POPULAR GOVERNMENT

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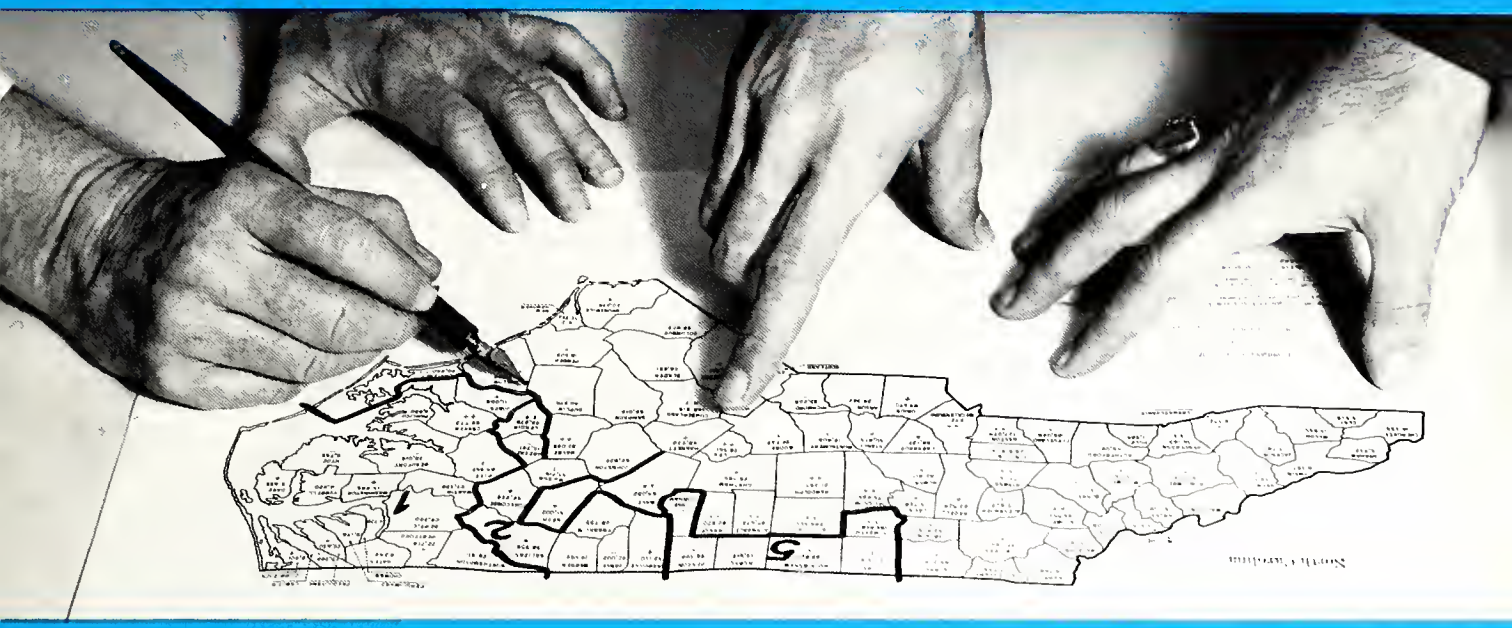

In This Issue:

This month's cover picture symbolizes the drawing and redrawing of lines across the North Carolina map during the recent redistricting session of the General Assembly.

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Contents

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PART ONE

Legislative Representation in North Carolina: A Chapter Ends

By John L. Sanders

[Editor's Note: At the request of the presiding officers of the Senate and the House of the North Carolina General Assembly, the Institute of Government provided professional assistance for legislative committees and the General Assembly itself in preparing plans for reapportioning the State Senate and House and revising the congressional districts. The author participated throughout this undertaking.

The first part of this article, published in this issue, deals with the background of reapportionment and the work of the preparatory committees. The second part, which will appear in the March issue, will analyze the special session and the subsequent decision of the Federal court regarding the North Carolina reapportionment legislation.]

Introduction

It is 49 minutes past noon on January 14, 1966. The closing ritual is intoned; the gavels of the presiding officers fall. The Extra Session of 1966 ends and with it an era in the history of the General Assembly of North Carolina.

