POPULAR GOVERNMENT

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Extra General Assembly Session Amends Speaker Law

Policy Making Roles of Mayors, Managers and Councilmen

Transporting Intoxicating Liquors

The District Court Magistrate

1965 Changes: Fish, Game and Boat Laws

Minimum Standards for Police Training

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On this month's cover, the Speaker Ban Study Commission hears a witness. From left to right are Sen. Gordon Hanes; Mrs. Elizabeth G. Swindell, publisher, Wilson Daily Times; *Sen. J. Russell Kirby; Rep. A. A. Zollicoffer, Jr.; Rep. David M. Britt, chairman; Raleigh attorney William T. Joyner; Rep. Lacy H. Thornburg; and Rev. Ben C. Fisher. Not shown is Charles F. Myers, president, Burlington Industries.*

Extra Session of General Assembly Amends Speaker Act

The General Assembly, meeting in extra session on November 15-17, amended the State's visiting speakers statute to restore to the respective boards of trustees of the state institutions of higher education authority to regulate the use of the facilities of their institutions for speaking purposes.

The statute being admended, G.S. 116-199 and 200, was originally enacted in 1963. It prohibited the state-supported colleges and University from permitting the use of their facilities for speaking purposes by any person who:

"(1) Is a known member of the Communist Party;

"(2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;

"(3) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to Communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state."

Extensive and sustained controversy arose as to the merits of this statute. The Commission on Colleges of the Southern Association of Colleges and Schools, Inc. (the agency which accredits institutions of higher education in North Carolina and the region), took note of the statute as a possible impairment of the authority of the trustees to govern the internal affairs of the institutions, and this led to considerable apprehension that accreditation of all of the state-supported institutions might be lost due to the statute.

In order to find the facts and propose a solution to the problems arising from the Speaker Ban Act, the Gen-

THE AMENDED LAW

The only major bill introduced and passed by the 1965 Special Session of the North Carolina General Assembly was, as its title indicated, "an Act to Amend the Law Relating to Visiting Speakers at State-supported Institutions and to Vest the Administration and Regulatory Power of Said Law in the Board of Trustees of the Various State-supported Institutions."

The legislation as drafted, however, was stated in the familiar terms of "striking out" and "inserting" certain lines and words. Accordingly, to find the substance of the change one has to match the printed bill opposite the unamended 1963 'Ban' Law. Few are apt to take the time and trouble to do this.

Here, then, is published the amended law as it exists today. The footnotes below show the changed wording and additional provisions. The revised statute reads as follows:

G.S. Ch. 116 Educational Institutions Article 22

Visiting Speakers at State Supported Institutions

§ 116-199. *Use of facilities for speaking purposes.*—The board of trustees of each college or university which receives any State funds in support thereof, shall adopt and publish regulations governing the use of facilities of such college or university for speaking purposes by any person who:[1]

(1) Is a known member of the Communist Party;

(2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;

(3) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to Communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state. (1963, c. 1207, s. 1; 1965 Extra Session, c. 1, s. 1.)

§ 116-200. *Enforcement of article.*—Any such regulations[2] shall be enforced by the board of trustees, or other governing authority, of such college or university, or by such administrative personnel as may be appointed therefor by the board of trustees or other governing authority of such college or university. (1963, c. 1207, s. 2; 1965 Extra Session, c. 1, s. 2.)[3]

1. The 1965 amendment rewrote all that part of § 116-199 appearing before the colon. That part formerly read as follows: "*Certain speakers forbidden to use facilities.*—No college or university, which receives any State funds in support thereof, shall permit any person to use the facilities of such college or university for speaking purposes, who:".

2. The 1965 amendment substituted "Any such regulations" for "This article" at the beginning of § 116-200.

3. Section 3 of the amendatory act provides: "Neither the provisions of this Act nor the provisions of Article 22 of Chapter 116 as the same appear in the 1963 Cumulative Supplement of the General Statutes, shall repeal or be construed to repeal any provision of Article 4 of Chapter 14 of the General Statutes." (This section is designed to make certain that 1941 legislation making specified "subversive activities" punishable as felonies under State law remains in full force and effect. These activities include, among others, the oral, written, or printed advocacy or teaching of "the doctrine that the government of the United States or a political subdivision of the United States should be overthrown by force, violence or any unlawful means." Under this 24 year old law persons who are or have engaged in described "subversive activities" are barred from State employment, or if already employed by the State, are required to be "forthwith discharged.")

TRUSTEES' POLICY STATEMENT

The policy statement regarding visiting speakers which was adopted by the Boards of Trustees of the 11 North Carolina State-supported institutions of higher learning appears verbatim below. This policy statement was drafted by the Britt Commission and included in its report. It was "recommended" for Trustee adoption prior to the Special Session by both the Commission and Governor Moore.

"The Trustees recognize that this Institution, and every part thereof, is owned by the people of North Carolina; that it is operated by duly selected representatives and personnel for the benefit of the people of our state.

"The Trustees of this Institution are unalterably opposed to communism and any other ideology or form of government which has as its goal the destruction of our basic democratic institutions.

"We recognize the the total program of a college or university is committed to an orderly process of inquiry and discussion, ethical and moral excellence, objective instruction, and respect for law. An essential part of the education of each student at this Institution is the opportunity to hear diverse viewpoints expressed by speakers properly invited to the campus. It is highly desirable that students have the opportunity to question, review and discuss the opinions of speakers representing a wide range of viewpoints.

"It is vital to our success in supporting our free society against all forms of totalitarianism that institutions remain free to examine these ideologies to any extent that will serve the educational purposes of our institutions and not the purposes of the enemies of our free society.

"We feel that the appearance as a visiting speaker on our campus of one who was prohibited under Chapter 1207 of the 1963 Session Laws (The Speaker Ban Law) or who advocates any ideology or form of government which is wholly alien to our basic democratic institutions should be infrequent and then only when it would clearly serve the advantage of education; and on such rare occasions reasonable and proper care should be exercised by the institution. The campuses shall not be exploited as convenient outlets of discord and strife.

"We therefore provide that we the Trustees together with the administration of this Institution shall be held responsible and accountable for visiting speakers on our campuses. And to that end the administration will adopt rules and precautionary measures consistent with the policy herein set forth regarding the invitations to and appearance of visiting speakers. These rules and precautionary measures shall be subject to the approval of the Trustees."

eral Assembly in its regular 1965 session, acting on Governor Dan K. Moore's request, created a nine-member Commission on the Study of the Statutes Relating to Visiting Speakers at State Supported Educational Insitutions. Representative David M. Britt of Robeson County was chosen as Commission Chairman.

After two series of public hearings and further deliberation, the Commission on November 5 issued a report recommending:

(1) That G.S. 116-199 and 200 (the Visiting Speakers Act) be amended so as to eliminate the ban contained in the 1963 text, and instead to vest in the respective boards of trustees of the state University and colleges the authority and responsibility for adopting rules and precautionary measures with respect to the use of their respective campuses for speaking purposes by persons covered by the 1963 legislation.

(2) That the several boards of trustees adopt a statement of policy drafted by the Commission with respect to speakers. (See the text of this statement printed with this article.)

(3) That the Governor call an extra session of the General Assembly to enact the statutory amendment proposed by the Commission, provided the boards of trustees adopted the recommended speaker policy statement.

In swift order, the Governor endorsed the Commission's recommendations and issued the call for the special session, and all of the boards of trustees adopted the proposed policy statement. The General Assembly met on November 15 and voted to limit its business to the Speaker Act amendment. After public hearings on the Commission-recommended bill and the adoption of a change which clarified the responsibility of the boards of trustees for its enforcement, the General Assembly adopted the measure. (See the text of the act, printed with this article.) The final vote for the act in the House of Representatives was 75 to 39 and in the Senate, 36 to 13. The act took effect upon its ratification on November 17.

Next Issue: Legislative Reapportionment

Our February issue will bring up to date the story on North Carolina's reapportionment. The results of the special session of the North Carolina General Assembly called to convene January 10, 1966, will be analyzed. Governor Dan K. Moore has summoned the General Assembly into special session for the second time in two months as a result of the United States District Court decision in *Drum v. Seawell* requiring that the State's House, Senate, and congressional districts be reapportioned by January 31, 1966, in the interests of equitable legislative representation. Other articles in the issue will consider measuring the internal effectiveness of police organizations, the collection of taxes from a closely-held corporation that has ceased doing business, and bonding of municipal employees.

Governor Addresses Annual Conference of Superior Court Judges

About 40 judges attended the Annual Conference of Superior Court Judges held at the Institute of Government October 22-23. Governor Dan K. Moore, himself a superior court judge for ten years, was guest of honor and gave the principal address at the annual dinner at the Carolina Inn on Friday evening. The Governor reminisced with many longstanding friends of the bench, and expressed his satisfaction and confidence in the caliber of justice and judicial leadership being demonstrated by the superior court judges. He also expressed strong approval of the then-impending Court of Appeal amendment to the Constitution, adopted November 2 by a vote of over three-to-one.

On the 23rd, the Judges heard a panel discussion on the Judicial Department Act of 1965, presided over by former-Judge J. Frank Huskins, now Director of the Administrative Office of the Courts. Also participating in the panel were Judges C. W. Hall and James C. Farthing, and Assistant Director of the Administrative Office, Bert Montague.

In a business session were discussed various professional reports presented by committee chairmen and plans for the third annual Judicial Seminar to be held in connection with the North Carolina Bar Association convention in June at Myrtle Beach. The sessions ended with a buffet luncheon at the Institute just prior to kick-off for the Carolina-Georgia game.

Elected President for the coming year was Judge George Fountain, of Tarboro. Judge Rudolph Mintz was elected Vice-President, Judge Raymond Mallard President-elect, and Judge Eugene Shaw was re-elected Secretary-Treasurer.

Governor Moore makes the keynote address at the judges conference banquet.

Appearing in a panel discussion of the Judicial Department Act of 1965 were, left to right, Judge C. W. Hall; Judge James C. Farthing; Director of the Administrative Office of the Courts, J. Frank Huskins; and Bert M. Montague, assistant director of the office.

Above are some of the judges in attendance at the annual conference.

The Roles of North Carolina Managers, Mayors and Councilmen in Policy Making

By B. James Kweder

[*Editor's Note: The author is a research assistant at the Institute of Government. This article is adapted from his study of council-manager government prepared for the Institute.*]

Early in 1963 the Institute of Government undertook a study of policy making in North Carolina council-manager cities. The mayors and councilmen in 21 cities and most of the managers in the state cooperated with the Institute in providing information about the roles each played in the policy-making process.[1] The results of that study have been compiled and the major findings are summarized in this article.

Council-manager government has spread rapidly across the nation. Of all cities in the United States with populations over 5,000 in 1940, only 17 per cent had the council-manager form of government. Today, council-manager government is found in 40 per cent of all cities over 5,000 population.

North Carolina has been a leader in adopting the council-manager plan. Over 83 per cent of the cities of 5,000 and more population have adopted the plan, and all but one city of 10,000 or more population has council-manager government. The data is summarized in Table 1.

Despite the tremendous growth and general popularity of the council-manager plan, however, relatively little attention has been devoted to examining the plan in operation. Particularly neglected have been the roles of the manager, mayor, and councilmen in formulating policy.

The purpose of the North Carolina study was to secure information about what the managers, mayors, and councilmen did and how they interacted with each other during the initiation, evaluation, and implementation of policy proposals. In other words, what were the roles of the manager, mayor, and councilmen in the policy-making process?

The structure of council-manager government varies considerably across the state and differences in structure can affect the roles of the participants. Therefore, in selecting the 21 cities in which mayors and councilmen were interviewed, several factors were taken into account. Table 2 indicates the cities included in the study and the factors considered in choosing them.

Initiating Policy Proposals

The study of North Carolina cities indicates that the city manager plays a key role in and is frequently the focal point of the policy-making process. That conclusion should come as no surprise to any manager, nor to most mayors and councilmen. However, it does contradict a popular myth which asserts that policy making is the exclusive duty of the council. ICMA conventions have frequently heard sharp exchanges over the question of whether the manager should or should not participate in policy-making. This study cannot provide an answer to the ethical problem posed by the question, but it does offer some substantial evidence in support of the contention that most managers do play a significant policy-making role.

The manager's involvement in the policy-making process often begins at the request of a councilman before a problem is yet crystallized into a policy proposal. For example, mayors and councilmen were asked about what they did when someone in the public asked for their help in having a service performed such as repairing a street, installing a traffic light, or something similar. Most of the mayors and councilmen in 17 of the 21 sample cities, and 74 per cent overall, said that they would refer the request to the manager or a department head. The position of most mayors and councilmen is that many problems should initially be referred to the manager for his determination of whether the matter is one which requires council action. In effect, the manager is asked to decide what is a policy matter to be resolved by the council and what is an administrative matter which he and his department heads can handle themselves.

There are some major exceptions to this general rule, however. Less experienced managers are less likely to be trusted with the determination of

TABLE 1. Number and per cent of North Carolina council-manager cities, 1965[a]

Population Group	Total Cities	Council-Manager Cities	
		Number	Per Cent of Total
Over 100,000	3	3	100.0
50,000-100,000	4	4	100.0
25,000-50,000	7	7	100.0
10,000-25,000	21	20	95.2
5,000-10,000	26	17	65.4
Total	61	51	83.6

a. Figures compiled from the files of the Institute of Government and from: U. S. Department of Commerce, Bureau of the Census, *Census of Governments: 1962*, Vol. I, *Governmental Organization* (Washington: U. S. Government Printing Office).

1. A great debt of gratitude is owed the 56 managers, 19 mayors, and 100 councilmen who patiently and considerately provided the information which made this study possible.

TABLE 2. Cities included in the study showing selected characteristics, 1963

City	Population	Year Plan in Effect	Size of Board (Including Mayor if Appointed)	Selection of Mayor	Election of Board	Type of Election
Winston-Salem	111,135	1948	8 members	Elect	Wards	Partisan
Raleigh	93,931	1947	7 members	Appt.	At large	Nonpart.
Durham	78,302	1921	12 members	Elect	Mixed	Nonpart.
Asheville	60,192	1931	7 members	Appt.	At large	Partisan
Wilson	28,753	1933	6 members	Elect	At large	Nonpart.
Salisbury	21,297	1927	5 members	Appt.	At large	Partisan
Hickory	19,328	1913	6 members	Elect	Wards	Nonpart.
New Bern	15,717	1947	5 members	Elect	W-A-L-	Nonpart.
Lumberton	15,305	1949	6 members	Elect	W-A-L	Partisan
Chapel Hill	12,573	1922	6 members	Elect	At large	Nonpart.
Sanford	12,253	1949	7 members	Elect	W-A-L	Nonpart.
Washington	9,939	1952	5 members	Appt.	At large	Partisan
Morganton	9,186	1913	4 members	Elect	Wards	Nonpart.
Graham	7,723	1955	5 members	Appt.	At large	Nonpart.
Mount Airy	7,055	1961	5 members	Elect	Mixed	Nonpart.
Roxboro	5,147	1928	5 members	Elect	Mixed	Nonpart.
Whiteville	4,683	1947	4 members	Elect	At large	Nonpart.
Ahoskie	4,583	1957	5 members	Elect	At large	Nonpart.
Mount Holly	4,037	1958	4 members	Elect	At large	Nonpart.
Wadesboro	3,744	1957	5 members	Elect	At large	Nonpart.
Ayden	3,108	1959	5 members	Elect	W-A-L	Nonpart.

NOTE: *W-A-L* means nominated by wards and elected at large. *Mixed* means that some councilmen are elected at large and the remainder are either elected by wards or nominated by wards and elected at large.

what constitutes an administrative matter than are veteran managers. Only 58 per cent of the mayors and councilmen in cities where the manager had been in his job for less than two years said that they would pass on a request for service to the manager or a department head. Seventy-one per cent of the mayors and councilmen in cities where the managers had two or three years' experience, and 88 per cent in cities where the manager had been on the job for four years or more indicated they would pass requests for service to the manger or department head.

In cities where the manager is inexperienced and there are relatively strong committees, the exception is even more pronounced. In four of the sample cities where the manager had been on the job for less than four years, a fairly strong committee system was in existence. Fifty-two per cent of the mayors and councilmen in those four cities indicated that they would go directly to the council or one of its committees with a request for service.

Undoubtedly, further exceptions might have been uncovered in a more detailed study. But general sentiment on this question was summed up by 74 per cent of the councilmen and all but one of the mayors. They agreed that under council-manager government the council should set broad policies and let the manager decide upon specific matters covered by policies. Only under unusual circumstances which could not easily be predicted beforehand would most mayors and councilmen bypass the manager on a service request.

On personnel matters, mayors and councilmen want the manager to handle problems without involving them. Only seven per cent said that they would go directly to the council with an employee's request for help in changing jobs, getting a pay raise, or something similar. Seventy per cent avowed that they would never bring a matter like that before the council regardless of circumstances.

It is clear, then, that most mayors and councilmen draw a distinct line which excludes a large number of matters they do not consider policy questions deserving their immediate attention. The manager is given considerable flexibility and responsibility for determining what matters should be brought to the council as policy proposals.

Among those questions which the council is eventually pressed to resolve, the majority are raised by the manager. Seventy-nine per cent of all the managers, mayors, and councilmen interviewed and majorities in 19 of the 21 sample cities reported that the manager was more active than individual councilmen in proposing new policies and programs.

Mayors are more active than councilmen in proposing new policies and programs although they do not appear to match the managers' influence at this stage of the policy-making process. Fifty-six per cent of the managers, mayors, and councilmen in the sample cities and half or more in each of 16 cities reported that the mayor was more active than individual councilmen. However, when examined on a city by city basis, it is quite clear that the manager in most of the sample cities proposed more policies than any other person in the city government.

The information gathered corresponds with the finding of Gladys Kammerer and her associates in Florida where, in over 75 per cent of the cases studied, "the manager was identified as of special importance in policy initiation, either alone or in combination with the council and/or the mayor." The mayor was so identified in only one-third of the cases.[2]

2. Gladys M. Kammerer and John M. DeGrove, *Florida City Managers: Profile and Tenure* (Gainesville: Public Administration Clearing Service of the University of Florida, 1961), pp. 12-13.

When the manager does approach the council on a problem, in 20 of the 21 sample cities it was reported that he presents the council with facts and with his judgment of the probable consequences of different courses of action. In 14 cities it was further stated that the manager also suggests the course of action he thinks the council should follow. In the cities where the manager did not generally volunteer a recommendation, he was usually asked for one. In fact, one of the few complaints voiced against managers came from a councilman who lamented: "Our biggest problem is trying to get the manager to tell us what he thinks."

It is obvious, then, that not only is the manager an important participant in the policy-making process, but that he is very frequently cast in the role of policy initiator.

Evaluating Proposals and Making Policy Decisions

In addition to his participation in the initiation of policy, the manager is also deeply involved in the evaluation of policy proposals. A majority of the managers, mayors, and councilmen in all but two of the sample cities indicated that the manager's opinion was more influential than any other person's when a policy decision was made. Overall, 80 per cent of the councilmen and 84 per cent of the mayors held that opinion. Modesty or underestimation may have kept the degree of agreement among managers at 67 per cent.

Much of the manager's leadership in the evaluation and selection of policy positions follows from his role of major policy initiator. He is the one who most often brings a matter to the council for resolution by a policy decision.

But the manager's influence over the evaluation of policy is further enhanced by the fact that he plays the critical role of uncertainty absorber. As has already been noted, when the manager approaches the council he comes armed with facts and information about the possible consequences of different courses of action. In many cases he makes, or is prepared to make, a recommendation. This is true whether the manager is coming to the council for the first time about a matter or whether he is reporting back to the council about something which has been referred to him for study. In either case, what the manager communicates to the council are certain inferences he has drawn from his examination of the facts instead of all the evidence itself.[3]

Uncertainty absorption is expected of the manager. In fact, the council demands it of him in the interest of time and efficiency. One major advantage of the council-manager plan is that it relieves the busy, elected citizen-officials of the tedious fact gathering involved in policy making and puts it in the care of a professional manager. But that means that the council is seriously disadvantaged in trying to assert a point of view independent of the manager's:

> Through the process of uncertainty absorption, the recipient of a communication is severely limited in his ability to judge its correctness. Although there may be various tests of apparent validity, internal consistency, and consistency with other communications, the recipient must, by and large, repose his confidence in the editing process that has taken place, and, if he accepts the communication at all, accept it pretty much as it stands. To the extent that he can interpret it, his interpretation must be based primarily on his confidence in the source and his knowledge of the biases to which the source is subject, rather than on direct examination of the evidence.[4]

Playing the role of uncertainty absorber places a heavy burden of responsibility upon the manager, both to be accurate and impartial in drawing inferences, and to conduct himself in a manner which will win the respect and confidence of elected officials. Apparently most managers are successful at the task because we found virtually no resentment of any kind against the degree of influence wielded by the manager in the evaluation of policy. Eighty-four per cent of the mayors and 85 per cent of the councilmen reject the notion that the manager is too much involved in policy-making or has too much authority.

