarians Workshop	September 9-11
Public Welfare Administrators—Group II	September 9-11
Probation Officers Seminar	September 14-16
Public Welfare Supervisors Seminar—Group II	September 17-18
Public Welfare Supervisors Seminar—Group III	September 23-25
Assistant Probation Officers Seminar	September 28-30
A. B. C. Officers	September 28-October 2
Public Welfare Directors Seminar—Group D	September 30-October 2

THE ATTORNEY GENERAL RULES

Employment Security Commission; Clerks of Court; Fees; Docketing E.S.C. Certificates; Statutory Construction.

Chapter 288 of the Session Laws of 1945 creates a uniform rule as to a Clerk's fee for the docketing of an E.S.C. certificate in all 100 counties of the state. The general authority granted by Chapter 333 of the Session Laws of 1955 to County Commissioners to set Clerk's fees must yield to this specific rule.

2 April/Overton

* * *

Justice of the Peace; Maintaining Office in Township Other Than in Which Elected; Jurisdiction.

Under G.S. 7-115, as read in context with the other portions of Chapter 7, Article 14, a resident of one township cannot be appointed as a Justice of the Peace for another township. A Justice of the Peace appointed for one township cannot establish an office and try cases in another township. A Justice of the Peace cannot be appointed in the county at large (not being assigned to any township) for the purpose of trying cases throughout the county. See 3 March/Croft and 28 February/Downs.

7 April/Carr

* * *

Justices of the Peace; Jurisdiction; Claim and Delivery.

The 1963 amendment to G.S. 7-122 raised the jurisdiction of Justices of the Peace to $200 in claim and delivery actions if the parties are in a vendor-vendee relationship. Depending on the terms of the contract, where property has been repossessed in a claim and delivery action such repossession does not return the title to the vendor for his own use, but solely for the purpose of sale, and the vendor may recover the deficiency after applying the proceeds of the sale to the purchase price. See *Noville v. Dew*, 94 N.C. 44, and *Mitchell v. Battle*, 231 N.C. 68.

13 April/Alderhold

* * *

Justices of the Peace; Attachment; Jurisdiction.

By the procedures outlined in G.S. 1-440.47 to -440.56 and 7-149, Rule 19, a Justice of the Peace may issue an attachment against an automobile involved in an accident but belonging to a non-resident. However, the amount of recovery is limited to $50.

30 April/Hodges

* * *

Guardians; Guardianships; Ancillary; Clerk of Superior Court; Power To Appoint Non-resident.

G.S. 33-6 empowers a Probate Court (Clerk of Superior Court) to appoint a non-resident person as an ancillary guardian and guardian of the property lying in the county. The non-residence of the guardian is not in itself a basis for refusing to confirm the sale of guardianship property. See *In Re Hall*, 235 N.C. 697, 704.

3 April/Jarrett

* * *

Clerks of Superior Court; Elections; Term of Office; Filing Fee; Vacancy.

A person elected at a general election to fill the unexpired term of a Clerk of Superior Court will hold office for the remainder of the unexpired term and not for a full term. An earlier ruling, 29 January 1958 Osborn, pointed out that the provisions in the General Statutes and the North Carolina Constitution requiring the election of the CSC for a four year term at the time and in the manner for election of General Assembly members meant that a person elected to fill a vacancy was only to hold office for the unexpired term. These pertinent provisions have been incorporated into the new judicial article of the North Carolina Constitution. Art. IV §7(3).]

4 May 1964/Huggins

* * *

Recorder's Courts; Justice of the Peace Courts; Appeal From Justice Court.

In counties where there is a recorder's court created and operated under the General Statutes, appeals from the justice of the peace courts shall go to the recorder's court and not directly to the superior court. G.S. 7-177; G.S. 7-243; State v. Baldwin, 205 N.C. 174.

1 May 1964/Moore

* * *

Dual Office Holding: U. S. Commissioner and Justice of the Peace.

U.S. Commissioner and Justice of the Peace are both offices or places of trust or profit under the United States and the State respectively within the meaning of N.C. Const. art. XIV, sec. 7, as amended 30 November 1962. Justices of the Peace are, by this amendment, no longer excepted from the constitutional prohibition against dual office holding. If a person is elected Justice of the Peace while a U.S. Commissioner, he must take steps to remove himself from one of the two offices.

20 April/Rothrock

Staff Changes

(Continued from page 23)

Some evidences of this year's enrichment already have begun to appear in the pages of this magazine, as those readers who have enjoyed Green's series on *Planning in Great Britain* and Heath's recent article on *Water Resources Law* will attest. The return of these three Assistant Directors is an occasion for homecoming and welcome both for the Institute and those it serves.