In the five-day session, called by Governor Dan K. Moore, the General Assembly set a national record by the promptness and comprehensiveness with which it brought North Carolina into compliance with the principle of legislative representation in proportion to population. Congressional districts were revised, the State Senate was redistricted and reapportioned, and most significantly, the 360-year old pattern of separate representation of every county in the House of Representatives was abandoned in favor of apportionment on the basis of population. And for good measure, the boards of county commissioners of the counties of the State were authorized to reapportion their membership where necessary to satisfy the "one man —one vote" standard.

These articles will review the developments which led to that extra session, describe the work of the session, and offer some thoughts on its possible consequences. Over the last five years, legislative representation in North Carolina has been the subject of several articles in this magazine[1] and of other publications of the Institute of Government.[2] The reader interested in the long and often lively history of the effort to achieve fair legislative representation in this State, and especially the details of the last decade of that history, will find them there. Only a brief sketch of that background will be given here.

1. These articles have been collected and published by the Institute as REAPPORTIONMENT AND REDISTRICTING IN NORTH CAROLINA, 1961-1965 (1965).
2. SANDERS, DATA ON NORTH CAROLINA CONGRESSIONAL DISTRICTS, STATE SENATORIAL DISTRICTS, AND APPORTIONMENT OF THE STATE HOUSE OF REPRESENTATIVES (1961); MAPS OF NORTH CAROLINA CONGRESSIONAL DISTRICTS 1789-1960, AND OF STATE SENATORIAL DISTRICTS AND APPORTIONMENT OF REPRESENTATIVES, 1776-1960 (1961); MATERIALS ON REPRESENTATION IN THE GENERAL ASSEMBLY OF NORTH CAROLINA (1965); MATERIALS ON CONGRESSIONAL DISTRICTS IN NORTH CAROLINA (1965).

National Developments

Until 1962, the federal courts and many state courts (including the North Carolina Supreme Court) would take no part in controversies over legislative representation. If the citizen believed himself unfairly represented in his local, state, or national legislative body, the courts considered that a matter to be resolved in the political arena, between voter and legislator, not in the courtroom. But in *Baker v. Carr*, 369 U.S. 186 (1962), a case challenging the apportionment of the legislature of Tennessee, the Supreme Court of the United States held that the complaining citizen who believed himself underrepresented in his state legislature had a cause of action which the federal courts had jurisdiction to hear and on which, if the facts were found to justify it, relief would be granted. The citizen's right to fair representation was held to flow from the United States Constitution, not that of his state.

In a set of six decisions handed down on June 15, 1964, the Supreme Court gave specific meaning to its 1962 declaration by holding

> that, as a basic constitutional standard, the Equal Protection Clause [of the fourteenth amendment] requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.[3]

The fact that there were then 15 pending appeals from federal and state courts dealing with many aspects of state legislative representation enabled the Supreme Court in *Reynolds v. Sims* and its five companion decisions to deal with the subject with a degree of comprehensiveness which ordinarily would have required many years of litigation.

The national character of the problem of fair state legislative representation was illustrated in the quantity of litigation which promptly arose in the wake of *Baker v. Carr*. By the end of 1965, court actions challenging the constitutionality of state legislative apportionments had been filed in 49 states — only Maine had escaped suit. Fifteen state legislatures had by that time reapportioned themselves so as to align representation in both houses with population, and members were sitting under those apportionments. Another 24 states had taken such action in preparation for the next legislative elections. The legislatures of another eight states were under court order to reapportion, and cases were in earlier stages in two states.[4]

In the interval between *Baker v. Carr* and *Reynolds v. Sims*, the Supreme Court had decided another major case dealing with legislative representation. In *Wesberry v. Sanders*, 376 U.S. 1 (1964), the Court had held that the United States Constitution, Article I, Sec. 2, requires that

3 Reynolds v. Sims, 377 U.S. 533, 568 (1964).
4. "Most States Have Acted on 'One Man, One Vote,'" 1 State Legislatures Progress Reporter, #4, p. 2 (Jan. 1966).

members of the United States House of Representatives represent substantially equal numbers of people.

In consequence of the decision in *Wesberry V. Sanders,* state and federal courts in at least 15 states have invalidated congressional district plans on the basis of inadmissable disparities between the population of the largest and smallest districts within the state.

Before examining the North Carolina litigation, note should be taken of the present plan of representation in North Carolina.

Apportionment in North Carolina

The present plan of representation in the General Assembly of North Carolina dates from the Constitution of 1868.