Managers are able to gain and hold the confidence of their councils in a variety of ways, several of which were revealed by our study. In the first place, most managers do not dabble in politics. Fifty-nine per cent of the councilmen and a majority of those interviewed in 13 cities agreed that the manager could hurt a councilman's chances of re-election if he wanted to do so. But councilmen were unanimous in their opinion that their managers had never tried to influence the outcome of an election.

Perhaps the biggest factor in the manager's securing the confidence of elected officials is his loyalty to the council. Sixty-one per cent of the councilmen and 79 per cent of the mayors believed that the manager felt that his responsibility was to the council rather than to the public. Ninety per cent of the managers agreed. Moreover, all of the managers, 79 per cent of the mayors, and 84 per cent of the councilmen felt that the manager gave the council credit for all policies which prove to be popular. Most of the managers and mayors went so far as to say that the manager usually takes the blame for unpopular policies, but most councilmen could not accept that contention.

Finally, the way that the managers go about implementing a policy decision is designed to demonstrate firm loyalty which inspires confidence in return. A third of the managers and mayors, and 27 per cent of the councilmen believe that the manager could find a way to ignore a council decision if he wanted to do so. Nevertheless, only three out of 100 councilmen claimed that the manager did not carry out the policy decisions of the council to the best of his ability, even when he disagreed with those policies.

The ability to acquire and maintain the confidence of elected officials enables the manager to perform the role of uncertainty absorber and, in turn, to share significantly in the evaluation of policy proposals. Combined with his role as major policy initiator, this generally makes the manager the most influential of the participants in the policy-making process in council-manager cities.

The Mayor and Policy Making

Critics of council-manager government have frequently attacked the policy leadership of the manager as a serious handicap to democratic government because the manager is not an elected official. Ridley found that, "virtually every manager would welcome more active participation by [the] council in initiating and pro-

3. James G. March and Herbert A. Simon, *Organizations* (New York: John Wiley and Sons, 1958), p. 165.
4. *Ibid.*

moting policy matters."[5] But, if it is assumed that policy leadership should necessarily or desirably come from one person, then most critics urge that the mayor act as the policy-making leader.

Many mayors do play an important role in the policy-making process. We have already noted that mayors are frequently more active than individual councilmen in proposing new policies and programs. Thus, the mayor does play a strong supporting role in many cities as a policy initiator. Furthermore, in 12 of the 21 sample cities half or more of the managers, mayors, and councilmen agreed that the mayor's opinion carried more weight in council discussion of policy than did any other council member's opinion.

While the manager's influence over the evaluation of policy is unaffected by variations in the structure of the government—the manager's opinion is more influential than any other person's in policy discussions in all but two of the sample cities—several factors summarized in Table 3 appear to have some bearing on whether the mayor is more influential than councilmen.

One interesting finding is that the length of time that the manager has been in office seems to increase the influence of the mayor more than the length of time that the mayor has been in office.

A more important correlation, however, is that between the mayor's influence and the way in which councilmen are elected. Three out of every five persons interviewed in cities where councilmen are elected by wards said that the mayor had more influence than councilmen, but less than a majority agreed in cities where councilmen are elected at large. It would appear, then, that at-large elections of councilmen may tend to prevent the mayor from being more of a policy leader. However, if all members of the governing board are elected at large, the mayor may exert greater policy leadership if he is appointed to his position instead of being directly elected.

The mayor's image as a political leader tends to increase his leadership role in policy making, and his image as a ceremonial figure tends to limit his role in policy making. For example, in fourteen of the twenty-one sample cities a majority of those interviewed indicated that they thought the mayor was more of a political figure than were other members of the governing body. Fifty-one per cent of the people interviewed in these same cities agreed that the mayor's opinion carries more weight than councilmen's, while in the other seven cities only 37 per cent agreed. Part of the explanation of this phenomenon may lie in a "political" mayor's ability to arouse public support for his side in a controversy. In the same fourteen cities 51 per cent of those interviewed said that the mayor was able to arouse support better than councilmen and only 30 per cent agreed in the other seven cities.

Perhaps one of the severest limitations on the mayor's ability to exercise greater policy leadership is his image as a ceremonial figure. Most of the councilmen in eighteen cities asserted that the main difference between the mayor and councilmen was that the mayor had many ceremonial duties to perform, and majorities in fifteen cities said that the mayor spent as much time on public relations as on anything else.

Acting as the ceremonial head of government is definitely part of the mayor's role, but if the vast majority of councilmen regard the mayor as being primarily a greeter of visitors and a ribbon cutter it is easy to understand why many of them would resist his asserting a greater policy-making role.

The role of the mayor in council-manager government seems to be subject to several influences. Structural characteristics, particularly the way the mayor is chosen in relation to councilmen, have some bearing on the role he plays, as do other, intangible factors. It might be most accurate to say that the mayor's role in policy-making is uncertain and ill-defined. All mayors are required to play the role of ceremonial head of government, but some have managed to play important roles as initiators and evaluators of policy proposals as well.

TABLE 3. Per cent of respondents in cities with certain characteristics agreeing to the statement: The mayor's opinion carries more weight in council discussion of policy than other council members' opinions

Characteristic of the City	Per Cent of Respondents Agreeing
Manager in office 10 years or longer	73
Manager in office 2 to 9 years	46
Manager in office less than 2 years	33
Councilmen nominated or elected by wards	63
Councilman elected at large	45
Mayor appointed, councilmen elected at large	57
Mayor elected, councilmen elected at large	36
Mayor in office 4 years or more	49
Mayor in office less than 4 years	41

The Councilmen and Policy Making

It is generally agreed that councilmen have a dual role to play in policy making. They must approve or disapprove those measures which come before them as policy proposals. In a strictly legal sense councilmen are *the* policy makers in council-manager government. However, the very considerable involvement of the manager in the initiation and evaluation of policy demonstrates that policy making is not the "exclusive" duty of the council as suggested by the ICMA.[6] Rather, policy making is a shared activity in which the manager plays the most influential role as initiator and evaluator of policy proposals.

However, councilmen also have the significant role of representing their constituents. Eighty-one per cent of the participants interviewed in the sample cities indicated that councilmen generally try to assess public opinion before taking a stand on an issue. If opinion in the community appears to be evenly split, a majority in 15 cities said that councilmen will try to maintain a neutral position. Seventy-three per cent of the councilmen in cities where councilmen are

(Continued on page 27)

5. Clarence E. Ridley, *The Role of the City Manager in Policy Formulation* (Chicago: International City Managers' Association, 1958), p. 5.

6. *Handbook for Councilmen in Council-Manager Cities* (Chicago: International City Managers' Association, 1958), p. 1.

Transportation of Intoxicating Liquors

By Ben F. Loeb, Jr.

(Editor's note: GS numbers in the material to follow refer to sections in the General Statutes of North Carolina, and case citations are to the North Carolina Reports.)

A recent opinion by the North Carolina Attorney General has raised anew difficult questions pertaining to the noncommercial transportation of intoxicating liquors into, out of, and between points in this state. Problems of statutory interpretation have arisen because five separate acts, which are in apparent conflict, have been passed in the last half-century, and all are still on the books.

Turlington Act

The first of these five statutes, the Turlington Act, was enacted in 1923. This legislation was designed to make state law conform to federal prohibition law as expressed in the Volstead Act and in the Eighteenth Amendment to the Constitution of the United States. The Turlington Act presented few difficult problems of analysis because it absolutely prohibited the transportation of any beer, wine, or whiskey whatsoever (GS 18-2).

Light Domestic Wines

The 1935 General Assembly in effect modified the Turlington Act by authorizing the manufacture for sale of wines produced from fruits, grapes, and berries grown within North Carolina (GS 18-101). No specific provision was made for the transportation of these beverages, but obviously it was the intent of the Legislature at least to permit the wine to be moved from winery to market and from market home.

Alcoholic Beverage Control Act

In 1937, four years after the repeal of the Eighteenth Amendment, the General Assembly enacted the Alcoholic Beverage Control Act (ABC Act), which permitted the establishment of county liquor stores where alcoholic beverages could be legally purchased. This statute did not provide for municipal ABC stores, but many cities operate liquor stores pursuant to special acts of the General Assembly. The ABC Act is concerned solely with "alcoholic beverages," and that term is narrowly defined to include only those beverages containing over 14 per cent of alcohol by volume (GS 18-60). Therefore this law does not apply to or regulate the transportation of unfortified wines or beer, since the former by definition may not contain over 14 per cent of alcohol and the alcoholic content of the latter is even less. However, the ABC Act, in many respects, does set exacting standards for the transportation of such beverages as whiskey and fortified (over 14 per cent alcohol) wines.

The ABC Act drastically modified but did not repeal the Turlington Act, and in areas that have not elected to establish liquor stores, the Turlington Act is still the primary law. Cities or counties which have voted to establish ABC stores are usually referred to as "ABC territory," and those not having liquor stores are generally designated "non-ABC territory."

Noncommercial Transportation

The ABC Act modified the Turlington Act to allow persons to transport taxpaid alcoholic beverages (whiskey and fortified wine) from ABC territory to or through non-ABC territory under the following conditions:

(1) The amount transported must not exceed one gallon.

(2) The beverages must not be for the purpose of sale.

(3) The caps or seals on the containers must not be opened or broken (GS 18-49).

The obvious intent of this provision is to permit persons living in a county that does not have ABC stores to drive to a liquor store in another county, purchase up to one gallon of alcoholic beverages, and return home. During the return trip the bottles may not be opened, and once brought home, the beverages may not lawfully be taken outside of one's private dwelling (GS 18-11). Also, the North Carolina Supreme Court has held that only one gallon of alcoholic beverages may be transported in any automobile, regardless of the number of persons riding in the vehicle [*State v. Welch*, 232 N. C. 77, (1950)].

The ABC Act further provides that people may purchase up to one gallon of whiskey or fortified wine outside North Carolina and transport it into this state if:

(1) The beverages are for the personal use of the individual bringing them into North Carolina.

(2) The caps or seals on the containers are not opened or broken.

(3) The beverages were legally purchased (GS 18-58).

As originally enacted, the ABC Act was silent on questions concerning the quantity of alcoholic beverages that could be transported in counties having liquor-control stores. For instance, could a person traveling in ABC territory lawfully have more than a gallon of whiskey or fortified wine in his automobile? Prior to 1945, because this privilege was not specifically denied, the answer to the question was an equivocal yes.

The 1945 General Assembly, in an apparent attempt to clarify the law in this respect, wrote into the ABC Act a new GS 18-49.2 which provided that the "wilful transportation of alcoholic beverages within, into, or through the State of North Carolina in quantities in excess of one gallon is prohibited . . ." This new section made no distinction between transportation in ABC territory and in non-ABC territory; in either case transporting over a gallon was a misdemeanor punishable by a fine, imprisonment, or both, in the discretion of the court.

Had the law been left as set out in GS 18-49.2, North Carolina would today have a simple and easy to apply rule — no transportation of over one gallon of alcoholic beverages anywhere at any time. But exceptions to GS 18-49.2 were added by GS 18-49.4. Among them is one which states that "nothing contained in the

said sections [GS 18-49.1 to GS 18-49.3] shall be construed to prohibit the transportation in this State of alcoholic beverages legally acquired for one's own personal use and transported as now authorized by the laws of this State . . ." In 1945, at the time GS 18-49.1 to GS 18-49.4 were passed, the transportation of any amount of whiskey and fortified wine in ABC territory was "authorized by the laws of this State." Therefore the Institute of Government has for many years taken the position, admittedly with some misgivings, that in ABC territory there is no limit on the quantity of alcoholic beverages which may be legally transported for one's own personal use. It seems quite remarkable that in the 20 years since the enactment of GS 18-49.4 there has not been a single reported State Supreme Court decision interpreting this ambiguous wording.

The Attorney General's opinion mentioned at the beginning of this article addresses itself to the scope and meaning of the exception contained in GS 18-49.4. This opinion, dated July 16, 1965, was given in response to the following inquiry:

> If a person transports a gallon of taxpaid whiskey for his personal use and a passenger also has possession of one gallon of taxpaid whiskey for his personal use in a wet jurisdiction, does GS 18-49 and the rule of STATE v. WELCH, 232 NC 77 apply? Does GS 18-49 apply only to dry jurisdictions?
>
> If a person transports more than one gallon of legally acquired taxpaid whiskey for his personal use is GS 18-49.4 a defense to a violation of GS 18-49.2, except to the extent that the State has a prima facie case of possession for the purpose of sale under GS 18-32?

The Attorney General's reply stated in part:

> Although our court has not ruled specifically on the question, *it is the opinion of this office that a person may not transport in excess of one gallon of taxpaid whiskey in any county of the State,* and that if the driver of an automobile possesses one gallon of taxpaid whiskey and a passenger also has one gallon of taxpaid whiskey, such would constitute illegal transportation even in a wet territory (emphasis added).
>
> We do not believe that GS 18-49.4 would be a defense to a person who transports more than one gallon of taxpaid whiskey for his personal use. No doubt, you are referring to the portion of GS 18-49.4 which reads as follows:
>
> > "Nothing contained in the said sections shall be construed to prohibit the transportation in this State of alcoholic beverages legally acquired for one's own personal use and transported as now authorized by the laws of this State."
>
> GS 18-49.4 was enacted in 1945. Therefore, in our opinion, the above quoted section has reference to GS 18-49 and GS 18-58 as they existed in 1945, both having been previously enacted in 1937.
>
> In view of this opinion, it would appear that the transportation of whiskey in quantities exceeding one gallon is probably unlawful anywhere in North Carolina. The Attorney General's ruling did not deal with a related problem concerning the amount of fortified wine which may be transported in ABC territory, and therefore this question remains unresolved.

Commercial Transportation

The commercial transportation of alcoholic beverages (whiskey and fortified wine) in this state is sanctioned by the ABC Act in three instances:

(1) When the beverages are to be sold in ABC stores (GS 18-49).

(2) When the beverages are in transit through North Carolina to another state (GS 18-49.1).

(3) When the beverages are for delivery to a federal reservation, such as Fort Bragg (GS 18-49.1).

Companies or persons desiring to engage in the business of trucking alcoholic beverages to federal reservations or through North Carolina to another state must comply with several rather strict requirements inserted into the ABC Act in 1945. Among these requirements are the following:

(1) A bond in the penal sum of $1,000 must be posted with the State Board of Alcoholic Control. This bond must have a surety approved by the ABC Board and is conditioned that there will be no unlawful transportation or delivery in this state.

(2) A statement signed by the ABC board chairman or director showing that the bond has been furnished must accompany the shipment.

(3) A bill of lading or other memorandum signed by the consignor must also accompany the beverages and show (a) the description of the beverages in the shipment, (b) the name and address of the consignor, (c) the name and address of the consignee, and (d) the route to be traveled in North Carolina. This route must be substantially the most direct way from the consignor's place of business to the place of business of the consignee.

(4) The person in charge of the vehicle in which the beverages are being transported is required to exhibit the above-listed documents upon the request of any sheriff, deputy sheriff, or other police officer having the power to make arrests (GS 18-49.1).

Beverage Control Act

The Beverage Control Act of 1939 deals only with those beverages containing 14 per cent or less of alcohol by volume — in other words, beer and unfortified wines. As originally passed, this act authorized the manufacture, sale, possession, and transportation of beer and unfortified wines in all areas of the state. However, in 1947 legislation was enacted which allowed individual counties to elect to prohibit the retail sales of either or both of these beverages (GS 18-124). At present only about half the counties permit retail sales of beer, and even fewer allow unfortified wines to be sold. Municipalities with a population of 1,000 or more persons and located in a "dry county" may have their own citywide election on the question of authorizing retail sales of beer or wine inside the corporate limits (GS 18-127).

Noncommercial Transportation

The outcome of a municipal or

county election on this issue has absolutely no effect on the legality of the transportation of beer and unfortified wine in such city or county. The transportation of these beverages by an individual for his own use is lawful, under the Beverage Control Act, in all parts of the state, and, further, there is no restriction on the quantity that may be transported (GS 18-66).

Commercial Transportation

Beer and unfortified wine may be commercially transported by motor vehicle into, out of, or between points in North Carolina under the following conditions:

(1) A numbered certificate must be obtained from the State Commissioner of Revenue for each vehicle to be used in the transportation, and the certificates must be prominently displayed on the respective vehicles.

(2) Persons actually transporting the beverages must have in their possession an invoice, bill of sale, or other record showing: (a) the name and address of the person from whom the shipment was received; (b) the name and address of every person to whom deliveries are to be made; (c) the character and contents of the containers being transported; and (d) the number of bottles, cases, or gallons in the shipment. This record must be produced upon request of any representative of the Revenue Commissioner.

(3) Persons or firms engaged in the business of transporting beer or wine must keep records reflecting the character and volume of shipments — the records to be open for inspection by the Commissioner of Revenue or his agent at all times. In addition, reports are required to be made at such times and in such form as may be prescribed by the Revenue Commissioner (GS 18-66).

Fortified Wine Control Act

A statute dealing solely with fortified wines, which by law must contain over 14 per cent of alcohol, was enacted in 1941. The principal thrust of this act was to authorize sales of certain types of wines in hotels, restaurants, drugstores, and grocery stores. An analysis of the Fortified Wine Control Act does not fall within the scope of this article since its provisions did not alter existing law concerning the transportation of intoxicating liquors.

Prima Facie Evidence

A great deal of confusion has arisen concerning what actions constitute a per se violation of the liquor laws and what conduct merely constitutes prima facie evidence of a violation. The sale of whiskey, beer, or wine by a person not specifically authorized by law to do so is unlawful, and "possession for the purpose of sale" is likewise illegal absent statutory authority. But if law-enforcement officers had to actually apprehend a bootlegger in the act of making a sale in order to charge him with possession for the purpose of sale, there would indeed be few arrests or convictions for this offense. Thus the Legislature has provided that the possession of certain quantities of beverages is prima facie evidence that the possession is for the purpose of sale.

Black's Law Dictionary defines prima facie evidence as evidence sufficient to establish a given fact, which if not refuted will remain sufficient. In North Carolina, prima facie evidence is usually sufficient to get a case to the jury, but of course does not insure the defendant's conviction. Proof of any one of the following facts constitutes prima facie evidence of illegal possession for the purpose of sale:

(1) Possession of more than one gallon of spirituous liquors (whiskey) anywhere in the state.

(2) Possession of more than one gallon of wine (fortified or unfortified) in ABC territory, or possession of more than three gallons of wine in non-ABC territory.

(3) Possession of more than five gallons of malt liquors (beer) anywhere in the state, except that in areas where malt beverages are legally sold, 15½ gallons of *draft* beer may be possessed without invoking this rule (GS 18-32).

(4) Possession of any quantity at all of non-taxpaid whiskey, beer, or wine anywhere in the state [*State v. Graham*, 224 N. C. 347 (1944)]

Thus if a person is transporting in his automobile over one gallon of whiskey, he may be charged not only with illegal transportation, but with unlawful possession for the purpose of sale as well. It should be noted that these presumptions cannot be combined to make out a prima facie case. For instance, a person may at any time in any county transport as much as one gallon of taxpaid whiskey, one gallon of taxpaid wine, and five gallons of taxpaid beer without invoking any of the above-listed presumptions.