Editor's Perspective: NACO Report *(Continued from page 20)*

County Commissioners, presided over some meetings and was a panel member on others. Ben Haigh, chairman of the Wake County Commissioners, presided and Howard E. Manning, chairman of the N. C. State Board of Public Welfare, spoke on "State-County Welfare Relations." Fred Parker, Wayne County Attorney, moderated a session on "Libel and the Public Official." President Stella H. Spencer, Caldwell County treasurer, presided over the program of the affiliated National Association of County Treasurers and Finance Officers, and president J. Harry Weatherly, Mecklenburg county manager, presided over the program of the National Association of County Administrators. (Both were elected to the NACO board of directors.) Rowan County accountant Wayne G. Simpson, presided at the "Tar Heel" breakfast sponsored by the N. C. Association of County Accountants. And when the first annual merit awards were passed out, Alex McMahon, Harry Weatherly, and Stella Spencer all were honored. No other state had more than one president of an affiliated organization or more than one winner of a national merit award. Congratulations are in order for these officials. We would be remiss if we did not note the compliment implicit in these awards to the over-all calibre of Tar Heel county officials, many of whom attended the Washington meeting. We like to think that their association with the Institute of Government may have played some role in the leadership and recognition of North Carolina officials in their national organizations.

Still, there is no reason for complacency. In saluting NACO and our own officials for the general excellence of the "County Information Congress," we might note certain apparent shortcomings and challenges. The limited attendance at some meetings and workshops suggests that an uncomfortably large percentage of county officials have less interest in their potential substantive gain as officials from these meetings than in the fun aspects of such occasions. Although no foolproof system of sticks or carrots has been devised to make officials more conscientious, the Association would do well to consider ways of encouraging those who go to San Diego next year to take full advantage of workshops and meetings in which they have so great an opportunity to grow and enrich their quality as public officials.

Some subjects for workshop presentation could stand more careful wording. For example, the title "Sounding Off—The Press and the Public Officials Confronting Each Other" sets a tone of confrontation and antagonism. In the press-government seminars we have begun here at the Institute, an approach of encouragement in a quest for mutual perspective and understanding has been used. Results to date indicate it is a sound approach, more conducive to progress than "confrontation."

It might also not be amiss to suggest to NACO that, having opened Pandora's box in dealing with problems of public information and communication and of split-level government, it should be sure to keep it open. The benefits to be derived from continuous study and evaluation of complex problems depend in part upon continuity and growth of program.

The rapidity and eagerness with which copies of *Popular Government*, placed on the NACO display table, were gobbled up—and the list of names and addresses of public officials and newsmen from all over the country who requested that copies of the magazine be sent to their offices—indicates a hunger to know more about such matters as press-governmental relations, the "war on poverty" (one of our issues dealt with the North Carolina Fund), and the whole spectrum of government.

Finally, it would be ungrateful not to note the color and special moments of hospitality at the NACO "County Information Congress." At a White House garden party county officials and their families had an opportunity to hear, shake hands with and speak to President Johnson, Lady Bird, Lynda Bird and a bevy of cabinet members, including Secretary of State Rusk and Secretary of Defense McNamara. The address by President Johnson, standing before the Marine Band on the White House lawn platform, and the related election year addresses on the previous day by Senator Goldwater and the subsequent day by Senator Humphrey will bring personal recollections for the rest of many lives. And then there was the reception given by the North Carolina Congressional delegation for Tar Heel officials.

Two personal experiences stick in our memory: One, the gay response of Lynda Bird to our comment that we have two sons about her age and that she should let us know the next time she is coming to North Carolina. The President's daughter responded: "Sounds good to me! I'll be there next week!" Two, an unexpected chat with Senator Hubert Humphrey (in a men's washroom following his address) in which the senior Senator from Minnesota expressed his great admiration for the University of North Carolina and remarked that he had hoped his son, a political science major, would attend Chapel Hill. We noted that one of our sons, also a political science major, had just graduated from UNC, was working this summer as a State governmental intern, and was bound for the University of California and graduate study this fall. So, even in personal experiences, the wheel came full cycle. The interrelationship of all government and all people shone brightly through the prisms, spreading shafts of light and reflecting from and upon a most constructive occasion, proving again that government is not fixed and static but a dynamic process, requiring continuing study and evaluation, exchange and involvement, leadership and learning.

—*Elmer Oettinger*

Credits: Cover photograph by Robert Stipe; photographs on pages 9-11 by Billy E. Barnes; all other photographs by Charles Nakamura. Layout by Lynn Deal.

GOOD REHEARSAL. YOU'VE TEN MINUTES OFF. IT'S CAMEL TIME RIGHT NOW.

Camel Time is pleasure time!

Time for easygoing taste...honest enjoyment ...choice quality tobaccos. Moments seem to brighten up every time you light one up. Make it Camel Time right now!

THE BEST TOBACCO MAKES THE BEST SMOKE!