The Senate consists of 50 members, elected for two-year terms from districts so laid out that every Senator represents approximately the same number of people—under the 1960 census, an ideal of 91,123 persons. No county may be divided in the formation of districts, except that a single county entitled by its population to elect two or more Senators may be divided into a corresponding number of senatorial districts. (This option has never been exercised by the legislature, and until 1964, no county had ever elected two or more Senators.) The districts and apportionment of Senators among them are required to be revised by the General Assembly after every decennial federal census.[5]

The House of Representatives is composed of 120 members, elected for two-year terms. Every county is constitutionally guaranteed the right to elect a member to serve in every session. Thus only 20 seats are left after the 100 counties are given their minimum representation. These 20 seats are apportioned among the more populous counties according to a non-discretionary, mathematical formula written into the constitution. A constitutional amendment adopted in 1962 transferred the duty of decennially reapportioning the House from the General Assembly as a whole to the Speaker of the House.[6]

The effect of this plan is that the Senate is to be apportioned on the basis of population, subject to the minor qualification that district lines must follow county lines, and that the House of Representatives is to be apportioned on the basis of local governmental units (counties), with minor population leavening.

The House of Representatives was last reapportioned in 1961, the first such action since 1941. The Senate was redistricted and reapportioned in an extra session of the General Assembly in 1963, the first such revision since 1941. As a result of these reapportionments, the minimum controlling percentage—i.e., the percentage of the State's population living in the smallest counties which together could elect a bare majority (61) of the Representatives—was 27.09; the corresponding figure for the Senate was 47.06. The "population variance ratio"—i.e., the proportion between the number of people represented by the legislator with the most constituents and the number represented by the one with the fewest constituents—was 18.15 to 1 in the House and 2.26 to 1 in the Senate.[7]

The congressional districts in North Carolina were last revised in 1961, when the reduction of the State's congressional delegation from 12 to 11 members required the elimination of one district. The 1961 districts vary in population from 491,461 in the Eighth District to 277,861 in the First District, giving a population variance ratio of 1.77 to 1.

The North Carolina Litigation: The Drum's Discordant Sound

Suit is Begun

Once the House and Senate had been reapportioned in 1961 and 1963 and congressional districts realigned in 1961, public concern over state legislative and congressional representation—never great—largely subsided, as did political agitation over the subject. There was casual talk of a possible suit challenging the legislative system, but it had generally been assumed that it would come at the instance of a sectional or political group that saw advantage to be gained.[8] Events turned out quite differently.

On September 10, 1965, Renn Drum, Jr., a Winston-Salem attorney, acting as an individual and not for any organized group,[9] instituted in the United States District Court for the Middle District of North Carolina an action entitled *Drum v. Eure et al.* He asked, on behalf of himself and others similarly situated, that a three-judge District Court be convened and that it declare violative of the United States Constitution the statutory apportionment of both the House and Senate, the constitutional provision guaranteeing every county one member in the House, and the statutory congressional districting plan. He further asked that the defendants—the Chairman of the State Board of Elections, Secretary of State, and Attorney General—be enjoined from conducting further primary and general elections for state legislators and congressmen under the allegedly invalid plans. Should the General Assembly fail to revise all three plans on a strict population basis in time for the 1966 primaries, the plaintiff requested that the District Court either devise apportionment plans of its own or order that elections for legislators and Congressmen be held at large.

The State answered on October 26, virtually conceding the unconstitutionality of the apportionment of the House of Representatives, but contending that the senatorial and congressional districts were fairly laid out by population standards. On motion of the State prior to the hearing, the Attorney General and the Secretary of State were dismissed as parties defendant because of their slight involvement in the election process, and the other four members of the State Board of Elections were added so that the orders of the Court would be as binding on them as on the Chairman, who was one of the original defendants. Thus the title of the case became *Drum v. Seawell.*

5. N. C. CONST. art. II, §§ 3, 4.
6. N. C. CONST. art. II, §§ 5, 6
7. Both of these mathematical tests have been used consistently by the Supreme Court and lower courts in testing the fairness of state legislative apportionments. The nearer the minimum controlling percentage approaches 51 per cent, and the nearer the population variance ratio approaches 1.00 to 1, the more nearly the apportionment plan accords with the principle of representation in proportion to population.
8. "Suit is Filed Here on Apportionment," Greensboro Daily News, Sept. 11, 1965.
9. "Redistrict N. C., Suit Asks," The Charlotte Observer, Sept. 11, 1965.