Poisonous Liquors

The significant history of existing liquor legislation dates from the passage of the Turlington Act in 1923, and almost all statutes dealing with intoxicating liquors are found in Chapter 18 of the General Statutes. However, there is one little known (and even less used) provision enacted in 1874 which is contained in GS Chapter 14 among the state's criminal laws. GS 14-329(b) makes it a felony, punishable by at least one year in prison, for any person to transport, for purposes other than his own personal use, any spirituous liquors (whiskey) containing foreign properties or ingredients poisonous to the human system if the person engaged in the transportation knew or had reasonable grounds to know of the beverage's poisonous qualities. Actually this offense has five elements, all of which must be present in order to violate the section. To secure a conviction the state must establish that:

(1) A spirituous liquor was being transported.

(2) The liquor contained foreign properties or ingredients poisonous to the human system.

(3) The defendant knew or had reasonable grounds to know of the beverage's poisonous qualities.

(4) The liquor was *not* for the personal use of the defendant.

(5) The liquor was being transported for use as a beverage.

If the third element is missing because the defendant did not know or have reasonable grounds to know of the beverage's poisonous qualities— he may still be prosecuted for a violation of GS 14-329(c), which has essentially the same elements as GS 14-329(b) except for knowledge of the dangerous ingredients. A violation of subsection (c) is a misdemeanor rather than a felony, but conviction carries a minimum six-month sentence.

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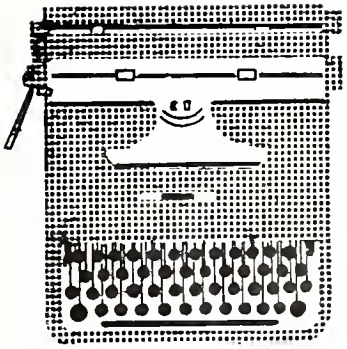

● NOTES FROM . . .

CITIES AND COUNTIES

Blue Laws

Asheville citizens have approved a Sunday closing law by a vote of 7,378 to 6,552. The City council had adopted a blue law in August but opponents of the measure rounded up sufficient signatures on a petition to force a referendum on the ordinance. The new law prohibits Sunday sales of such items as clothing, furniture, appliances and hardware, but does not affect Sunday operation of food stores, service stations, restaurants, hotels and motels, as well as a number of other businesses. The law prohibits recreational and amusement events for which admission is charged from operating before 1 p.m. Sunday, unless the event was in progress at midnight on Saturday.

* * *

Civil Defense

Mebane Commissioners endorsed a 12-hour civil defense course offered by the Junior Chamber of Commerce. The course, "Education for Living in the Nuclear Age," was conducted in November.

* * *

Education

Randolph County voters dealt a crushing blow to plans for construction of five county high schools when they defeated a tax levy proposal 3,753 to 2,685. The proposal would have authorized a tax of 37 cents per $100 valuation.

* * *

Cumberland County voters approved a $3 million county bond issue for school construction by a vote of 3,936 to 1,126. The county school system will receive $2 million, the city system $1 million.

* * *

Fire Prevention

Greensboro was declared winner of the first annual Piedmont Triad Area Fire Prevention Contest, which took place in October among Greensboro, *Winston-Salem* and *High Point*. The contest was based on those cities' fire-loss records, fire prevention activities and news reports about the program.

* * *

"Fire-police patrolmen" have been proposed for *Durham*—a new concept in public safety which is already in effect in *Winston-Salem*. Twenty-two new men being added to Durham's police and fire departments will be trained in the dual role as specialists in both law enforcement and emergency fire protection. The system will rely on effective communication and a vast, expensive communications center has been set up in the new police headquarters building.

* * *

Health

Edgecombe County voters gave overwhelming approval to a $600,000 hospital bond issue which will add 50 beds to the 75-bed Edgecombe General Hospital. The vote was 2,315 to 1,485.

* * *

An executive committee has been named for the newly formed *Catawba* County Planning Council for Mental Retardation. The Council has been formed to determine county needs and plan for meeting them with the aid of more than two million dollars in federal grants made available to North Carolina for capital outlay.

* * *

Work will begin in July 1966 on the million dollar expansion of *Kings Mountain* hospital, beginning the first phase of a 20-year building program.

* * *

Housing

Federal officials from Atlanta have visited *Southern Pines* to inspect sites proposed for 100 low-cost housing units, for which a federal grant of $1.5 million has been approved. The project will include 80 units for general occupancy and 20 for older persons.

* * *

Law Enforcement

An automatic numbering system for keeping track of complaint and follow-up reports has been installed by the *Winston-Salem* Police Department. The new system will electronically assign numbers as each department records a complaint, previously a hand-stamping job which often resulted in duplication of complaint numbers.

* * *

Libraries

The site of a new southside branch library in *Winston-Salem* has been approved by the *Forsyth* County Library Commission. The branch facility is expected to cost $107,500.

* * *

A $1000 grant has been extended to the *Avery-Mitchell-Yancey* Regional Library from the McClure Fund in recognition of continuing growth and service to more than 40,000 residents of the three counties. The money will be used for book purchases and will augment a second purchase sum allotted as a Dorothy Canfield Fisher national award.

* * *

Local Legislation

Mount Holly councilmen have adopted a new Sunday closing law which knocks out a previous blue law.

* * *

Planning and Zoning

A new area map of *Kings Mountain*, outlining proposed new city streets, recreation parks, and industry sites, has been unveiled by local planners.

* * *

Utilities

Facilities which will provide *Butner* with 10 million gallons of water daily have passed final inspection. The

(Continued on page 21)

The District Court Magistrate

By C. E. Hinsdale

In North Carolina's ten-year campaign for modernization of its lower courts, the "horrible example" of the need for reform most frequently cited by the campaigners was the court of the justice of the peace. Unsupervised by judicial authority, operating usually in undignified surroundings, and compensated only by the fees of his "victims," the justice was an easy mark. His nineteenth century role as a community leader and respected arbiter of justice in his neighborhood had been overtaken by a changing society. The constitutional amendment of 1962 did away with the *court* of justice of the peace, and the Judicial Department Act of 1965 administered the coup de grace — the *office* itself was abolished. Death and burial take place at different times in different counties, starting with 22 counties in 1966, and is not complete throughout the State until December, 1970.

The demise of the justice of the peace does not mean, however, that all of the functions for which he was so essential in an earlier day no longer are required. A need still exists, for example, for a minor judicial official to issue warrants and to accept guilty pleas to minor offenses after normal working hours and at various widely separated locations within a county. To fulfill this need, the office of *magistrate* was created.

It would not be accurate to say that the magistrate *replaces* the justice of the peace. To a limited extent this is true; but in a larger sense— in the major attributes which caused the office of justice to fall into disrepute — the magistrate is simply not comparable. First of all, the magistrate is an officer of the district court, and as such is under the close, direct supervision of the district court judge. Second, his authority in criminal matters is severely curtailed. Finally, he is compensated by a salary, to which he is entitled irrespective of his decisions in cases tried by him.

Constitutional Provisions

A discussion of the magistrate must begin with the Constitutional references to this new office. The key provisions are in Article IV, Section 8: ". . . For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court . . . The number of . . . Magistrates shall, from time to time, be determined by the General Assembly . . . Vacancies in the office of Magistrate shall be filled, for the unexpired term, in the manner provided for original appointment to the office."

Other sections of Article IV provide that the General Assembly shall prescribe the jurisdiction and powers of magistrates; that appeals from magistrates shall be heard *do novo*; that the General Assembly shall provide for the removal of magistrates for "misconduct or mental or physical incapacity"; and that in no case shall the compensation of any magistrate depend upon his decision or upon the collection of costs.

Statutory Provisions

The Judicial Department Act of 1965 (Chap. 310, S.L. 1965) fills in many details concerning the office of magistrate. Article 16 (Secs. 7A-170 to -176) completes the formal description of the office. The magistrate is required to take the same oath of office as a district judge (conformed to the office of magistrate), giving emphasis to his constitutional status as an officer of the district court. The chief district judge prescribes the times and places at which each magistrate is required to maintain regular office and court hours and "to be otherwise available" for the performance of his duties. "To be otherwise available" is intended to cover rural community situations, for example, where a magistrate may be required to keep no regular office hours, but merely be present, whatever the hour, for the convenience of law enforcement personnel seeking warrants or itinerant motorists desiring to post bond for, or plead guilty to, a minor traffic offense.

Since the Constitution requires the General Assembly to determine the number of magistrates per county, and since the number needed depends on several interrelated factors which cannot be fixed in advance, the General Assembly sought to achieve flexibility, convenience and economy by providing for a minimum and a maximum quota of magistrates for each county. For the 1965-67 biennium, quotas given in the table on page 13 are provided.

The steps by which the minimum quota of magistrates comes into office are somewhat complicated, four different officials having a hand in the process. Not later than the first Monday in September, 1966, and biennially thereafter, the Administrative Officer of the Courts, after consulting with the chief district judge (or the senior regular resident superior court judge if—as will be the case initially in each district — there is no chief district judge) fixes the salaries of the various magistrates to be appointed in each county, and so notifies the clerk of superior court. The salary for each magistracy is fixed upon consideration of the time which the particular magistrate will be required by the chief judge to devote to his office. Not later than the first Monday in October of the same year, the clerk of superior court shall submit to the senior regular resident superior court judge of the district *nominations* of magistrates to fill the minimum quota for the county, specifying as to each nominee the salary level for which nominated. Thereafter, by the first Monday in November, the senior regular superior court judge shall, from the clerk's nominations, appoint magistrates to fill the minimum quota for each county of the district, at the various prescribed salary levels. Magistrates so appointed take office the first Monday in December, and serve for two years.

Sec. 7A-171(b), following the constitutional language, speaks of *nominations* of magistrates to fill the minimum quota. If the minimum quota is one magistrate, presumably the law requires the clerk to submit at least two nominees. If the minimum quota is more than one, and all vacancies draw the same salary, the law is less clear. Must the clerk nominate two candidates for *each* vacancy? Suppose only one candidate per magistracy chooses to seek the posi-

Judicial District	Counties	No. of Magistrates Minimum	Maximum
1	Camden	1	2
	Chowan	1	3
	Currituck	1	2
	Dare	1	3
	Gates	1	3
	Pasquotank	2	3
	Perquimans	1	3
12	Cumberland	4	6
	Hoke	1	3
14	Durham	3	6
16	Robeson	7	12
	Scotland	2	3
25	Burke	3	5
	Caldwell	2	4
	Catawba	4	6
30	Cherokee	2	3
	Clay	1	2
	Graham	2	3
	Jackson	2	3
	Macon	2	3
	Swain	2	3
	Haywood	3	4

tion, etc.? This ambiguity was recognized in the drafting stage, and in the General Assembly. More appropriate language, to do away with any ambiguity and to provide for all possible situations, could not be agreed upon. It was finally concluded that the interpretation of this language would be left to the common sense and good faith of the clerk and the judge concerned. In the unlikely event that this solution fails to work, further efforts to clarify the respective powers of the clerk and judge can be made by later legislatures.

If the chief district judge, in the light of experience, finds that the minimum quota of magistrates for any county in his district is inadequate, he may, with the approval of the Administrative Officer, certify to the clerk that a specific number of additional magistrates, within the maximum quota, is necessary in such county. The Administrative Officer fixes the salary for the additional magistrate or magistrates, and the clerk submits nominations to the superior court judge, as in the case of appointments to fill the minimum quota. Additional magistrates so appointed take office immediately, and serve until the end of the two year term for which the initial minimum quota was appointed.

Vacancies in the office of magistrate, whether in the minimum or maximum quota, are filled for the unexpired term in substantially the same manner as for the original appointment. The clerk must make nominations within 30 days, and the judge must appoint within 15 days thereafter, the salary level of the magistracy remaining unchanged.

The salary of a magistrate is set at not less than $1200, and not more than $6000, per year. Presumably magistrates assigned to rural intersections, to be available to issue warrants and to bind over or accept guilty pleas from minor misdemeanants from time to time, will be compensated near the lower end of this scale. Magistrates in urban areas assigned full time to the trial of small claims cases, as well as criminal matters, will probably be salaried at the maximum rate. No magistrate will receive any fees. All fines, forfeitures, costs and fees received by the magistrate will be remitted to the clerk of court for further disposition. Full-time magistrates will be covered by the State employees' retirement system and by social security. Coverage of part-time magistrates by the State retirement system is uncertain, apparently depending on whether such employees are considered "permanent" or not.

On rare occasions suspension or removal of a magistrate from office may be appropriate. Chief district judges possess the suspension power; removal power is vested in the senior regular resident superior court judge or any regular superior court judge holding court in the district. Grounds for suspension or removal are the same as for a district judge: willful or habitual neglect or refusal to perform the duties of the office, willful misconduct or maladministration in office, corruption, extortion, conviction of a felony, or mental or physical incapacity. Disciplinary action is initiated by the filing of sworn written charges in the office of the clerk of superior court. The chief district judge examines the charges, and if he finds that the charges, if true, constitute grounds for removal, he *may* suspend the magistrate from performing the duties of his office pending a hearing. The magistrate's salary continues during the suspension. The hearing is held by the superior court judge within 10 to 30 days after the magistrate has been given written notice and a copy of the charges. If the judge finds that grounds for removal exist, he shall order the magistrate permanently removed from office, and terminate his salary. If the judge finds no grounds for removal, he shall lift the suspension. An appeal from removal lies to the Supreme Court for errors of law. Pending the decision on appeal, the suspension continues. If the Supreme Court orders the magistrate reinstated, his salary is restored from the date of removal.

Since magistrates will be handling government funds, bonds (faithful performance of duty) are required. The amount of the bond is fixed by the Administrative Officer and made payable to the State which pays the premium. The bond may be individual or collective. The Administrative Officer also prescribes certain records, dockets, and accounts to be kept by the magistrate, under the general supervision of the clerk of the superior court.

Authority of the Magistrate

Authority in Criminal Matters.

Within the jurisdiction of the district court, in criminal actions, any magistrate has power:

> "(a) In misdemeanor cases, other than traffic offenses, in which the maximum punishment

which can be adjudged cannot exceed imprisonment for thirty days, or a fine of $50, exclusive of costs, to accept guilty pleas and enter judgment;

(b) In misdemeanor cases involving traffic offenses, to accept written appearances, waivers of trial and pleas of guilty, in accordance with a schedule of offenses and fines promulgated by the chief district judge;

(c) In any misdemeanor case, to conduct a preliminary examination and bind the accused over to the district court for trial upon a waiver of examination or upon a finding of probable cause, making appropriate orders as to bail or commitment;

(d) To issue arrest warrants valid throughout the State;

(e) To issue peace and search warrants valid throughout the county; and

(f) To grant bail before trial for any noncapital offense." (Sec. 7A-273)

The power of the magistrate in criminal matters is thus less than that of the justice of the peace in at least two important respects: the magistrate can accept guilty pleas only, and, if the charge is a traffic offense, he can accept guilty pleas only to those offenses on a list promulgated by the chief district judge, and also impose only the listed fine. Discretion of the magistrate is restricted to the amount of the sentence in those guilty-plea non-traffic misdemeanors within his $50/30-day maximum authority. On the other hand, the authority of the Magistrate to issue warrants is greater than that of the justice of the peace — he can issue an arrest warrant which is valid throughout the State, without "backing" by a justice in another county or certification by the clerk of superior court. (At the same time, the authority of law enforcement officers to issue warrants is terminated.)

The special treatment for traffic offenses represents an effort on the part of the legislature to bring a measure of uniformity into procedures and punishments in minor traffic cases, to limit the number of judicial officials concerned with the disposition of traffic matters, and to concentrate the responsibility for the administration of justice in traffic cases in the hands of a few, presumably specially trained, judges.

Authority in Civil Matters; Small Claims.

Within the jurisdiction of the district court, the authority of the magistrate in certain civil cases has been expanded considerably over that held by the justices of the peace. The magistrate is authorized to try a *small claim action* in which the amount in controversy does not exceed $300, provided:

(a) the principal relief requested is monetary, or the recovery of specific personal property, or summary ejectment, or a combination thereof;

(b) the plaintiff requests assignment to a magistrate for trial;

(c) the chief district judge assigns the claim to a magistrate; and

(d) all the defendants reside in the same county as the magistrate.

The procedures for the trial of a small claim action are set forth in detail in Article 19 of the 1965 Act. Such an action is initiated by filing a "Small Claim" complaint with the clerk of superior court. The chief district judge exercises the assignment power in his sole discretion. He may assign all small claims actions, by standing order, to a particular magistrate or magistrates; he may assign certain types of claims to designated magistrates, or he may withhold all assignments, thereby forcing each small claim to be tried by a judge. If he fails to assign a small claim within five days, it is automatically treated as a regular civil action, to be tried before a judge in district court.

If the judge orders assignment, the clerk issues a "magistrate summons" to the defendant. This commences the action. Notice of assignment is also given to the plaintiff and to the designated magistrate. The defendant may be subjected to the jurisdiction of the court over his person by the usual methods, and also by certified mail, return receipt requested, if the defendant signs the receipt. Failure of the defendant to answer after proper service constitutes a general denial, but default judgments are not rendered unless the defendant answers and admits all the material allegations of the complaint. Counterclaims, cross-claims, and third party claims which would make the amount in controversy exceed the assignable limit of $300 are not permissible. The only pleadings are the complaint and the answer, but on appeal and trial *de novo* before a district court judge (with or without a jury), appropriate counterclaims, cross-claims, third party claims, replies and answers to cross-claims are allowed. Motions for a change in venue or objections to jurisdiction are heard by a district court judge. Otherwise trial procedures, rules of evidence, etc., are as in non-jury civil actions generally. In a small claim action seeking summary ejectment, if the defendant denies the title of the plaintiff, the action is transferred to the regular district court civil docket.

Judgments of the magistrate are judgments of the district court, and are recorded and indexed by the clerk as are civil judgments generally; they constitute a lien and are subject to execution in the same manner as judgments of the superior court. The provisional and incidental remedies of claim and delivery, subpoena duces tecum, and production of documents are obtainable in small claim actions. Sample forms for various types of small claim actions and procedures are set forth in the statute. Substantial compliance with the forms is sufficient.

Additional (Non-Trial) Authority of Magistrates.

In addition to the powers of magistrates in civil and criminal actions, the following incidental and supplemental powers are also given to the magistrates:

(a) to administer oaths;

(b) to punish for contempt;

(c) when authorized by the chief district judge, to take depositions and examinations before trial;

(d) to issue subpoenas and capiases valid throughout the county; and

(e) to perform any civil, quasi-judicial or ministerial function assigned by general law to the office of justice of the peace. (Sec. 7A-292)

Subsection (e) above, requires special comment. Several hundred sections of the General Statutes refer to the justice of the peace. Some of these statutes concern obsolete 18th or 19th century functions; some embrace

duties, such as the ceremonial marriage function, appropriate or necessary for continuance by the 20th century magistrate; others may not fall clearly into either category and require further study. Pending completion of an intensive section-by-section study of these statutes to single out and carry forward those non-trial, quasi-judicial functions appropriate for discharge by the magistrate, the Courts Commission and the legislature resorted to general language, for which specific functions can be substituted upon completion of the necessary research. Preliminary indications are that only a score or so of specific duties need be carried forward, and that several score of statutes referring to the justice of the peace can be repealed outright. It is not considered likely that any of these essential ministerial or quasi-judicial functions will occupy an appreciable portion of the time of the average magistrate.

Magistrate's Costs and Fees

As noted earlier, the magistrate is compensated solely by a State salary. Fines and forfeitures continue to inure to the benefit of the county school fund, by constitutional mandate. Costs of court and special fees collected by the magistrate are all remitted to the clerk of superior court for further disposition to the State, or county or city, as provided in the uniform costs bill applicable to the entire General Court of Justice.

The costs of court for a criminal conviction before a magistrate total $15. This is the same as before the district court judge, and is uniformly applicable regardless of plea. (The defendant, of course, is always free to plead not guilty, requiring that his case be heard before a district court judge.) Therefore, there is no financial incentive to plead guilty before a magistrate, although convenience might be a factor in making such a plea.

The $15 is allocated to four separate funds: $2 to the county or city whose officer performed the arrest, or served the process; $2 to the county or city furnishing the trial (courtroom) facility; $3 to the State Law Enforcement Officers' Benefit and Relief Fund; and $8 to the State for support of the Judicial Department generally.

The $2 facilities fee is to be used by the county or city for courtroom and related judicial facilities, including ". . . adequate space and furniture for . . . magistrates . . ." Thus by law the county or city is responsible for providing office space or a hearing room of some sort for magistrates. The magistrate's duties are such that ordinarily a single room in the courthouse or other suitable building will be adequate. This will impose an additional obligation on the county or city, at least where a magistrate is assigned to full time regular office hours. In rural communities, however, where a magistrate may be assigned merely for occasional issuance of warrants or acceptance of guilty pleas to minor traffic offenses, providing an office for a magistrate may be impractical. The facilities fee is collectible in any event, however, and unless a city provides the facility in which the magistrate performs his duties, the fee is remitted to the county.

In small claim actions assigned to a magistrate, the cost of court varies with the amount in controversy. If the amount sued for is $100, or less, the cost is $5; if the amount in issue is over $100 but less than $300, the cost is $8. In each instance, $2 of this sum is allocated to the county (city) for facilities; the remainder is remitted to the State. These costs are collected in advance by the clerk of superior court.

In addition to costs collectible in civil and criminal actions, the magistrate is allowed to charge the following special fees: performing a marriage ceremony, $4; hearing petition for a year's allowance to a surviving spouse or child, allotting same, etc., $4; taking a deposition, $3; proving execution or taking acknowledgement of instruments, $0.50; and performing any other statutory function not incident to a civil or criminal action, $1. Fees of assessors or commissioners ($2 each) appointed by a magistrate may also be charged. All of these fees are remitted to the State.

Miscellaneous Matters

The status of a magistrate as an officer of the district court undoubtedly prohibits his holding any other public office under the dual office-holding prohibition in Article XIV, Section 7 of the State Constitution.

Magistrates may be assigned by the chief district judge in an emergency, to temporary duty outside the county of their residence, but within the district. Since all counties will have at least one magistrate, and most counties will have several, this provision will probably see little use. When additional magistrates are needed on a permanent basis, implementation of the maximum quota provision of the law is the proper solution. If the maximum quota is already in use, legislative action to raise the quotas should be sought.

In small claim actions, the law provides that the magistrate has no authority except as to actions which have been specifically assigned to him for trial. A judgment rendered by a magistrate in an unassigned small claim is therefore invalid. No other powers of the magistrate are dependent upon assignment, the law directly providing that the magistrate possesses "all the powers of his office at all times during his term." In the exercise of his criminal and quasi-judicial powers, therefore, the chief district judge may not legally restrict the magistrate. He may, of course, by administrative agreement, in the interest of efficient operations or convenience, provide that only designated magistrates perform marriages, for example, or that contested preliminary hearings be conducted only by magistrates to whom a suitable hearing room is available. The acts of any magistrate conducted in violation of any administrative agreement would be perfectly valid, however. This is so in order that the magistrate's acts be immune to challenge on the grounds that he exceeded the authority granted to him by the chief district judge. Administrative restrictions of this type will probably be uncommon, but they may be necessary occasionally to balance workloads among magistrates, to fit workloads to salary schedules, or to channel certain functions (such as marriage ceremonies) to the magistrate with the most suitable office. In any event, a magistrate who persisted in performing functions contrary to the wishes of the chief district judge would undoubtedly jeopardize his reappointment.

For the 22 counties activated in 1966, a minimum of 48 magistrates, and a maximum of 85, is prescribed. A statewide projection of these numbers, taking into account that the quotas for the most populous counties have not yet been fixed, results in an eventual total of about 250

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By L. Poindexter Watts

1965 LEGISLATIVE CHANGES: GAME, FISH and BOAT LAW ENFORCEMENT

(Editor's Note: Chapter numbers refer to the 1965 Session Laws of North Carolina. HB and SB numbers are the numbers of bills introduced in the House and in the Senate. When an act is effective upon ratification, the ratification date is included in parentheses following the citation of the act; when there is a different effective date, this is denoted by the use of the abbreviation eff." All dates are in 1965 unless otherwise noted.)

A number of proposals dealing with administration of the game and fish laws made headlines during the 1965 session of the General Assembly. Controversial measures included reorganization of the North Carolina Wildlife Resources Commission, the omnibus fish law revision and its proposal to change the name of the Division of Commercial Fisheries of the Department of Conservation and Development, the Cherokee trout fishing bill, and—with some humor mixed in — the ban on taking alligators. After the session adjourned several boating accidents made headlines which may shape enforcement action on certain boating acts that were passed and also affect future legislation on the subject of boating safety.

Clearly the most important legislation of the session in the area under discussion was the omnibus revision of the fish law. The act that passed and its legislative history is given in some detail below.

Proposals that failed to pass will be discussed throughout this article in connection with the various subjects in question.

Omnibus Revision of the Fish Law

The legislation that finally passed the General Assembly revising the fish laws, Chapter 957 (HB 560) (eff. January 1, 1966), was a very comprehensive measure. Nevertheless, it had been trimmed substantially in passage, having the unusual fortune of being transformed in two different House committee substitutes.

Commercial Fisheries Study Commission

In 1963 the General Assembly passed Resolution 72 creating a Commercial Fisheries Study Commission of 11 members to be appointed by the Governor to inquire into the feasibility of reorganizing the Division of Commercial Fisheries of the Department of Conservation and Development. The preamble to the resolution indicated the view that the Division was almost entirely geared to enforcement of restrictions on seasons, areas, and equipment designed to conserve the natural fishing available but that more emphasis should be placed on research, processing, manufacturing, and marketing of seafood products.

After studying the group of projects underway or being planned by the Division — some of which were instituted by a new Commissioner of Commercial Fisheries and some of which had been started before his appointment — the major recommendation of the Study Commission was to give the new Commissioner a chance to continue with the things he was already undertaking. It recommended against reorganization of the Division.

In studying the administration of the commercial fisheries laws, however, the Study Commission concluded that an important aid to better conservation of the fisheries resources would result from a reworking and clarification of the hodge-podge of fisheries laws on the statute books.

The Study Commission's recommendation sought to clarify the administrative authority and the jurisdiction of the Division of Commercial Fisheries and the Wildlife Resources Commission in enforcing the game and fish laws. Its recommendations also sought to resolve the dispute that has arisen between the sports and commercial fishermen. Though the point is hotly contested, salt-water sports fishermen have long blamed commercial net fishermen for cleaning out an entire area of fish and thus contributing to their poor fishing luck on many occasions. More recently, they have complained that there was no official agency representing their interests.

Introduction of SB 262 and Identical HB 560

On April 20, SB 262 and identical HB 560 were introduced embodying the Study Commission's proposals. Salient features included:

- Repeal of Subchapters IIA, III, IV, and IVA of Chapter 113 of the General Statutes and substitution of a new Subchapter III dealing overall with the conservation of marine, estuarine, and wildlife resources.
- Granting of broad jurisdiction to the Department and the Commission over matters affecting conservation, with a provision for concurrent jurisdiction and an orderly settlement of jurisdictional disputes by agreement among agencies where there was an overlap of jurisdiction.
- A broadening of law enforcement powers granted the officers of the Department and the Commission.
- Repeal of all local game and fish laws except the controversial and complex fox laws. The Commission was given jurisdiction by regulation, however, to repeal local fox laws and substitute its own comprehensive regulatory provisions.
- Abolition of the Commercial Fisheries Advisory Board and its replacement by a larger 11-member Coastal Fisheries Advisory Board appointed by and to serve at the pleasure of the Governor. This provision embodied

the political heart of the bill. Instead of resolving the dispute between the commercial and sports fishermen in the General Assembly, the Department of Conservation and Development would be given expanded jurisdiction to referee the fight. In doing this job, the Department would be given the opportunity of consulting with the Advisory Board — to consist of three legislators, three commercial fishermen, three sports fishermen, and two scientists.

- Major revision of the licensing, taxing, leasehold, and other regulatory provisions relating to oysters and clams.
- Requirement that all grants of the bed under and fishery rights in navigable waters be registered by January 1, 1970, with a provision for condemnation of such granted rights where necessary in the public interest.
- Revision of publication requirements for regulations of the Department and the Commission, and statutory authority for proclamations of the Director of the Department of Conservation and Development suspending or implementing fisheries regulations in coastal fishing waters. The proposed statutes governing regulations also provided for simpler methods of proof of the text of regulations in court than under general law.
- Express authority to the Department and the Commission to incorporate by reference in their regulations federal laws and regulations dealing with matters over which they have concurrent state jurisdiction.
- Reduction of the general penalty for violations of fishing regulations of the Department and the Commission from a fine or imprisonment in the discretion of the court to mere imposition of a fine not to exceed $50.
- Integration of the laws dealing with hunting and fishing licenses sold by the Commission in order to achieve uniformity of administration.
- Statutory sanction for the Commission's system of special device licenses for fishing in inland fishing waters.

To reflect the change in jurisdiction, the Division of Commercial Fisheries was renamed the Division of Coastal Fisheries; the old commercial fishing waters primarily administered by the Department were renamed coastal fishing waters. The thrust of the proposed bill was in the direction of having each agency be responsible for the conservation of all of the fisheries resources in the waters under its primary jurisdiction, but the existing overlap of jurisdiction was preserved subject to later modification by agreement of the Department and the Commission.

Committee Action on SB 262 and HB 560

SB 262 was referred to the Senate Committee on Conservation and Development. Because of the broad range of topics in the bill, HB 560 was sent to a select committee appointed by the Speaker of the House. The Senate and House committees held joint hearings on the fish and wildlife revision. At the close of the hearings, both committees agreed upon changes to be embodied in a committee substitute, but it was decided to let only the House Select Committee report the substitute.

As a Wildlife Resources Commission subcommittee appointed to study the omnibus fish and wildlife revision had been unable to meet and chart an official Wildlife position, the substitute deleted where possible the provisions making changes in the game laws, but kept the basic jurisdictional concepts of the original bill. (This resulted, of course, in some of the administrative and regulatory provisions continuing to govern wildlife in general.) The committee substitute also eliminated the provision authorizing search warrants for fish taken or possessed illegally, narrowed in a few other respects the enforcement powers granted officers of the Department and the Commission, deleted authority given the two agencies to seek injunctions to prohibit violations of their laws and regulations, eliminated a provision condemning grants of the bed under navigable waters when planted with seed oysters or shells in good faith and without notice for the use of the public by the Department, and in several respects modified the fishing provisions to be administered by the Commission to make fewer substantive changes in the law or to place back in the statute things that had been deleted and put under the administrative control of the Commission in the original bill.

The last set of changes in the committee substitute was adopted primarily at the urging of the Department of Water Resources. The provision giving the Department and the Commission concurrent jurisdiction with other agencies where there was an overlap of interest was deleted. In addition, the Department and the Commission were specifically denied jurisdiction "over matters with respect to which jurisdiction may now or hereafter be vested in the Board and Department of Water Resources, the State Stream Sanitation Committee, or the State Board of Health." Finally, a provision in the bill somewhat expanding the circumstances in which the fish-kill procedure in G.S. 143-215.3(7) might be used was eliminated.

The House adopted the recommended committee substitute but objections from commercial fishermen as to the nature of the compromise reached between sports and commercial fishing interests were strong enough to require referral to the House Committee on Commercial Fisheries and Oyster Industry.

The protest of the commercial fishermen was not so much directed to the substance of the bill as to the change of name of the Division of Commercial Fisheries. They thought substituting "Coastal" for "Commercial" indicated that the Department of Conservation and Development would no longer show the same interest in the welfare of commercial fishermen as in the past. The new name, of course, did reflect a basic jurisdictional shift which would result in the Department's representing the interests of both sports and commercial fishermen in coastal waters, but the fishermen concentrated on the name and did not propose any changes in the jurisdictional portions of the bill.

Though most of the second set of hearings centered on the name change, a few other points were developed which resulted in minor changes in the commercial fishing portion of the bill. The largest number of changes, though, came through the request of the Executive Director of the North Carolina Wildlife Resources Commission. As the Commission had still not met to take any formal position on the bill, he recommended a number of detailed minor changes in the main designed to keep the law more as it had been in the past so far as the Commission was concerned. The basic change giving potential jurisdictional control over salt-water sports fishing to the Department remained unaffected, however.

Because of the number of minor changes that had been approved, the House Committee on Commercial

Fisheries and Oyster Industry reported a committee substitute for the committee substitute sent to it — as amended. The last-minute amendment was the name change. The fisheries division of the Department was named the Division of Commercial and Sports Fisheries instead of the Division of Coastal Fisheries. The compromise embraced the names of the agencies; for reasons of utility, the term "coastal" was retained in description of the waters formerly called "commercial." Thus the committee recommended a committee substitute for the committee substitute, as amended.

A minor floor amendment in the House represented the only additional change made. The legislation passed the Senate without change.

Analysis of the Act in Its Final Form

In its final form, Chapter 957 rewrote only Subchapter IV of Chapter 113 of the General Statutes and a few other scattered sections of the statutes. A statement of purpose for the act, which has been codified as G.S. 113-316, gives an overall view of the changes made by the act:

> To clarify the conservation laws of the State and the authority and jurisdiction of the Department of Conservation and Development and the North Carolina Wildlife Resources Commission: The Commissioner of Commercial Fisheries and the Division of Commercial Fisheries of the Department of Conservation and Development are renamed the Commissioner of Commercial and Sports Fisheries and the Division of Commercial and Sports Fisheries; the Commercial Fisheries Committee of the Department of Conservation and Development is renamed the Commercial and Sports Fisheries Committee; the Commercial Fisheries Advisory Board is abolished and in its stead is created the Commercial and Sports Fisheries Advisory Board; commercial fishing waters are renamed coastal fishing waters and the Division of Commercial and Sports Fisheries is given jurisdiction over and responsibility for the marine and estuarine resources in coastal fishing waters; the laws pertaining to commercial fishing operations regulated by the Department of Conservation and Development are consolidated and revised generally and broadened to reflect the jurisdictional change respecting coastal fisheries; and the connected and related laws pertaining to fisheries resources administered by the North Carolina Wildlife Resources Commission are recodified to harmonize in such revision and consolidation.

Jurisdictional changes. The jurisdictional changes are reflected primarily in new definitions of "marine and estuarine resources" and of "wildlife resources" contained in new G.S. 113-129. Marine and estuarine resources are defined as:

> All fish, except inland game fish, found in the Atlantic Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant and animal life.

Interlocking definitions of "fish" and "coastal fisheries" make this an extremely broad definition. "Fish" include "all marine mammals; all shellfish; all crustaceans; and all other fishes." "Coastal fisheries" is broadly defined to include almost every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters. The definition also includes all dealings in fish by persons primarily concerned with fish taken in coastal fishing waters, but it excludes inland game fish wherever found and any authority over the taking of fish in inland fishing waters.

The definition of "wildlife resources" includes:

> All wild birds; all wild mammals other than marine mammals found in coastal fishing waters; all fish found in inland fishing waters, including migratory salt-water fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or dependent upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures.

The grant of jurisdiction over marine and estuarine and wildlife resources to the Department and the Commission was qualified somewhat by the exclusion of matters governed by the Board and Department of Water Resources, the State Stream Sanitation Committee, and the State Board of Health. See G.S. 113-132(e). The act also amended G.S. 143-238(3), -239, -247, -248, -250, and -252 in the Wildlife Resources Act in order to implement the jurisdictional change that was made.

G.S. 113-132(d) utilizes the concept of interagency agreement to settle conflict of jurisdiction in the event there is an overlapping of jurisdiction given the Department and the Commission. If the agencies cannot agree, the Governor is empowered to resolve the differences.

To preserve the status quo, G.S. 113-132(e) and -321 provide for designation of joint fishing waters in which both agencies have regulatory authority. Until modified by agreement, joint waters will be those coastal fishing waters in which hook-and-line fishing licenses were required by the Commission as of January 1, 1965. There is some desire to reduce the number of joint fishing waters by future agreement, but certain bodies of water such as Currituck Sound will probably remain permanently as joint fishing waters. Reduction of the joint waters will likely be accompanied in some instances by a new agreement as to the location of the boundary line between coastal fishing waters and inland fishing waters. The act does not change this boundary line, but merely renames commercial fishing waters as coastal fishing waters.

Repeal of local coastal fishing laws. The first committee substitute swept away the proposal to repeal all the local game and fish laws except the fox laws. G.S. 113-133 contains the portion left: a repeal of "all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources . . . ." Where a local act or ordinance affects the conservation of marine and estuarine resources in a merely incidental way, the local provision affecting such conservation is not repealed if it concerns something "not essential to the conservation objectives set out in this subchapter [IV]."

Expanded regulatory authority. Although this was narrowed somewhat in the case of the Commission, one of the most notable features of the new act is the increase in discretionary authority given the Department and the Commission over the subjects as to which they can make regulations. G.S. 113-134 gives both agencies general authority to make implementing regulations with reference to the entire *chapter* (Chapter 113 of the General Statutes) — within the limits of the jurisdiction granted each agency. This has the effect of broadening the Commission's regulatory authority as to game law as well as fish law. Throughout the revised subchapter there are repeated provisions detailing and expanding the power to make regulations as to particular subjects. The Board of Conservation and Development is given the rather unusual power of implementing and modifying licensing requirements in G.S. 113-151, -153, and -155(e).

G.S. 113-264 grants the Department and Commission the power to make regulations as to all property over which they have control. This section is not by its terms limited to property used in the administration of fishery conservation laws, and thus may well authorize the Wildlife Commission to make regulations over property used in connection with its game and boating programs.

Basic penalty provision. G.S. 113-135 sets out the basic criminal penalty for violation of any provision of the subchapter or regulation of the Department or Commission adopted under the authority of the subchapter: a fine not to exceed $50. A small number of specific offenses carry higher punishments. In every case but one the higher punishment specified is simply misdemeanor fine or imprisonment or both in the discretion of the court. The exception, in G.S. 113-294, carries the same maximum by legal implication for it prescribes a minimum fine of $50 in addition to such other punishment as the court may impose in its discretion for selling game fish and related offenses.

The revised law makes it plain that in addition to the criminal penalty such previous sanctions as confiscation of property and license revocation may be imposed. These will be treated as appropriate below.

Expanded enforcement authority. In the definitions in G.S. 113-128, the term "commercial and sports fisheries inspector" is shortened to "inspector" and the term "wildlife protector" is shortened to "protector." Inspectors and protectors according to the definitions for the subchapter include all employees of the Department and the Commission, respectively, who are sworn in as officers and assigned to duties which include exercise of law enforcement powers. Inspectors and protectors are granted the powers of peace officers anywhere in North Carolina in enforcing all matters within the jurisdiction of their respective agencies, and they are additionally granted the authority to arrest without warrant under the terms of G.S. 15-41 for felonies, for breaches of the peace, assaults upon them or in their presence, and for other offenses that would undermine the authority of the State or threaten peace and order if ignored.

The power of inspectors and protectors to stop persons and check their licenses, weapons, fish, and wildlife is spelled out in detail. Special rules are set out if the person stopped is in a motor vehicle. In general, inspectors and protectors must have reason to believe a person is engaging in an activity regulated by their respective agencies before they can check a person whether he is afoot or in a conveyance, but protectors may not stop vehicles on primary highways without *clear evidence* that someone within the vehicle is or has recently been engaging in an activity regulated by the Commission. Inspectors, on the other hand, may stop various conveyances anywhere upon reasonable ground to believe they are transporting taxable seafood products. Refusal of a person to stop for a lawful check is unlawful. For greater detail as to these arrest and enforcement provisions, see G.S. 113-136. It should be noted that G.S. 113-136 is general in scope and includes protectors when they are enforcing not only the fish law but also the game and boat law.

Seizure and confiscation of property. General provisions as to seizure and confiscation of property for both inspectors and protectors are contained in G.S. 113-137. The right to *search* for property as an incident of a lawful arrest is confirmed; in addition, the statute authorizes *seizure* (but without search) of lawfully discovered evidence when the officer is authorized to arrest but gives a citation instead. Next, inspectors and protectors are authorized to seize fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of a crime within their respective jurisdiction that they lawfully discover while in pursuit of their duties; this seizure may be made despite the absence of any person in the area subject to arrest or the failure or inability of the inspector or protector to make an arrest. These seizure provisions are worded broadly enough to apply to protectors in all their enforcement work and not just in fish law violations. Several of the more explicit confiscation provisions are limited to fish.

G.S. 113-137(d) sets out a summary confiscation procedure for live or pershable fish that have been seized, with several alternatives.