Hearing

The hearing before the three-judge District Court was held on November 24, 1965, in Greensboro. Judge J. Spencer Bell of the United States Court of Appeals presided. Judge Bell had served three terms (in 1957, 1959, and 1961) as a Democratic member of the State Senate from Mecklenburg County, and there he had been a frustrated champion of compliance with the reapportionment requirements of the state constitution. The other two members of the panel were Chief Judge Edwin M. Stanley of the Middle District and Chief Judge Algernon L. Butler of the Eastern District of North Carolina, both Republicans. The makeup of the District Court, as well as the dispatch with which it moved to hear and decide the case, made it clear that the State could expect to be held to a prompt and thorough compliance with federal constitutional standards. This factor had vast influence in the subsequent legislative proceedings.

On November 7, 1965, Representative Herbert C. Bonner of the First Congressional District died, and special primary and general elections were called by the Governor to fill the resulting vacancy. A Republican resident of the First District was permitted to intervene in the Drum case to request that the special election be enjoined until the congressional districts could be revised to equalize their populations.

The newly-formed North Carolina Chapter of the American Civil Liberties Union filed a brief *amicus curiae,* generally supporting the contentions and requests of the plaintiff.

Pre-trial proceedings on October 29 had resulted in the stipulation of the facts of the case, so that the hearing on November 24 was confined to fairly brief arguments on the law. The plaintiff appeared on his own behalf and through his law partner, Ray Motsinger. The defendants were represented by Assistant Attorney General James F. Bullock and Thomas L. Young, a private attorney engaged for the purpose.

Decision

On November 30, the District Court issued its order and opinion.[10] It declared invalid, as violative of the fourteenth amendment, (1) the apportionment of the State Senate, (2) the apportionment of the State House of Representatives and the state constitutional provision guaranteeing every county at least one seat in the House, and (3) the congressional districting plan.[11] Further elections under the existing plans were enjoined, except that the special election in the First Congressional District was permitted to proceed under the existing congressional district plan, since that district would otherwise go unrepresented for almost a year. The General Assembly was given until January 31, 1966, to revise the state legislative and congressional apportionment plans in order to effect representation substantially in proportion to population. The Court declared that if the legislative actions failed to meet constitutional standards, the Court would "fashion a scheme of apportionment which will permit the 1966 primaries and elections to proceed on a just and equitable basis." Jurisdiction of the action was retained by the Court.

In its opinion, the District Court reiterated the principal rules laid down by the Supreme Court in *Reynolds v. Sims*, and then proceeded to discuss each of the challenged apportionment plans. While it cited defects in each of the existing plans, it gave little affirmative guidance as to what standards it expected the replacement plans to meet.

With respect to the congressional districts, the Court said that the population variance ratio of 1.77 to 1 existing between the Eighth and First District "cannot be justified." It noted various population differences among the districts, but did not indicate whether all of them were unacceptable.

The population variance ratio of 18.15 to 1 and the minimum controlling percentage of 27.09 in the House of Representatives the Court found to evidence population differentials "too great to be acceptable." It also struck down the state constitutional provision guaranteeing every county at least one member of the House of Representatives and the formula for apportioning the remaining 20 seats, presumably because those provisions cannot be honored and still achieve representation in the House in proportion to population. The remaining state constitutional provisions with respect to the House were left intact.

The Court stated that "the apportionment of the Senate is far more nearly equitable than that of the House, . . ." but struck down the Senate plan, in part because of the necessity of treating the apportionment of both houses as parts of an indivisible plan of representation. Somewhat more guidance was given as to the standard the Court expected to be achieved in the reapportionment of the Senate. While no exception was taken to the minimum controlling percentage of 47.06 in the Senate, the population variance ratio of 2.26 to 1 was found to be "on its face unjustifiable . . .", and the Court indicated that it expected a ratio of 1.3 to 1 to be attained in the revised plan. The state constitutional provisions with respect to Senate apportionment were not questioned, since they require the same population-based apportionment as that mandated by the fourteenth amendment.

The Court noted the fact that certain counties were over-represented in both the Senate and the House of Representatives but drew no specific inference from that fact.

In response to a request by the State for explicit instructions on the point, the Court declared that military personnel counted in the 1960 census could not be excluded in devising apportionment plans.