Provisions relating to seized property in general are flexible and designed to permit the fairest possible administration under a variety of circumstances. There are no set provisions for confiscation (other than of live or perishable fish that must be disposed of promptly); it is up to the judge upon conviction to determine whether any property used in connection with an offense should be confiscated and sold. The statute, G.S. 113-137(i), provides for appeal of the reasonableness of seizure and sale. The net proceeds of any property sold must go to the school fund of the county in which the property was seized.

Suspension and revocation of licenses. G.S. 113-166 governs suspension and revocation of licenses issued by the Commissioner of Commercial and Sports Fisheries. It requires suspension or revocation of *all* licenses issued by the Commissioner when a licensee has been convicted of two or more offenses that occurred within a period of three years. This will apply to offenses committed on and after January 1, 1966. Any offenses relating to oysters or clams taken from an area closed because of suspected pollution is serious enough to be counted as two separate offenses. Suspension is for ten days upon conviction for the commission of the second offense within three years; it is for 30 days upon a third conviction; and all licenses are revoked upon a fourth or subsequent conviction when

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Minimum Standards for Police Training

By Norman E. Pomrenke

[*Editor's Note: This is the first of a series of articles on upgrading police training. The author, an assistant director of the Institute of Government, is currently conducting a course in Police Administration for North Carolina law enforcement officers.*]

The National League of Cities, meeting in Detroit in 1965, passed the following resolution:

> Employing persons having the necessary mental and physical ability, and providing them with a uniform, badge, and gun, is not in itself sufficient to qualify a person as a law enforcement officer. The enforcement of laws and the regulation of human behavior in our complex, urban society requires providing recruits with extensive basic training in all facets of police work and providing veteran officers with regular, refresher training, as well as specialized training in selected areas of knowledge. Such training is provided now, with few exceptions, in the larger metropolitan centers, medium sized cities, and many of our suburban municipalities. However, the majority of the nation's municipalities are too small to efficiently conduct adequate training programs, and among those municipalities that provide police training the quality of training varies substantially. The League, therefore, urges the establishment of minimum state-wide training standards and, further, urges the establishment on a voluntary basis, of regional or state-wide centers for providing recruit, in-service, and specialized training for municipalities not now providing such training.

What Are Minimum Standards of Training?

The two basic factors confronting every police administrator are the capabilities of his personnel and the qualitative and quantitative training provided. Both of these are vital when equated with the level of service the administrator hopes to provide to the community. Minimum standards of training take cognizance of the inability of many police organizations to provide such training.

Before any comprehensive conclusions are drawn as to what are minimum standards, it is imperative to describe in general terms a "qualified" police officer. In defining a qualified police officer one could say that he, "is one who, with a minimum amount of supervision, can *efficiently* and *effectively* perform most police functions." Obviously, then, qualified connotates certain requirements. These requirements are:

1. A specific amount of experience.
2. Positive character.
3. Good physical-condition.
4. General education.
5. Particular knowledge of the:
   a. Penal Code
      (1) Laws of arrest, search and seizure
      (2) Criminal procedure
      (3) Corpus delicti of crimes
   b. Vehicle Code
   c. Alcoholic beverage and narcotic laws
   d. Laws governing juvenile and the mentally ill
   e. Rules of evidence
6. Particular training in skills for:
   a. Operation of police equipment
   b. Use of firearms
   c. Self-defense
   d. First aid
   e. Report writing
   f. Diagramming
   g. Typing
7. Particular training in procedures for:
   a. Mechanics of arrest and search
   b. Handling juveniles
   c. Patrol procedures
   d. Civil disturbances
   e. Specific crime procedures
   f. Police tactics
   g. Police observation
8. Particular training in investigations for:
   a. Preservation, collection and presentation of evidence
   b. Interrogation
   c. Statements
   d. Modus operandi
9. General knowledge of:
   a. Traffic control and accidents
   b. Vice
   c. Records
   d. Organization principles
   e. Communications
   f. Jurisdiction
   g. Availability of scientific aids
   h. Public relations
   i. Press relations
   j. Race relations
   k. Court procedure
   l. Probation, parole and prisons
   m. Police ethics

State minimum standards of training encompass the above qualification requirements into a comprehensive training program made available to all police officers within the State. Most minimum standards programs for the recruit level vary in their total hour requirements. However, they are all between 120 hours and 200 hours.

The Extent of Minimum Standards

The preliminary results of a survey conducted by the International Association of Chiefs of Police reveals that 21 states have enacted some form of state-wide training law. Four of these are mandatory in nature; 17 are voluntary. Legislation is now pending in two other states. The trend appears to be toward state legislation for minimum standards of training for police.

Problems in Minimum Standards of Training

Even though the premise may be accepted that minimum standards of training have evolved because of the inability of many municipalities to afford training facilities and programs for their police officers, any efforts to get and maintain minimum standards still raises pertinent questions. In North Carolina approximately 60 per cent of the police officers are trained to the level of minimum standards. These officers are, in the most part, members of the larger police organi-

Inspector Harold Barney, patrol division commander of the Tampa Police Department, uses visual aids as he lectures on training during the Institute's Police Administration School. Barney is also a member of the faculty at St. Petersburg Junior College in Florida.

zations. Minimum standards are aimed at the remaining 40 per cent, yet this 40 per cent represents those police organizations which, due to many factors, are not able to train their officers to a minimum level.

Primary factors include insufficient available funds and inadequate policing at home while the officer is attending a training session. Still, the chiefs of these smaller departments readily acknowledge the vital need of such training.

Continuing Police Service

Prior to any real solution for obtaining minimum standards in the small department comes the question "who will police the city while training is given?" Perhaps a county law enforcement advisory council to provide police services to the smaller community is a partial solution, because until continuing adequate police service is assured, the smaller communities will never be able to participate in a minimum standards program, regardless of their desire to do so.

Financing

A second major problem involved in minimum standards is financing. The two leading proponents of minimum standards—California and New York—have extremely different methods of financing such a program. The California plan, which is a voluntary plan, funds the program by assessment of $2 for every $20, or fraction thereof, of every fine, penalty, and forfeiture imposed and collected by the courts for criminal offenses, other than a fine, penalty, or forfeiture for a violation of the Vehicle Code, or for any local ordinance relating to stopping, standing, parking, or operation of a vehicle, and other than for a violation of the Fish and Game Code. The California system is based upon the philosophy that the violator of criminal statutes pays for the training of the police officer.

The New York plan, which is a mandatory plan, funds the program from state revenue by appropriation from the State Legislature. The New York System automatically calls for the discharge of a police officer who does not receive minimum training within six months of his hiring date.

The California plan does not use public funds for the support of the program; New York does.

Many police administrators agree that mandatory minimums are more desirable in that they provide for these police departments which are unable to provide training. The same administrators feel that a voluntary system maintains the initial problem and only certifies those already proficient.

Summary

The question regarding minimum standards does not appear to evolve around "if we're going to need minimum standards" but rather "when are such standards going to be implemented?" Judging from the experience of other states, it becomes readily apparent that with proper planning prior to adoption, the State can develop a model system for assuring minimum standards of training. The critical need in law enforcement today is standardized and adequate functional recruit training. The mechanics of such a program are secondary to a general consensus leading to action on the immediate need. □

Transporting . . . Liquors

(Continued from page 10)

Conclusion

The enforcement of laws relating to the transportation of intoxicating liquors is an extremly complex activity because statutes dating from 1874 to the present are still in effect and are at least partly in conflict with one another. However, a few rules, applicable in all areas of the state, may be unequivocally stated:

(1) There is no restriction on the quantity of taxpaid beer and unfortified wine that may be lawfully transported by an individual for his own use.

(2) The transportation of whiskey in quantities exceeding one gallon is evidently prohibited in all counties.

(3) The transportation of spirituous liquors (whiskey) having poisonous qualities is unlawful.

(4) It is illegal at all times and places to transport any quantity of whiskey, beer, or wine upon which the taxes imposed by law have not been paid.

One of the principal difficulties associated with liquor-law enforcement is the average law-abiding citizen's unfamiliarity with exactly what is permitted by GS Chapter 18. For example, how many North Carolinians are aware that the possession of over one gallon of legally acquired whiskey could subject them to prosecution for "unlawful possession of liquors for the purpose of sale"? For this reason it is perhaps fortunate that practically all liquor-law violations constitute misdemeanors rather than felonies. □

Notes from Cities . . .

(Continued from page 11)

$1.25 million project includes two large reservoirs and a pumping station. Previously Butner had purchased water from *Durham* at a cost of $4000 monthly.

* * *

Natural gas for *Kernersville* became virtually certain with approval by the board of aldermen of a proposed 40-year franchise and contract.

* * *

An unexpected three-to-one majority with approval from each of 20 *Wilmington* precincts will provide for construction of two sewage treatment plants. In passing the $5,500,000 bond issue, voters okayed an increase in the minimum water and sewer rate from $11.10 per quarter to approximately $15.60 to provide funds to retire the general obligation bonds.

(Continued on page 32)

1965 Legislative Changes . . .

(Continued from page 19)

all offenses occurred within three years. A licensee must wait at least six months following revocation before he is eligible to be licensed again.

The Commissioner must act to suspend or revoke under the above scheme receiving reliable notice of a conviction. Thus, if there is a conviction, any required suspension or revocation follows automatically by administrative action.

The suspension and revocation provisions applicable to the Wildlife Commission, on the other hand, are imposed purely in the discretion of the court convicting of a fish law offense. (Hunting and trapping license revocation provisions in the game law remain undisturbed by the new law.) G.S. 113-277 authorizes the judge to revoke for the remainder of the license period or to suspend for a definite period — which may be longer or shorter than the license period. A period of suspension may not exceed two years, though.

Commercial fishing and other licenses. The law formerly required licenses for vessels using commercial fishing equipment in commercial fishing waters. G.S. 113-152 expands the vessel licensing requirement to cover "commercial fishing operations" not only in coastal fishing waters but also such operations of *North Carolina* vessels outside our territory which result in landing and selling fish in the State. "Commercial fishing operations" include use of commercial fishing equipment no matter what the purpose of taking the fish, plus any means of taking when a primary purpose is to sell the fish.

The basic schedule of license fees for vessels remains the same, except that vessels without motors are eligible for a one-dollar license no matter what the length. The separate $10 license on the use of purse seines by menhaden vessels was eliminated and the basic vessel license was raised from $1.50 to $1.60 per ton.

G.S. 113-153 provides that a vessel having its primary situs elsewhere may land and sell its catch taken outside North Carolina without a license if the jurisdiction of that vessel would permit North Carolina vessels to have reciprocal privileges. Otherwise, the vessel from out of state must have a vessel license or a license to land and sell. Since licenses to land and sell are limited to the small operator selling less than $200 worth of fish in a year, the usual out-of-state vessel not meeting reciprocity requirements would have to buy the vessel license in order to sell its out-of-state catch here.

The license to land and sell set out in G.S. 113-155 is a new license to provide identification and regulation of persons selling fish *to a dealer* who are not otherwise covered by any law. As noted, this two-dollar license allows sale of up to $200 worth of fish per year. Most people will not need to buy this license, though, as fishermen taking their catch through the use of licensed vessels are exempt. The same is true of one dealer selling to another and a fisherman selling fish of a type that can be sold which were lawfully taken in inland fishing waters.

The other new license required is the individual oyster and clam license. This one-dollar license is needed in addition to any vessel license that may apply, and every single individual engaged in taking oysters and clams from public or private grounds *for commercial use* must have a current and valid license issued to him personally in his possession. This license, which is required by G.S. 113-154, can only be sold to residents of North Carolina. The original draft of the act required it of everyone taking oysters and clams, in effect excluding nonresidents completely as was true in the past at least as to oysters, but the House Committee on Commercial Fisheries and Oyster Industry amended the section to require the license only of those taking for commercial use. This amendment apparently was motivated by concern that the new law would appear too harsh if it required both a vessel license *and* an individual license of everyone taking oysters or clams for personal use through the aid of a vessel. It is noteworthy in this regard that the new law eliminates all other exemptions from season and license requirements applicable to those taking seafood for their own personal use.

Licenses for fish dealers. G.S. 113-156 makes everyone who deals in fish for a profit a dealer in the first instance, but then excludes those whose dealings are scientific or official, those noncommercially selling no more than $500 worth of fish per year, and fishermen who sell their catch exclusively to licensed dealers. All others are dealers, but some of these dealers need not be licensed with the Department; exempt dealers include those who buy all their fish from a licensed dealer or an out-of-state dealer or who deal only in fish subject to the jurisdiction of the Wildlife Commission. The right of a fisherman to sell a total catch of up to $500 a year on a casual, noncommercial basis does *not* apply to oysters and clams; anyone selling these is subject to dealer licensing requirements unless covered by some other exemption.

The separate licenses for dealers in oysters, clams, and scallops have been eliminated. The new law provides for one of two kinds of shellfish-dealer licenses to cover any or all of these three shellfish.

A shucker-packer license for $25 per year includes the right to ship shellfish in the shell. A license to deal in shellfish in the shell only is $10.

A similar breakdown has been made for dealers in crabs — without regard to whether they are hard or soft crabs. The license for the crab processer, who may also deal in unprocessed crabs, is $10. The license for dealing in unprocessed crabs is five dollars per year.

There was no substantial change as to the other dealer licenses.

A number of new provisions have been put in the law to give the Department clear administrative authority in dealing with its licensed fish dealers as to collecting taxes, requiring contribution as to oyster shells, keeping proper records and the like. Some are innovations in fact; others merely spell out procedures which have been developed in the past.

Taxes on seafood. With regard to the amount of tax on seafood, G.S. 113-157 makes several changes. The tax on oysters is now a straight eight cents per bushel; there is no special tax for so-called coon oysters.

One other change in the oyster tax resulted from the definition of "bushel" included in G.S. 113-129. Defining it as a dry measure containing 2,150.42 cubic inches adopts across the board the four-peck standard bushel and eliminated the previous five-peck oyster "bushel" or tub. In those areas that were still assessing tax on the basis of

the five-peck measure the new definition will cause a slight increase in oyster tax.

The tax on hard crabs has been changed to ten cents per one hundred pounds instead of ten cents per barrel. This also results in a slight increase, as the usual conversion figure used was based on an average of 120 pounds of crabs per barrel. As the barrel is almost never used today as a measure, the change undoubtedly will be welcome as a simplification despite the small tax increase it entails.

The only other possible change in tax concerns shrimp. The old law specified that the tax was 15 cents per 100 pounds on either cooked or green shrimp. The new law places the same tax on green shrimp only — and also specifies that the tax is to be levied on shrimp weighed with the heads off.

Oyster and clam leases. G.S. 113-202 revises completely the law pertaining to leases of public bottoms for oyster and clam culture. In general, it places existing leases under the more stringent provisions of the new law, provides for termination and renewal of all leases more than ten years old according to a schedule, modifies the procedure for protesting leases to allow this to be done before the lease is granted, and provides a specific list of causes for termination of lease. Most importantly, the rental figure on all leases more than one to two years old is raised to five dollars per acre per year. Any leaseholder who considers the new legal provisions to be a condemnation of existing contract rights is authorized to apply to the Industrial Commission for reimbursement of any damages he may prove. The provisions as to oyster and clam leases are very detailed, and anyone interested in the subject should read G.S. 113-202.

Registration and condemnation of grants. G.S. 113-205 requires all persons claiming title to any part of the land lying under navigable waters of North Carolina or claiming any right of fishery in navigable waters superior to that of the general public to register their grants or claims with the Commissioner. Unless registered on or before January 1, 1970, all such grants or claims are rendered null and void. G.S. 113-206(d) sets out a procedure by which the Department may contest a claim of title or right of fishery and, if necessary, condemn it for the use of the general public. In addition, where the Department has granted leases without notice of any grant or other claim of fishery right, the area in which the leaseholder is engaged in the commercial production of oysters or clams is given priority over the grant or other claim. Again, for reasons of constitutional law, the person claiming that any provision or action taken under the new law has condemned his claim of title or right of fishery may apply to the Industrial Commission for reimbursement of such damages as he may prove.

Commercial and Sports Fisheries Advisory Board. The purposes for creating the new 11-member Advisory Board have already been discussed. The provisions relating to this group are G.S. 113-241 to -245. It should be pointed out that the Commissioner of Commercial and Sports Fisheries plus the chairman of the Commercial and Sports Fisheries Committee of the Board of Conservation and Development are entitled to notification of and to attend regular and special meetings of the Advisory Board. Moreover, the Commissioner — in addition to the chairman of the Advisory Board — is entitled to call special meetings.

Coastal fishing violations. As in the past, most of the specific provisions governing coastal fishing — as opposed to matters concerning licenses, taxes, leases, and the like — are left to regulations of the Department. In fact, several of the statutes governing specifics as to oysters such as the prohibition against taking oysters at night or on Sunday are now out of the statutes entirely and will become exclusively a matter of regulations. Nevertheless, a few specific provisions in the old law were retained in the statutes. Several will be discussed below as they are provisions applicable both to the Department and the Commission. Among the provisions retained are several dealing with oyster equipment in G.S. 113-184.

G.S. 113-183 is an expansion of a former provision relating to untaxed or unlawfully taken seafood. It makes it unlawful to possess, transport, sell, buy, and the like any fish with knowledge or reason to believe that such fish are illicit. Fish are illicit when taken, possessed, or dealt with unlawfully, or when there has occurred a substantial failure of compliance with the law or regulations with respect to such fish.

G.S. 113-185 contains the two prohibitions demanded by the sports fishermen. G.S. 113-185(b) contains in the act as it passed a prohibition against trash or scrap fishing for commercial purposes. It is substantially similar to an old commercial fisheries regulation, but its insertion in the statutory text was demanded by the salt-water sports fishermen. The same is true as to the prohibition against fishing near piers, though here the statutory prohibition is somewhat stronger than the old regulation. The pier-fishing provision in G.S. 113-185(a), however, was amended before it got to the floor of the House. It still prohibits fishing within 750 feet of an ocean pier except from the pier or by means of surf casting, but it eliminates the requirement of the bill that the pier owner place buoys to mark the distance before the law can take effect.

G.S. 113-187 makes certain distinctions as to punishment for coastal fisheries violations that are worth noting. The basic provision in G.S. 113-187(a) makes it unlawful to participate in an unlawful commercial fishing operation. As no punishment is set out, the penalty is a fine not to exceed $50 under the terms of G.S. 113-135. G.S. 113-187(b), though, makes it a misdemeanor punishable in the discretion of the court for the owner of a vessel knowingly to permit it to be used unlawfully. "Knowingly" is a very difficult element to prove and this charge may not be brought very often.

G.S. 113-187(c), on the other hand, may literally apply in more situations than was intended by the draftsman. It states:

> Any person in charge of a commercial fishing operation conducted in violation of any provision of this article and its implementing regulations or in charge of any vessel used in violation of any provision of this article and its implementing regulations is guilty of a misdemeanor punishable in the discretion of the court.

"This article" refers to Article 15; thus it excludes offenses dealing with licenses and taxes, but it includes most other offenses. The subsection was patterned on an old provision in the oyster law imposing a higher punishment on the boat captain, but the revised version is broader in scope. Probably the courts would hesitate to apply the higher punishment to one-man operations or joint two-or three-man ventures where there is no one

clearly in command. As a practical matter, of course, there cannot be a higher penalty assessed unless the warrant were to state that the defendant was in charge of a vessel or a commercial fishing operation. Even if a person were a captain or one in charge, if the offense were worded only in terms of participation the punishment would not exceed a fine of $50 under G.S. 113-187(a) and -135.

Provisions applicable to Department and Commission. Article 20 groups several miscellaneous provisions that apply both to the Department and the Commission. Most of them have antecedents in the prior law and require no special comment. G.S. 113-261 probably broadens the power to grant permits to take fish with drugs, poisons, electricity, and the like, and G.S. 113-262(b) expands somewhat the prima facie provision of the former law. It referred only to fish bearing evidence of being taken with explosives; the new law extends to fish bearing evidence of having been taken with poisons, drugs, explosives, or electricity.

G.S. 113-263 had more teeth in it in the original bill. Upon a protest by the Department or the Commission as to a dam within the jurisdiction of the State of North Carolina, construction could not begin or proceed except upon approval of the Governor and the Council of State. In final form, the section merely confers a right of inspection of plans and specifications of dams to be built, and provides that "due consideration" should be given to the view of the Department and the Commission. A companion provision that was completely eliminated from the original bill gave the Board of Conservation and Development and the Wildlife Commission certain authority to make regulations governing the discharge of pollution into, dredging or filling in, destruction of marsh lands and other fish-spawning and wildlife-feeding grounds in, and other operations and activities in coastal fishing waters and inland fishing waters that may be inimical to fish and wildlife.

G.S. 113-265(a) is based upon a previous statute making it lawful to fish from bridges with a sidewalk more than four feet wide or with a guard rail between the walkway and roadway. In order to give more flexibility to handling this subject, the provision places this matter within the regulatory power of the Department and the Commission. The Department is to make regulations as to bridges over coastal fishing waters and the Commission is responsible for bridges over inland fishing waters. The new statute retains the provision making it unlawful to fish from the draw span of a bridge.

Inland fishing licenses. Article 21 does not make any major changes with respect to fishing licenses sold by the North Carolina Wildlife Resources Commission. There is a slight change in terminology as to the licenses in G.S. 113-271, but the only real changes are two minor liberalizations as to these hook-and-line licenses. By virtue of the definition of "resident" in G.S. 113-130 and the terminology used in G.S. 113-271(c)(3), a permanent resident of North Carolina moving from one county to another need no longer establish a six-month's residency in the new county. It is enough that he be a genuine resident of the state for more than six months; in that event he may purchase a resident county fishing license in the county in which he lives. It seems clear that this refers to his place of permanent residence rather than a place of temporary abode such as a summer cottage.

The other change conforms the law to the practice. The resident state daily fishing license according to the former law was available only to those outside their county of residence. Now, under G.S. 113-271(c)(4), the resident daily license may be used anywhere in the state.

G.S. 113-273 carries forward several provisions of the former statutes with regard to licensing trout ponds, fish hatcheries, and the sale of game fish from private ponds under special circumstances. There was some slight rewording and minor changes of detail but no major changes.

G.S. 113-274 spells out the authority of the Commission to issue permits for the taking of fish. As a convenience, Article 21 uses the term "license" to denote a written authorization as to which there is a charge, while "permit" refers to one as to which there is no charge.

The new provisions in the article are contained in G.S. 113-275 and -276. G.S. 113-275(d) gives the Commission the power to require license applicants to disclose all information necessary to prove eligibility for a particular license. G.S. 113-276(c) broadens the landowner exemption to cover spouses; the former law did not technically apply unless the spouse was a member of the family under 21. Perhaps the most apparent change in the law is a modification of the fishing license exemptions to make them harmonize with those in the game law. Instead of exempting all residents 16 years old or less (and nonresidents 12 years old or less), G.S. 113-276(d) grants an exemption to anyone under 16 if he is either (1) accompanied by a responsible adult in compliance with applicable license requirements or (2) is carrying a valid license issued to one of his parents or his guardian. It is also made explicit that this exemption applies only to the regular hook-and-line license and not to the special trout license. The same is true of the natural-bait exemptions for persons fishing in their own county — and is true of the landowner exemption.

G.S. 113-276(h) makes it plain that the Commission may require persons exempt from license requirements to carry identification sufficient to prove their exemption. The Commission may also require persons to substantiate their entitlement to a particular type of license.

The provisions of G.S. 113-277 relating to suspension and revocation of fishing licenses have previously been discussed.

Revised publication and administrative provisions. Articles 17 and 23 relate respectively to the administrative powers of the Department and the Commission. G.S. 113-221 contains detailed provisions relating to publication of regulations of the Board and proof of the text of regulations in court. In addition, it provides for the proclamation procedure which has been developed to take care of changing conditions that may occur between meetings of the Board. Comparable publication provisions in G.S. 113-301 were deleted from the administrative section applicable to the Wildlife Commission. Nevertheless there is an advantage in that it makes it clear that the publication procedure there set out applies to all regulations of the Commission and not just to fishing regulations. As will be noted later, G.S. 113-301 embodies the substance of an act which was passed earlier during the 1965 session reducing the number of times a regulation would have to be published in the newspaper.

G.S. 113-302 through an apparent typographical error makes very little sense. It says that the prima facie evidence provisions of G.S. 113-103 "respecting game apply equally to the possession of game fish in such establishments." The prima facie evidence provision in G.S. 113-103 applies to possession of game during closed season — not to any establishments. The intended reference was presumably to the prima facie evidence provision in the first sentence of G.S. 113-104. It makes possession of game in hotel, restaurant, cafe, market, or store, or by a produce dealer, prima facie evidence of possession for the purpose of sale.

G.S. 113-228 and -307 respectively authorize the Board and the Commission to incorporate by reference in their regulations provisions of federal law or regulations as to which there is concurrent jurisdiction. The sections further authorize automatic incorporation of future changes in the federal law so long as the portion of the federal law or of federal regulations adopted is clearly limited to an area within the concurrent state jurisdiction. G.S. 113-307 makes it clear that the authority applies to the total jurisdiction of the Commission and not just to the fish law.

Fisheries Commission and Advisory Board Appropriation

In the original fish and wildlife revision bill there was a technical appropriation provision which appropriated funds to the Department of Conservation and Development for the use of the Atlantic States Marine Fisheries Commission and the Commercial Fisheries Advisory Board — with a provision for the Advisory Board appropriation to go to any successor board. These two bodies have for the past several years been operating on funds allocated from the Contingency and Emergency Fund. The appropriation through the Department would result in these two appropriations being picked up as budget line items in the future.

As this was the only appropriation in the omnibus bill, it was decided to delete the provision in the first committee substitute and handle it in a separate bill, thereby avoiding the necessity of referring the omnibus bill to the Committee on Appropriations in each house. Chapter 935 (HB 1033) (eff. July 1) repealed the prior act appropriating funds to the Atlantic States Marine Fisheries Commission from the Contingency and Emergency Fund. It appropriates $1,500 and $2,000 for each year of the 1965-1967 biennium to the Department for the use respectively of the Fisheries Commission and the Commercial Fisheries Advisory Board. As this act was effective July 1, the appropriation was made to the old Commercial Fisheries Advisory Board. The administrative provisions in the omnibus bill, effective January 1, 1966, call for transfer of any appropriations from the abolished board to the new Commercial and Sports Fisheries Advisory Board.

Sanitation of Shellfish and Crustacea

A number of years ago when the State Board of Health sought to inspect and regulate sanitation in oyster and crab processing plants, the Attorney General ruled under the statutes then in force that the Department of Conservation and Development had the authority to regulate sanitation of this seafood. As a result, a cooperative program was developed by the Department and the State Board of Health for the regulation of sanitation of shellfish and crustacea. The staff members of the State Board of Health would draft regulations to be adopted by the Board of Conservation and Development. The State Board of Health assigned employees to work with employees of the Department in the cooperative program.

In order to give the State Board of Health greater autonomy in its regulation of sanitation, Chapter 783 (HB 862) (eff. July 1) amended the public health statutes to grant regulatory authority to the State Board in its own right. It redesignated old Article 14A of Chapter 130 of the General Statutes relating to swimming pools as Article 14B and inserted a new Article 14A on sanitation of shellfish and crustacea consisting of G.S. 130-169.01 to -169.03. The act empowers the State Board to regulate sanitary aspects of harvesting, processing, and handling shellfish and crustacea. It specifically authorizes the State Board to issue and revoke permits and exercise such other regulatory powers granted in Chapter 130 as necessary. As conservation jurisdiction remains with the Department, it authorizes the State Board and the Department to enter into an agreement respecting the duties and responsibilities of each agency as to harvesting, processing, and handling of the seafood in question.

The act contains the usual administrative provisions relative to a transfer of property and appropriations used in connection with the cooperative program from the Department to the State Board.

Reorganization of the Wildlife Resources Commission

See STATE GOVERNMENT in the September 1965 issue of *Popular Government* for a discussion of this subject.

Changes in the Game Law

In the 1965 session there were more proposals for changes in the game law that failed than ones that passed. The alligator law and the turkey penalty were the only two amendments to general laws that were ratified. The game law proposals that failed were as follows:

SB 87: would have restricted the ban in G.S. 103-2 against hunting with firearms on Sunday to such hunting done withing 500 yards of a church.

SB 100 and identical HB 248: would have made free hunting and fishing licenses available to North Carolina residents of age 65 or older upon payment of the license agent's fee. Bills to this effect are introduced every session; neither one this year was reported by the committee to which it was assigned.

SB 379: would have increased the price of nonresident hunting licenses by two dollars each, allocating the revenue from the increase to the proper Canadian agency for propagation and control of migratory waterfowl. This bill passed the Senate but received an unfavorable report in the House.

SB 404: would have made generally applicable the legislation found in numerous local acts prohibiting hunting from the right-of-way of a public highway. After being amended to permit county commissioners to exempt stretches of highway from the ban, the bill passed the Senate. It received an unfavorable report in the House.

HB 433: would have added Lincoln to the list of counties in G.S. 113-111 with no closed season on foxes

(Continued on page 28)

November 17-19 found the North Carolina Association of Assessing Officers at the Institute of Government for their annual conference. Among the program topics was a panel discussion, "Are Property Taxes Obsolete?" (above). Pictured during the discussion are Pearson Stewart, Director, Research Triangle Regional Planning Commission (back to camera); C. D. McGinnis, Gaston County Assistant Manager (far right); and Institute staff member Phil Green (center). Staff member Henry Lewis (foreground at left) spoke to the group on "New Legislation: Effect of the Spiers Case."

INSTITUTE SCHOOLS MEETINGS CONFERENCES

Two identical short courses on Traffic Accident Records and Their Uses have been conducted at the Institute of Government this fall. They have been presented by the North Carolina Traffic Safety Council, Inc., in cooperation with the Institute, the North Carolina Association of Insurance Agents, Inc., and the North Carolina Department of Motor Vehicles. Shown lecturing at left during the November session is Bradford W. Johnson of the public health statistics division of the North Carolina Board of Health. The course was designed to provide basic information on the collection, processing, summarizing, and filing of accident and arrest data so as to be of maximum benefit in planning and executing an effective traffic accident prevention program involving enforcement, engineering, and education.

The Roles . . . in Policy-Making

(Continued from page 7)

nominated or elected by wards said that they try to be neutral on divisive issues in contrast to only 55 per cent in cities where councilmen are elected at large.

There is some question about how thoroughly or systematically any of the councilmen try to sample public opinion. What constitutes public opinion for most councilmen are the opinions of those with whom he associates at business or social functions and the views of those who seek him out to express a suggestion or complaint.

When asked if councilmen usually try to keep in touch with groups which are not directly represented on the council—such as minority groups in the community—half or more of the participants in 11 cities said they did not. Overall, however, 61 per cent of those in cities where at least some of the councilmen are nominated or elected by wards said they did as compared to 51 per cent in cities where councilmen are elected at large.

The method of election was especially relevant in the smaller sample cities. About three out of every five people questioned in cities with 10,000 or more population agreed that councilmen do make an effort to keep in touch with minority groups, and the method of electing councilmen did not affect the answers given. But in cities of less than 10,000 people, only 44 per cent of those in cities where councilmen are elected at large thought that councilmen try to stay in contact with minority groups as compared to 58 per cent in cities where some councilmen are nominated or elected by wards.

Thus, the way in which councilmen are elected may affect how they play their representational role. Councilmen elected at large may be less sensitive to political pressures and therefore less responsive to minority groups. Councilmen nominated or elected by wards may have a better "feel" for the public pulse but are less willing to act when community opinion is split. This may explain, in part, why mayors in cities where councilmen are elected by wards are more influential in policy discussions than their counterparts in cities holding at-large elections.

BOND SALES

From October 12, 1965, through November 16, 1965, 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	*AMOUNT*	*PURPOSE*	*RATE*
Cities:			
Baileys	60,000	Sanitary Sewer	4.22
Forest City	250,000	Water and Sewer; Recreation Facilities Building	3.64
Goldsboro	3,500,000	Sanitary Sewer; Water	3.29
Landis	210,000	Sanitary Sewer	3.97
Mocksville	500,000	Water	4.07
Zebulon	165,000	Sanitary Sewer	4.19
Counties:			
Anson	850,000	School Building	3.38
Cleveland	1,500,000	County Hospital	3.28

Conclusion

The description of the roles of the manager, mayor, and councilmen extracted from the North Carolina study is a generalized description—what appears to be the prevailing pattern in the 21 cities studied. Undoubtedly, every manager, mayor, and councilman can think of times when a mayor or councilman was the major force behind the adoption of a specific policy, or when the manager's opinion was practically ignored by the council. The study in a statistical interpretation of interview data and did not try to account for every exception to the general rule. The findings must be read in that light. What we have described is the way that most policy decisions are made in most of the cities examined most of the time.

Based on the evidence gathered from the 21 sample cities included in this study, we can say that the manager appears to have two major roles in the policy-making process. First, the manager is usually the chief initiator of policy. Only in the case of rather inexperienced managers are councilmen somewhat reluctant to give the manager major responsibility for determining what matters should be brought to their attention and which should not. Second, all managers act as uncertainty absorbers for the council, translating problems into policy alternatives among which the council must choose. Usually the manager's presentation to the council includes a recommendation for specific action, and when it does not the manager is usually asked for a recommendation. Combined, the roles of policy initiator and uncertainty absorber tend to make the manager the most influential participant in the policy-making process in council-manager cities.

The mayor is required to play the role of ceremonial head of government. He may sometimes play the role of policy initiator, and in many cities exercises important influence over the evaluation of policy proposals. Appointed mayors in cities electing councilmen at large have greater influence in policy discussions than do elected mayors, but elected mayors in cities nominating or electing councilmen by wards have still greater influence. However, intangible factors such as the ambition of the mayor and councilmen's perceptions of the proper role of the mayor may do as much to shape the role of the mayor in policy making as do variations in the form of the council-manager plan.

Councilmen, under the council-manager plan, are assigned the role of acting as final arbiters in policy decisions. As a body, they must accept or reject the policy proposals which are presented to them. However, it appears that rarely does an individual councilman assume the role of policy initiator or exercise decisive influence in the consideration of policy proposals. The more important role of councilmen in the policy-making process may be that of representing the interests of constituents—a role which has probably not received the study it deserves. □

1965 Legislative Changes . . .

(Continued from page 25)

(Lincoln presently has no closed season on gray foxes but has a dogs-only season on red foxes). More importantly, the bill would have modified G.S. 113-110.1 (making hunting license requirement applicable to all participants in a fox hunt) by restricting license requirements to those carrying firearms for the purpose of taking foxes. This bill passed in the House but received an unfavorable report in the Senate. If this bill had passed, a number of other counties would undoubtedly have jumped on the bandwagon.

HB 494: would have added New Hanover to a 1963 Brunswick-Pender local act prohibiting the setting of a steel trap larger than a Number One trap on the lands of another.

HB 705: would have made it lawful in Gaston County to kill quail at any time, and to raise and market them alive or dressed — notwithstanding the provisions of G.S. 113-105. (G.S. 113-105 authorizes the propagation of game birds under a license, but specifically prohibits sale of quail and wild turkey for food purposes.)

HB 749: would have modified G.S. 113-104 in certain western counties to permit the use of a hand gun meeting certain specifications in hunting game animals and birds. The bill originally applied only to Burke County, but Alexander, Buncombe, Graham, Mitchell, Transylvania, Stanly, Surry, and Yancey counties were added in the House. It failed to pass second reading in the Senate.

Alligator Prohibition

As Florida has continued to enforce more stringently each year its laws protecting alligators, the commercial alligator hunters have moved northward. Chapter 904 (SB 475) (June 10) is designed to protect the native alligator population in several of our southeastern counties from wholesale destruction. It started out as a simple amendment to G.S. 113-102(d) making it unlawful to take alligators or their eggs at any time. In the course of passage the act was amended so as not to "apply to the land owner or owners."

Presumably the landowner can take and sell as many alligators and their eggs from his *own* land as he can find, but he probably could not contract to let a commercial alligator catcher come in and take them. The law is ambiguous whether a landowner could start a commercial alligator catching enterprise on his own land and hire employees, but the need for land ownership by the head of the enterprise would nevertheless cut down drastically on the opportunities for commercial taking of alligators.

The law, incidentally, does not mention the other offenses usually related to unlawful taking in the game law: possession, sale, transportation, purchase, and the like.

Turkey Penalty

In 1963 G.S. 113-109 was amended to impose a fairly stiff minimum fine or imprisonment on persons taking wild turkey during closed season. The law called for a fine of not less than $100 or imprisonment for not less than 90 days, or both, in the discretion of the court. Chapter 616 (HB 375) (May 19) amends G.S. 113-109(d) to add under this penalty provision the offense of taking wild turkey "during the open season . . . by the use of any unlawful means or method as defined in G.S. 113-104 . . . ."

Local Fox Laws

Only three counties were successful in amending their fox laws this session — which may be a record low.

Chapter 773 (HB 491) (June 2) repealed a 1963 law which had set a closed season on foxes between February 15 and October 1 for a portion of *Perquimans* County in the vicinity of the village of Belvidere. This means that all of Perquimans is again governed by G.S. 113-111, making it lawful to take foxes at any time.

Chapter 774 (HB 540) (eff. January 1, 1966) places a totally closed season on foxes in *Duplin* County from March 16 to August 1 each year. During the period from August 2 to March 15, foxes may be taken with dogs "and with dogs and guns when the hunting season is open on other upland game." The act preserves the right of an owner of property to take foxes that are committing depredations.

Chapter 522 (HB 661) (May 12) deletes *Yancey* County from the list in G.S. 113-111 and modifies that section to specify a year-round closed season on foxes.

Local Boars and Hogs

The residents of several western counties apparently became dissatisfied that the regulations of the Wildlife Commission did not open any season on European wild boar in their counties. The result was Chapter 608 (SB 160) (May 19) applicable in its final form to *Avery*, *Burke*, *Caldwell*, *McDowell*, *Mitchell*, and *Watauga* counties. It specifies that the boar season is to be the same as the bear season prescribed for those counties and sets out several regulatory provisions. Limits: one per day; one in possession; and two per season. Weapons permitted: rifles larger than .22 caliber; or shotguns when loaded with buckshot or rifled slugs. The use of dogs is allowed, and several other provisions of the general law are repeated. The act is silent as to any penalty for violation of its provisions. According to case law it would be a misdemeanor punishable in the discretion of the court.

Chapter 515 (HB 535) (May 12) applies in *Clay*, *Macon*, and *Jackson* counties. It declares "wild or feral hogs" to be game animals and imposes a closed season up till October 15, 1967. After that, the act sets an open season from October 15 to January 1. Limits: one per day; two in possession; and two per season. The act specifies that violations of its provisions are misdemeanors punishable in the discretion of the court.

Other Local Game Laws

Chapter 140 (HB 231) (March 30) specifies that black bears inflicting or attempting to inflict injury to *personal* property in *Washington* County may be killed by anyone either on the spot or in pursuit. The usual depredation provisions are either expressly or by implication limited to allow only persons with an interest in the property being damaged to kill the offending animal. The act might have something of the effect of opening a year-round season on bears except for the relatively unusual restriction that the damage be to personal property.

This would include livestock and crops that have been harvested, but not buildings, growing crops, timber, or other property attached to the land. In common with several other local acts affecting counties in eastern North Carolina, the act allows the person to keep any bear he kills, but he must notify his local wildlife protector before disposing of it.

Chapter 509 (HB 315) (May 12) enacts the standard prohibition against hunting from the right-of-way of any public highway in *Northampton* County. The penalty, though, is above the jurisdiction of a justice of the peace as violations are punishable by a fine not to exceed $50 or imprisonment up to 30 days, *or both*, in the discretion of the court. Wildlife protectors are given enforcement jurisdiction.

Chapter 928 (HB 865) (June 10) was amended during passage to apply to *Franklin* as well as *Warren* County. The act contains an elaborate preamble reciting the dangers caused by the carelessness of out-of-county hunters using high-powered rifles and then prohibits use of any rifle of any caliber in hunting *deer* in the two counties except with the written consent of the landowner. The act further prohibits rifles in hunting deer from any highway in the two counties without the written consent of adjoining landowners. Violations are punishable by a fine up to $50. Wildlife protectors are given the authority to enforce the act.

Trespass and Related Laws

Two amendments made to the law governing posted lands are treated below. Two bills of interest that failed to pass are:

SB 541: would have shielded the owners and operators of private ponds on privately owned land from liability for damages or any form of legal liability for injury or death of any person caused by reason of such person being in, around, or upon the waters of such private pond. The bill did not apply to commercial or recreational ponds to which the public is invited. This bill was not reported out of committee.

SB 590: would have amended G. S. 113-120.5 to provide that a natural or artificial pond or lake used for agricultural or livestock purposes may not be deemed an attractive nuisance. This bill failed on second reading in the Senate.

Lands Posted to Prohibit Hunting and Fishing

Although the statutes governing posted lands do not specifically grant jurisdiction to wildlife protectors and thus may not be enforced by them, it is still desirable that they as well as the hunting public keep abreast of changes in these laws.

Chapter 923 (HB 680) (June 10) amended G.S. 113-120.2 to simplify the method of posting land. As for general posting of boundaries of land to prohibit hunting, fishing, and trapping, the act deletes the requirement that the posted signs be not less than 150 yards apart. Thus, the law now provides for signs not more than 500 yards apart close to and along the boundaries, with at least one at each corner and on each side.

A more important change in G.S. 113-120.2, however, works a simplification in the posting of waters to prohibit fishing. It is enough to post signs along the stream or shoreline of a pond or lake at intervals of not more than 300 yards apart.

Chapter 1134 (SB 415) (June 17) amends G.S. 113-120.1 to add a minimum penalty for the offense of trespassing on the posted land, water, pond, or waterfowl blind of another. The offense committed in the daytime carries a minimum of a $15 fine. The offense committed between sunset and sunrise carries a minimum of a $30 fine. The top limit for each offense remains either a fine up to $50 or imprisonment up to 30 days. The act also deletes the former provision that except as to waterfowl blinds no trespass arrests could be made without the consent of the landowner or his agent.

Representatives of three counties found it necessary to restore the substance of this deletion, however, and a proviso applicable to *Halifax*, *Onslow*, and *Warren* counties was added. In these counties the consent of the landowner or his agent is necessary prior to arrest in every instance; the former exemption of waterfowl blinds is not retained.

Miscellaneous Changes in the Inland Fishing Laws

Fishing With Nets On Sunday

As usual, several more counties were exempted from the prohibition against fishing with nets on Sunday. This provision contained in G.S. 113-247 is to be repealed upon adoption of the omnibus fish law revision and will not be replaced. Thus, after January 1, 1966, there will be no closed net season anywhere in North Carolina simply on account of the day being Sunday.

For the information of those interested for historical purposes or for use until the end of 1965, the following additional counties were exempted from G.S. 113-247: *Duplin*, *Pender*, and *Wayne* (Chapter 354 [HB 397] [April 28]); *Jones* (Chapter 76 [HB 123] [March 16]); and *Pitt* (Chapter 142 [HB 233] [March 30]).

Boundary Waters Exemption

Of the 1965 laws amending the old fish laws which are slated to be replaced January 1, 1966, by the omnibus revision, perhaps the most complicated is Chapter 716 (SB 151) (May 27). It adds a new section in the old inland fishing license article to extend the natural-bait exemption from hook-and-line license requirements to certain out-of-county situations. For purposes of the exemption, residents of a county are deemed fishing within their own county when fishing in boundary water either (1) from the banks in their own county or (2) while located on the surface of or in such boundary water. In addition, where a municipality is bounded by a boundary river or stream, residents of the county in which it is located may fish in the boundary river or stream from the banks opposite the municipality and still be deemed in their own county. The same is true of fishing from any islands opposite the shore of the municipality. The act provides a fairly elaborate definition of the phrase "body of boundary water." Essentially, the definition covers any body of water which forms or has a course that runs substantially with the boundary line between two counties in North Carolina.

Publication of Wildlife Fishing Regulations

Chapter 718 (SB 166) (May 28) amended the fishing regulation publication requirements to reduce the

number of times regulations have to be published in a newspaper from four to once. The act stipulated that the newspaper in which the single publication is made must be one published in and having general circulation throughout North Carolina.

Although this provision expires on January 1, 1966, with the effective date of the new fish law, it is identical with the publication requirements pertaining to all — not just fishing — regulations of the Wildlife Commission in new G.S. 113-301.

Cherokee Trout Fishing Program

Early in the session SB 39 was introduced to divest the Commission of jurisdiction over all hunting and fishing on the reservation of the Eastern Band of Cherokee Indians. As the reservation of the Cherokees in North Carolina is not a single enclave but a number of widely scattered parcels of property in several western counties held in trust for the Cherokees by the United States, SB 39 would have been highly disruptive of enforcement of the game and fish laws in a number of counties and was vigorously opposed by the Commission.

Although SB 39 received an unfavorable committee report, some of the steam generated on its behalf carried over to another bill introduced later in the session limited to trout fishing and applicable only in *Jackson* and *Swain* counties. This bill was finally enacted as Chapter 765 (SB 253) (June 2), and has been codified as G.S. 71-8 to -12. It provides in G.S. 71-8 that subject to approval of the Secretary of Interior:

> the tribal council of the eastern band of the Cherokees shall be responsible for the management of the trout fishery on the waters of the lands presently held in trust for their use and benefit in Jackson and Swain counties. Such management shall include the establishment of creel limits, size limits and choice of bait.

G.S. 71-9 authorizes the Tribal Council to set seasons within limits:

> The above management may provide for a trout fishing season beginning with the state-wide trout season and extending to the thirty-first day of October.

Although the Commission was divested of jurisdiction over the "management" of the trout fishery on the lands in question, the act clearly implied that the Commission's license requirements would continue to apply; G.S. 71-10 provides that trout transported from reservation lands must be accompanied by an official Cherokee Indian Reservation fishing permit bearing, among other things, the permittee's North Carolina fishing license.

If at any time the United States Fish and Wildlife Service ceases to support the trout program or if the Tribal Council decides to discontinue the program, the management of this fishery is to revert to the Wildlife Commission.

Warning Tickets and Aircraft

Two bills which failed to pass would have had a substantial effect upon enforcement methods utilized by wildlife protectors. SB 205 and identical HB 450 would have copied the restriction placed upon the State Highway Patrol to prevent the use of aircraft in the enforcement of the game, fish, and boat laws. The bill went beyond the restriction placed upon the Patrol in that it ordered sale of the Commission's aircraft and made certain that none of the proceeds of such sale would revert to the Wildlife Resources Fund. The bill prohibited the admission of evidence gained by aircraft or other airborne equipment in any criminal action within the Commission's jurisdiction.

The other measure was HB 1026, which would have provided for the issuance of warning tickets by wildlife protectors for violations of the game and fish laws. The bill would have empowered protectors to issue the tickets to persons committing "minor" violations of the game and fish laws. Once a protector chose to issue such a ticket, the ticket and the fact of its issuance would have become privileged information available only to official personnel for statistical and analytical purposes.

This bill was modeled after the warning-ticket act which passed this session with regard to motor-vehicle offenses, Chapter 537 (SB 225) (eff. October 1). It should be noted that this act was later amended by Chapter 999 (SB 493) (eff. October 1) to delete the reference to "minor" violations and to authorize the issuance of warning tickets "for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the Motor Vehicle Laws." The concept of "minor" violations would likely have caused even more difficulty of interpretation in the game and fish law than in the motor vehicle law. From many standpoints, almost all the game and fish violations are minor.

Changes in the Boat Law

Resolution 83 of the 1963 General Assembly authorized the appointment of the North Carolina Aquatics Recreation Study Commission to report to the 1965 General Assembly concerning recreational use of waters, with special emphasis on multiple use and recommended legislation. Several important bills that were introduced in 1965 grew out of the recommenations of this study commission, and some of the recommended legislation was adopted, but in general boating legislation received comparatively little attention this session. Expressions of strong public concern over several boating accidents occurring later in the summer, however, indicates that in future legislative sessions issues of boating and water safety will demand an increasing share of the legislators' time. Governor Moore, for example, established in August a Governor's Committee on Water Safety and appointed the Executive Director of the North Carolina Wildlife Resources Commission as chairman.

Marine Toilets

As introduced, the marine-toilet legislation amended the boat law to require all vessels on the waters of North Carolina having marine toilets to meet design standards for such toilets prepared by the State Board of Health. A floor amendment in the House, however, drastically curtailed the scope of this bill — which had been sponsored by the Aquatics Recreation Study Commission — by limiting its application to vessels operating on "the inland lake waters of the State." Another floor amendment, though, extended the provisions of the bill to prohibit the placing of litter, raw sewage, and other wastes in inland lake waters.

Chapter 634 (HB 278) (eff. January 1, 1966) in its final form makes several amendments to the boat law.

First, in order to make sure that houseboats at anchor would be covered under the marine-toilet provision, the act makes basic changes in the definitions of "operate" and "vessel" contained in G.S. 75A-2. It is noteworthy that the changes in definitions — unlike the other sections of the act — apply to all waters and not just inland lake waters. Because the change in the definitions has an effect beyond the scope of the marine-toilet law, this portion of Chapter 634 will be treated separately below.

Next, a new G.S. 75A-6(o) is added requiring vessels operating on inland lake waters with marine toilets to meet the design standards of the State Board of Health. Marine toilets are of two general types: (1) sewage treatment devices and (2) holding tanks. Both types must be approved if carried, though vessels with marine toilets installed prior to January 1, 1966, are given until January 1, 1969, to conform to the new design standards. Wildlife protectors are to inspect marine toilets carried on vessels along with the other equipment listed in G.S. 75A-6. The Wildlife Commission is also supposed to refuse to issue a certificate of number to vessels not in conformity with toilet requirements and operating on inland lake waters. Since there is no registration limited to inland lake waters, this provision is probably rather meaningless and at most will require only an additional question on the form used in applying for a certificate of number.

As of the end of September, the State Board of Health had approved two models of sewage treatment devices and one holding tank. Information will be available from either the State Board of Health or the Wildlife Commission as additional models are evaluated and approved.

As noted, the act in its original form applied only to vessels carrying marine toilets. New G.S. 75A-10(c) inserted by floor amendment in the House states that no person shall:

> place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

In considering this subsection, two points need special attention:

(1) Although included in the Boating Safety Act of 1959, the new provision is not limited to litter or pollution from vessels. It would apparently include noxious material placed in inland lake waters by persons on piers and other structures over the water. Despite the literal wording of the act, though, it will probably be narrowly interpreted as not to divest the State Stream Sanitation Committee or the Department of Water Resources of jurisdiction over more conventional water pollution originating from land structures.

(2) The subsection clearly does *not* contain a flat prohibition against putting litter, sewage, or anything else in inland lake waters. There must be proof that the matter put in the water was such as to "render the waters unsightly, . . . or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes." Needless to say, until there are definite court interpretations, such a vague standard will leave many borderline situations in which wildlife protectors and other enforcement officers may hesitate to act.

One final interpretational problem is raised by the phrase "inland lake waters." Clearly excluded, as was intended, are fast-flowing rivers and streams in their original beds, coastal sounds, and other large stretches of estuarine waters. But the word "lake" is somewhat troublesome. Most of the so-called lakes in North Carolina are not natural lakes but are ones formed along the courses of rivers and streams by impoundments. The intent of the floor amendment very probably was to make the marine toilet and other provisions applicable in all of the heavily-used and relatively still larger bodies of inland water— and the term "lake" would thus include impoundments as well as natural lakes. Even so, there will be problems as to where a flowing stream stops and an impoundment area begins, but this problem may likely give less difficulty in practice than some of the others discussed above.

Amended Definition of "Operate" and "Vessel"

As mentioned above, Chapter 634 amended definitions in G.S. 75A-2(2) and -6(5). "Operate" is now defined as meaning:

> to navigate or otherwise use *or occupy* a motorboat or vessel, *and shall be applicable to any motorboat or vessel that is afloat.* [Emphasized portion is new.]

"Vessel" is defined as meaning:

> every description of watercraft *or structure,* other than a seaplane on the water, used or capable of being used as a means of transportation *or habitation* on the water. [Emphasized portion is new.]

The above definitions taken literally would mean that an over-the-water structure on pilings which serves as a habitation would be a "vessel" being "operated" for the purposes of the boat law. This expanded definition might lead to ludicrous results in other than the marine toilet case, but it must be remembered that almost all the other numbering and equipment requirements of the boat law apply to "motorboats"—or at least to motor-propelled vessels. One rather substantial change does result, however.

In the past wildlife protectors checking equipment requirements have had to prove actual navigation or some similar use of the vessel in question before bringing any prosecution for faulty or inadequate equipment or numbering. Now, if the expanded definition is given literal effect by the courts, a vessel at anchor or tied up at dock is being "operated" so long as someone is occupying it.

Regatta Authorization Exception

G.S. 75A-14(a) requires persons holding marine water events to obtain advance permission of the Wildlife Commission. Chapter 437 (SB 315) (May 7) amends this subsection to exempt camps for boys or girls holding regattas or other boat races where no motor power is used. Such camps holding marine parades or tournaments would still need to secure advance authorization from the Commission or — if in navigable waters of the United States — from the Coast Guard.

Because the North Carolina law cannot abridge the law of the United States, camps for boys and girls planning boat races without motor power in navigable waters of the United States would be required to secure permission

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Book Reviews

CONGRESSIONAL DISTRICTING: THE ISSUE OF EQUAL REPRESENTATION. By Andrew Hacker. Washington: The Brookings Institution, 1964. 144 pp. $3.50. (Paperback $1.95)

"One of the tenets of democracy," writes the author of this timely book, "is that citizens should be given the blessings of equality whether they want them or not." Offered as humor, that comment also will serve as a characterization of his approach to the subject of congressional redistricting.

This book is not, however, a broadside for "one man, one vote" in congressional elections, but a valuable and compact treatment of one of the most important political and judicial issues of the day. The author explores the constitutional and historical background of congressional districting, examines state legislative and judicial action on the subject, discourses upon the art of political mapmaking in its variant forms, and describes the recent characteristics and consequences of unequal congressional representation (which he finds to be bad and getting worse, due to rapid population shifts). The real struggle over congressional representation, he finds, is between the overrepresented rural minority and the underrepresented suburban minority — not between farmers and big city dwellers.

This edition of *Congressional Districting* includes a comment on *Wesberry v. Sanders,* 376 U.S. 1 (1964), the landmark case in which the Supreme Court first held that Article I, Section 2, of the Constitution has the "plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives" — a goal that, despite its present plainness, for 177 years had lain undiscovered in the simple phrase, "The House of Representatives shall be composed of Members chosen every second Year *by the People* of the several States . . ." The book was published too early, however, to include analyses of the subsequent cases in which the courts have applied the *Wesberry* rule to congressional districting schemes in several of the states. J.L.S.

NORTH CAROLINA HISTORY TOLD BY CONTEMPORARIES. By Hugh Talmage Lefler. Chapel Hill: The University of North Carolina Press, 1965. 566 pp. $7.50

This fourth edition has been revised and enlarged over its predecessors and updated through the legislative message of Governor Dan K. Moore on February 4, 1965. From its founding to recent events in its political, social and economic history, North Carolina and its development are put in a different perspective from the usual history book chronology. Through the reprinting in full and by condensation of historical documents, the author (Kenan professor of history at the University of North Carolina) has compiled a volume that is a valuable addition to the library of those in public and private life who share an interest in understanding about North Carolina and her future through a knowledge of her past. G.L.

A DICTIONARY OF ECONOMICS AND COMMERCE. By J. L. Hanson. Suffolk (England): Richard Clay (The Chaucer Press), Ltd. (Distributed by Philosophical Library, New York), 1965. 401 pp. $10.00.

This is a specialized type of dictionary which contains 4,000 entries of economic terms. It is much more complete and instructive than the standard glossary appearing at the end of economics textbooks. In fact the book is really a collection of explanations rather than definitions. Its principal shortcoming, actually a crucial limitation, as a reference work for U. S. readers as well as U. S. economists is that the British author has given it heavy British orientation. Thus, the definition of "Depressed Area" does not mention Appalachia, but lists South Wales, Clydesdale, South Lancashire and Durham (England).

For those who wish to know more about English-style socialism, the book gives only some insight. For example, "Welfare State [is a] term used — often somewhat derisively — of a comprehensive State system of social insurance against unemployment, sickness, old age and other similar contingencies, and with other schemes, such as a National Health Service, family allowances, national assistance, etc."

It is interesting to compare our own wide use of acronyms and initials with this British author's disdain of them. While we are constantly coining new "words" (CARE, VISTA, AID, etc.) and are familiar with the sound of letters (GNP, HEW, WPA, TVA, f.o.b., etc., etc.), he has included abbreviations only when "necessary" because of general usage.

Though this reference work was designed to be useful in England to men and women in many professions, it will be of value here primarily to those with interests in transatlantic trade or comparative economics and government. D. G. W.

● PATHWAYS TO PARLIAMENT: CANDIDATE SELECTION IN BRITAIN. By Austin Ranney. Madison: The University of Wisconsin Press, 1965. 298 pp. $6.50.

● A PREFACE TO URBAN ECONOMICS. By Wilbur R. Thompson. Baltimore: The Johns Hopkins Press, 1965. 413 pp. $7.50.

● MANUAL FOR THE ARRESTING OFFICER. By Irving Isaacson. Lewiston, Maine: Legal Publications, 1965. 163 pp. $2.50.

Notes from Cities . . .

(Continued from page 21)

Watersheds

In November elections, voters of two counties gave their approval to levy of county-wide property taxes for support of county-operated small watershed programs. *Wake* County voters authorized a maximum of one cent per $100 valuation tax levy by a vote of 9,089 to 5,502. *Rutherford* County voters okayed a maximum tax of five cents per $100 by a vote of 2,315 to 1,015. Earlier in the year *Jones* County was given voter approval for a maximum 25 cent watershed tax levy.

Attorney General's Rulings

CRIMINAL LAW:

Carrying Concealed Weapons

19 August 1965
A. G. to B. L. Matthews

Question 1: Would carrying a .22 caliber rifle concealed under the seat of a pickup truck constitute a violation of the law against carrying concealed weapons?

Answer: This office has ruled that carrying a pistol under the seat would constitute a violation of G.S. § 14-269. We are of the opinion that carrying a .22 caliber rifle concealed under the seat of a pickup truck would constitute a violation of G. S. 14-269 if the pickup truck were operated off the owner's premises.

Question 2: Would carrying a .22 caliber rifle, loaded or unloaded, *behind* (emphasis added) the seat of a pickup truck constitute a violation of the law against carrying a concealed weapon?

Answer: Whether this constitutes a violation depends upon whether or not the rifle was concealed and whether there was an intent to conceal the rifle. It would make no difference whether the rifle was loaded or not. In carrying the rifle behind the seat, the question would also be presented as to whether or not it was within easy reach and control of the occupant of the truck.

DOUBLE OFFICE HOLDING:

22 August 1965
A. G. to W. D. Gardner

Question: Would it constitute double office holding for a member of the Town Council to be appointed as assistant fire chief?

Answer: Both positions are public offices; therefore, one person may not serve in both capacities at the same time without violating Art. XIV, § 7, of the North Carolina Constitution.

10 September 1965
A. G. to Ray Brady

Question: May a person serve as a member of a County Board of Health and the State ABC Board at the same time?

Answer: Both positions are public offices; therefore, under Art. XIV, § 7, of the North Carolina Constitution, one person may not hold both offices at the same time. Acceptance of the second office automatically and instantaneously vacates the first office.

22 September 1965
A. G. to R. V. Biberstein

Question: Would acceptance of an appointment to the Veteran's Commission by a person who is already a member of a county board of education be considered double office holding in violation of Art. XIV, § 7, of the North Carolina Constitution?

Answer: Although a member of the Veteran's Commission is a public officer, he is exempt under the provisions of Art. XIV, § 7, of the North Carolina Constitution.

22 September 1965
A. G. to D. T. Clark

Question: Would acceptance of a position as town policeman by a person who is already township constable violate Art. XIV, § 7, of the North Carolina Constitution, as to double office holding?

Answer: A township constable is a public officer. A town policeman is a public officer. Upon the acceptance of the office of town policeman, this person instantaneously and automatically vacated the first office of township constable and thereafter had no right to act as township constable.

MOTOR VEHICLES:

Judicial Hospitalization

16 September 1965
A. G. to A. E. Blackburn

Question: Does commitment of alleged mentally ill persons and alleged inebriates to State hospitals for observation and treatment under G.S. § 122-63 (judicial hospitalization) necessitate the sending of notice of such commitment by the clerk of the court to the Commissioner of Motor Vehicles under the provisions of G.S. § 20-17.1?

Answer: A *commitment of an alleged mentally ill person* for a period of observation and treatment under G.S. § 122-63 is not an adjudication of insanity which would require the application of G.S. § 20-17.1. Neither would a commitment for a second period under G.S. § 122-65. Adjudication of legal insanity is a separate proceeding and is properly determined under chapter 35 of the General Statutes.

As to the *commitment of inebriates*, G.S. § 20-17.1(a)(2) requires revocation by the Commissioner of Motor Vehicles of a driver's license when the person has been "committed to, or has entered, an institution as an inebriate . . ." It is the A. G.'s opinion that, as to the commitment of inebriates under G.S. § 122-63, the clerk should file Form DL-40, as provided by G.S. § 20-17.1(c).

. . . Court Magistrate

(Continued from page 15)

magistrates as a minimum, and about 450 as a maximum. (This is less than half the present total of about 900 justices of the peace.) The majority of these will probably be part-time magistrates; only in the larger population centers will full-time magistrates be required.

In spite of the magistrate's lack of authority to try not-guilty criminal cases, he will need a thorough basic knowledge of several areas of the law. Issuance of valid warrants, especially search warrants, is a function of constantly increasing complexity. Proper conduct of a preliminary examination will require a knowledge of certain principles of constitutional law and criminal procedure. The conduct of a contested small claim may require familiarity with the law of contracts or negligence. Various other duties will require special training. This requirement for legal training, plus the high standard of personal integrity always demanded of a judge, means that the office of magistrate is a highly responsible one and that appointments to it should be made with great care. □

1965 Legislative Changes . . .

(Continued from page 31)

from the Coast Guard under applicable provisions of federal law.

Punishment for Violation of Boat Law Regulations

Until this session, the Boating Safety Act of 1959 authorized the Commission to make rules and regulations on various matters contained in the act but neglected to provide any sanctions for violation of such regulations. The penalty provisions in G.S. 75A-18 were limited exclusively to punishment for violations of the act itself. In most instances this has not hampered enforcement of the boating laws greatly, for the boat law regulations in the main merely defined standards as to matters specifically covered in the act — and prosecutions could be brought under the terms of the statute. The one important limitation was upon enforcement of local regulations authorized to be made under G.S. 75A-15.

Chapter 793 (SB 165) (June 3) remedies this gap in the law and provides a fine up to $50 for a violation of any rule or regulation adopted under the authority of Chapter 75A of the General Statutes.

In the process of amending G.S. 75A-18(a) in the manner indicated, Chapter 793 made one technical change that may cause some slight confusion. The original wording of the section listed "§§ 75A-4 to 75A-6," among others, as sections for which violations are punishable by a fine of up to $50. In 1961 G.S. 75A-5.1 was inserted in the act relating to free renewal of the certificate of number on commercial fishing boats, but carried its own (higher) punishment provisions for the actions specifically prohibited in that section (giving false information on an application or falsifying a commercial fishing tax receipt). The 1965 revision of G.S. 75A-18 (a), however, revises the wording to make the $50 fine provision applicable to "§§ 75A-4, 75A-5, 75A-5.1, 75A-6 . . . ."

Despite the change in the catch-all penalty section, it seems likely the courts will employ the adage that the specific prevails over the general and punish the two fraudulent acts specifically proscribed in G.S. 75A-5.1 (d) in accordance with the terms of the subsection itself: as misdemeanors punishable in the discretion of the court.

Uniform Waterway Marking System

The proposal to adopt the Uniform Waterway Marking System in North Carolina was one portion of a three-part package based on recommendations of the Aquatics Recreation Study Commission. Rather strangely, though, the three bills were all introduced at different times—one of them only ten days before the end of the session. Of the three bills only the one establishing the Uniform Waterway Marking System became law, but it will be necessary to discuss all three to achieve an understanding of what was proposed and the likely effectiveness of what was passed standing alone. (The marine-toilet proposal, also made by the Study Commission, might be considered a fourth part of the package, but this measure is to a large extent complete within itself and not dependent upon other legislation.)

The most important part of the package was the bill introduced last, HB 1135. It was a comprehensive measure rewriting the boat law and asserting State supremacy as to the control of boating and the recreational uses of public waters. It gave the North Carolina Wildlife Resources Commission the authority to make comprehensive regulations zoning and marking waters, governing operation of vessels, and relating to recreational use of waters in general. Cities and counties desiring any special provisions in their local waters had to apply to the Commission. (G.S. 75A-15(a) and (b) in its present form may possibly be construed to have this same effect, but the point is not clear.) A Boating and Water Safety Advisory Board was proposed to be created to make written recommendations to the Commission and other agencies having responsibility over boating and water recreation.

It can readily be seen that assessing all the different waters of North Carolina and coming up with a uniform pattern of zoning, marking, and other regulation is a monumental job well beyond the capability of the Wildlife Commission within present budget limitations. Although the Aquatics Recreation Study Commission made no specific recommendations as to funding, many of its members supported SB 174 and identical HB 399 sponsored by the Wildlife Commission. The measure provided that three tenths of one percent of what is commonly known as gasoline taxes should be diverted from the Highway Fund and be credited to the Commission for use in waterway marking and the regulation of boating and water safety. Interestingly enough, both bills received unfavorable reports in their respective houses before HB 1135 was even introduced.

The third part of the package, and the only part that passed, was the adoption of the Uniform Waterway Marking System. The act was Chapter 394 (SB 164) (eff. July 1) adding new G.S. 75A-15(c). The full text as codified is as follows:

> The Uniform Waterway Marking System as approved by the advisory panel of state officials to the merchant marine council, United States coast guard, in October, 1961, is hereby adopted for use on the public waters of North Carolina; and no markers shall be used in the waters of this State in conflict with the marking system prescribed by this subsection.

In 1961 and earlier years the Advisory Panel of State Officials to the Merchant Marine Council had been studying the problem of a simple nationwide system of markers that could be easily understood by the general public making recreational use of waters. After several preliminary studies and reports, the Advisory Panel on October 30, 1961, issued a report proposing a marking system of navigational and regulatory markers. The navigational buoys or markers were simplified (and compatible) adaptations of the system of navigational markers maintained by the United States Coast Guard. The regulatory markers followed the principle utilized in highway signs in that the shape and color of the markers (to be painted on either buoys or signs) had a general meaning that could be determined long before one is close enough to read the specific lettering on any marker.

Copies of the Advisory Panel's mimeographed report and the attachment containing pictured examples of the markers proposed may be obtained from The Council of State Governments, 1025 Connecticut Avenue, N.W., Washington 6, D. C.

The Council of State Governments subsequently recommended model legislation to be adopted by the states

with regard to the proposed marking system. The gist of the Council's draft was to authorize an appropriate state agency to make regulations as to uniform markers. The model statute left details of the system up to the agency, only requiring that such regulations:

> shall establish a marking system compatible with the system of aids to navigation prescribed by the United States Coast Guard and shall give due regard to the System of Uniform Waterway Markers approved by the Advisory Panel of State Officials to the Merchant Marine Council, United States Coast Guard. . . .

As can be noted in the quotation above, new G.S. 75A-15(c) takes a different approach from that recommended. The General Assembly simply enacted the marking system and made no provisions for regulations. As part of the three-part package, of course, this made little difference, for the regulatory powers that would have been granted the Wildlife Commission under HB 1135 specifically authorized adoption of the uniform marking system by regulation *plus* granting implementing regulatory authority. (Why the Study Commission recommended two different approaches at the same time is not clear.) Since HB 1135 did not pass, this leads to a consideration of exactly what the General Assembly adopted in the 1961 mimeographed committee report and what existing regulatory powers the Commission may have to supplement the marking system where the report is not specific.

Preliminary versions of the marking system had recommendations as to the size of markers and as to the construction of buoys and other fixed signs or structures on which the markers would be placed. The final report, however, in all but one instance leaves this to the discretion of each individual state — only recommending that uniformity within the state is "most desirable." The only specific size recommendation is that on *regulatory* buoys or markers there be a band of international orange at the bottom and the top not less than three inches in width. The portion in between the bands is to be white and serve as a background for the geometric shape of the particular regulatory marker. The orange bands are optional for shore structures, however. The geometric shapes themselves are to be applied in international orange against the white background, and spelled out words or recognized abbreviations are to be added (in black) to give specific meaning to the general meaning conveyed by the shape. The table at right gives the recommended shapes, with sample wording as indicated, though the list of wording is stated not to be complete.

SHAPE	MEANING	SAMPLE WORDING
Diamond Shape with Cross	*Boats Keep Out*	DAM, WATERFALL, RAPIDS, DOMESTIC WATER, SWIM AREA, etc. [to be painted under the shape]
Diamond Shape	*Danger*	ROCK, DAM, SNAG, DREDGE, WING-DAM, FERRY CABLE, MARINE CONSTRUCTION [to be painted on the white background inside the diamond shape]
Circle	*Controlled Area*	5 MPH, NO FISHING, NO SKI, NO SWIM, NO SCUBA, NO PROP BOATS, SKI ONLY, FISHING ONLY, SKIN DIVERS ONLY, etc. [to be painted on the white background inside the circle shape]
Square or Rectangle	*Other Information*	[Place names, distances, arrows indicating directions, availability of gas, oil, groceries, marine repairs, etc., to be painted on the white background inside the rectangular shape]

The navigational buoys or markers are recommended to have on them an indication to distinguish them from the similar markers maintained by the federal government. The system of navigational aids recommended in the report is as follows:

(a) On well defined channels, which would also include rivers, the Federal system of all-black and all-red buoys should be adopted. A red and a black buoy must be installed at both ends of the channel so that there shall be no question as to the fact that boats should pass between solid red and solid black buoys. Any staggering of the black and red buoys should be limited to instances where they are close enough together to eliminate any possible confusion, and they should then be installed in conformity with the buoys at the beginning of the channel. If used, the numbers should be colored white and may be reflectorized. Odd numbers should be used on black buoys and even numbers on red buoys.

(b) In those instances where there is no well defined channel, or the obstruction is of such a nature or in such a location that it can be approached from more than one direction, a cardinal system will be used, by using a white colored buoy with a red top or a white buoy with a black top, the width of the top color to be approximately one-third of the portion of the buoy showing above the water level. Navigation will be to the south or west of the red-topped buoys, and to the north or east of the black-topped buoys. The use of numbers should be colored white and may be reflectorized and shall be placed on the top portion of the buoy. Odd numbers should be used on black-topped buoys and even numbers on red-topped buoys.

(c) In cases where the obstruction is of such a nature that boats should go outside, that is, away from

the shore around the end of a reef, a buoy striped vertically with red and white stripes, the white stripe to be twice the width of the red stripe, shall be used; the significance of this buoy being that boats should not pass between it and the nearest shore.

(d) The size, shape and material of all buoys will be discretionary within the state, but uniformity within a state is most desirable. Whenever the term "buoy" is used herein, it shall mean either a floating or a fixed navigational marker.

(e) Use of reflectorized material is discretionary. If reflectors are used on the lateral buoys [the all-red and all-black buoys marking the sides of channels], a red reflector will be used on a solid red buoy, and a green reflector will be used on a solid black buoy, both of these buoys being used only on well defined channels. All other buoys such as those used in the cardinal system and the buoys indicating hazards protruding from shore, will have a silver or white reflector.

(f) Wherever navigational lights are used, they shall be flashing, the color of the light lens to be as outlined above for reflectors . . . .

(g) Whenever lights are desired on bridges, they shall be fixed red lights marking the edges of the safe channel with a single fixed green light to be placed over the center of the safe channel so as to indicate maximum vertical clearance at that point.

Three other marking recommendations fit into neither the regulatory nor the navigational marker category very easily, but apparently are treated in the report as regulatory markings (without the three-inch orange band requirement). The recommendations relate to mooring buoys, water structures, and divers' flags:

> The Committee further recommends that mooring buoys shall be white with a clearly visible blue band and the color white shall be used as the designating color for all other water structures, such as ski jumps, diving platforms, etc.
>
> The Committee also recommends that each state grant official recognition to the flag adopted by the Underwater Society of America for diving purposes, known as the "diver's flag," and being a red flag with a white diagonal running from the top of the flag where attached to the staff.

The committee mentioned in this quotation from the report is the Committee of State Officials on Uniform Markers of the Advisory Panel. The full Advisory Panel adopted its committee's report.

The only additional information given as to the "mooring buoy" is in the set of drawings attached to the report. In it a white buoy with a blue horizontal band running around it is described as an "anchor buoy" which is prescribed "for permanent placing in any waters for use in anchoring or mooring watercraft."

The above description of the Uniform Waterway Marking System indicates that much was merely recommended and that many details necessary to a uniform marking system were not covered in the report. Since G.S. 75A-15(c) simply adopts this system without more, the problem is as to who has the discretion to fill in some of the gaps. The logical candidate, of course, is the Wildlife Commission — since the marking system is authorized as part of the boat law. But as a *literal* interpretation of the statute, no one is given administrative authority over the system.

The Wildlife Commission already has in G.S. 75A-15 (a) and (b) authority to make "special rules and regulations with reference to the safe and reasonable operation of vessels" in particular local waters. As has been mentioned, however, it is not clear whether the Commission may make such local regulations on its own motion or whether it must wait until the local political subdivision holds public hearings and makes a formal request to the Commission for such regulations. In any event, the problem remains as to the scope of Commission regulations concerning the "safe and reasonable operation of vessels . . . ." Presumably this would authorize vessel speed limits, no-boating areas, no-skiing areas, and many other types of zoning contemplated as a predicate for any marking system, but some of the water recreational controls not explicitly related to boating — such as no swimming or no diving — would certainly be outside the Commission's present jurisdiction.

Another important question is whether the Commission under its local regulatory authority could regulate or prohibit private regulatory markers or private navigational aids. In navigable waters of the United States, of course, private regulatory and navigational markers are illegal unless placed with the permission of the Coast Guard. The Coast Guard is cooperating with the states and will not in the future approve any private markers unless compatible with the state system. Until the Wildlife Commission or some other North Carolina agency is given funds to construct and maintain uniform markers, though, it appears that most of them will have to be placed by private groups or by local authorities.

It thus seems logical that the Wildlife Commission should propose a set of supplementary standards for uniform markers as a recommendation for the entire state and then in each local water as local boating regulations are adopted officially incorporate the proposed standards as part of the scheme of regulation in the local water. The standards could also be used in consulting with the Coast Guard as to recommended action on requested private markers in navigable waters of the United States. The Commission could probably justify making a regulation prohibiting placement of any marker which it has not approved as a part of overall local boating regulations, but in waters without such local regulations (and which are not navigable waters of the United States) there is nothing to prevent uncontrolled placement of private markers so long as they are of the proper shape and color.

Lake Norman Water Safety Act

When it became clear that HB 1135 would not be considered this session, a last-minute local bill was introduced giving the county commissioners of *Catawba, Iredell, Lincoln,* and *Mecklenburg* the authority to make:

> rules and regulations for the safe operation of vessels and for recreational uses which will permit, protect, promote and aid in the safe, full and multiple use of the waters of Lake Norman . . .

The act, Chapter 1205 (HB 1187) (June 17), was an adaptation of HB 1135 and authorized the four counties

to hold joint meetings to make regulations for the lake, but required that each county ratify such joint regulations in a regular meeting before the joint regulations could take effect.

The act authorized the four counties to call upon the Wildlife Commission for information, advice, and assistance, but it did *not* specifically give wildlife protectors power to enforce the regulations. As the Commission's jurisdiction over boating and water safety is strictly limited to that granted in Chapter 75A of the General Statutes, this would mean that special county-commissioner-passed Lake Norman regulations would have to be enforced primarily by the sheriff's departments of the four counties. And in the absence of local legislation granting extended territorial jurisdiction, each sheriff's department would presumably be limited to that portion of the lake within its county. To date, these enforcement problems have discouraged passage of any Lake Norman regulations.

In spite of the local act, the Commission would apparently still be able to make local regulations for Lake Norman under G.S. 75A-15(a) and (b), and wildlife protectors would be able to enforce those regulations, but it is clear that such Wildlife Commission regulations could not have quite so broad a scope as those authorized in the Lake Norman act.

Person-Caswell Lake Authority

Chapter 200 (HB297) (April 8) authorizes the county commissioners of *Person* and *Caswell* to establish a five-member Person-Caswell Lake Authority. Three members are to be from Person and two from Caswell. Each member is to be appointed by and serve at the pleasure of the board of county commissioners of his own county.

The Authority is authorized to secure by purchase, gift, or lease lands and waters within the Hyco River Watershed within the two counties for public recreation and to recommend to the commissioners of the two counties appropriate zoning laws to develop recreational potential. It may construct roads, parking areas, sanitary facilities, and other recreational facilities, and may charge reasonable fees for the use of such facilities. It may sublease lands to others, and may apply to the Governor to have special officers commissioned to enforce laws and ordinances "on or relating to the waters and lands under the supervision or control of the Authority." In addition, the Authority may compensate either county to secure special policing from deputy sheriffs of the respective counties.

The Authority is authorized to recommend to the boards of commissioners of the two counties:

> the adoption of ordinances regulating the use by the public of the waters and lands under the supervision and control of the Authority and of recreation facilities established thereon.

The act fails, however, to set out any sanctions for the violation of these county ordinances. Thus, despite the authorization for special police to "enforce" these ordinances, a serious problem of enforcement is presented. Counties do not have any provision similar to G.S. 14-4 making violation of county ordinances a criminal offense; even G.S. 153-9(55) granting police power to a large number of counties (including Caswell and Person) does not provide for criminal prosecution as a means of enforcement. By traditional rules this may require the counties to bring civil actions to obtain compliance with its ordinances, but it can readily be seen that this would be a cumbersome method of dealing with minor infractions.

A supplementary measure passed late in the session gave the Person-Caswell Lake Authority what can be described as a financial shot in the arm. Chapter 1099 (HB 1027) (July 1) appropriates $25,000 as a grant-in-aid to the Authority.

Lake Phelps Boating Appropriation

Another more modest appropriation is in Chapter 1000 (SB 508) (June 14). It appropriates $15,000 to the Department of Conservation and Development for the construction of boating facilities at Lake Phelps in Pettigrew State Park.

Prohibition of Boating Fee

Chapter 1008 (HB 525) (eff. January 1, 1966) amends G.S. 113-34 and -35 to stipulate that though the Department of Conversation may continue to charge reasonable fees for hunting and fishing and for the use of docks, piers, and other structures in State parks, State forests, State lakes, and other recreational lands under the control of the Department of Conservation and Development, no fee can be charged for the operation or use of vessels. Although it is not entirely clear, this apparently means the Department could charge a fee for any vessels it might rent, but could not charge an individual a fee to operate his own vessel in such waters. □

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Some of the Schools, Meetings and Conferences Scheduled at the Institute of Government in January and February 1966

DATES	SCHOOLS, MEETINGS, CONFERENCES
JANUARY	
5, 12, 19, 26	Committee of Clerks of Superior Court
6-8, 21-22	Municipal and County Administration
11-13, 25-27	Police Administration
12-14, 26-28	Public Welfare
13	Governmental Data Processers
13-14	North Carolina Conference of Health Directors
14	North Carolina Section, American Institute of Planning
17-19, 24-26, 31-February 2	State Highway Patrol In-Service School
27-29	City and County Managers
FEBRUARY	
2, 9, 16, 23	Committee of Clerks of Superior Court
3	County Commissioners and Welfare Board Members
4	North Carolina Section, American Institute of Planning
4-5	North Carolina Bar Association Conference on Continuing Education
	North Carolina Center for Education in Politics
7-9, 21-23, 28-March 2	State Highway Patrol In-Service School
8-11, 22-24	Police Administration
9-11, 23-25	Public Welfare
13-18	Poverty Workshop
14-19	Basic Wildlife School
17-18, 24-25*	County Attorneys
18-19	Governmental Accounting School
19	Bench-Bar-Press Conference
19-20	North Carolina Educational Council
24-26	City and County Managers

* Tentative