The State Responds

The sweeping nature of the Court's decision in *Drum v. Seawell* and the brief time allowed for legislative action were not unexpected. The Governor and legislative leaders had already mapped general strategy for that eventuality. On December 1, Governor Moore stated that no appeal would be taken from the decision of the District Court, since the chances of reversal by the Supreme Court were remote and valuable time might be lost in the in-

10. Drum v. Seawell, F. Supp. (M.D.N.C. 1965).

11. The District Court invalidated the congressional districting plan on fourteenth amendment grounds, although the Supreme Court in Wesberry v. Sanders, 376 U.S. 1 (1964), had rested its decision solely on Article I, Sec. 2, of the United States Constitution. This may have been no more than an inadvertence of the District Court in tying state and federal plans together and striking them down with a single blow.

terim. He indicated his intention to convene an extra legislative session on reapportionment in January.[12] On the following day, plans for the appointment of three committees of legislators to prepare reapportionment plans for legislative consideration were announced.[13]

On December 6, Governor Moore issued his proclamation convening an extra session of the General Assembly on January 10, 1966, "for the purpose of considering and acting upon legislation to reapportion and redistrict the State of North Carolina." The Governor also stated his view, concurred in by President of the Senate Robert W. Scott and Speaker of the House of Representatives H. P. Taylor, Jr., that the business of the extra session should be limited to compliance with the order of the District Court; that state constitutional amendments should not be taken up, due to lack of sufficient time to amend the constitution prior to the deadline of January 31, 1966; and that no weighted or fractional voting system should be considered at the session.[14] (A number of legislators had indicated interest in the latter device as a possible means of retaining at least one Representative for every county while redistributing voting strength in the House in proportion to population.[15] Similar schemes suggested in other states have been disapproved uniformly by state and federal courts on either state or federal constitutional grounds.)

Preparation for the Extra Session

It was apparent that to bring the General Assembly to Raleigh to undertake the mammoth task of congressional, Senate, and House reapportionment without adequate groundwork would be at best a hazardous course. In recent years, it had been found very difficult or impossible to do less extensive jobs of revising plans of representation in the course of whole regular sessions. Therefore the presiding officers of the two houses appointed preparatory committees to develop plans for legislative consideration —one for reapportioning the House, one for reapportioning the Senate, and one for recasting congressional districts.

These three committees, composed entirely of legislators, worked intermittently from December 8 until January 4. Subsequent developments proved the wisdom of this procedure. Without the study, development of preliminary plans, solicitation of legislative and public opinion, revision of plans, publication of recommended plans and explanatory reports, and especially the educational experience for the 50 legislators involved, it is certain that the extra session would have run far longer than it did and it is probable that the session would have produced plans less likely to be acceptable to the District Court than those enacted.

House Committee

The Select Committee of the House of Representatives on the Redistricting and Reapportionment of the House of Representatives consisted of 16 Representatives appointed by the Speaker. It included one Republican member and substantial representation from the counties sure to lose independent representation in a reapportioned House.[16] The Speaker presided over Committtee meetings, which were held on December 8, 13, and 20, 1965, and January 3, 1966.

In preliminary speculation about the problems of complying with the Court order in *Drum v. Seawell*, it had been widely assumed that the hardest of the three tasks set for the General Assembly would be the reapportionment of the House of Representatives. The development of a population-based plan for apportioning the 120 Representatives necessitated abandonment of the ancient formula whereby every county, regardless of its population, elected at least one Representative, and the establishment of representative districts containing approximately 38,000 people per Representative. (The 1960 population of the State, 4,556,155, divided by the number of Representatives, 120, gives a representation ratio of 37,968.) Since over 50 of the counties contain substantially less than that number of people, a new approach—the grouping of many counties into districts—was inevitable. Here lay the prospect of the most significant and painful political consequence of the whole reapportionment process. Therefore the members of the House Committee surprised even themselves by producing, after only a few hours' work in their initial meeting, a complete preliminary plan of House apportionment. And the plan was a genuine committee product, not simply a ratification of a previously prepared scheme. That accomplishment was possible because the Committee, under the leadership of Speaker Taylor, set itself directly to its unpleasant task in the determination to produce a plan which both the General Assembly and the Court could approve, aware that the Court would do the job if the Committee and the General Assembly should fail. Moreover, the fact that most of the work of the Committee was done in executive session relieved the members of the temptation to make time-consuming (if futile) speeches of protest for the benefit of constituents.

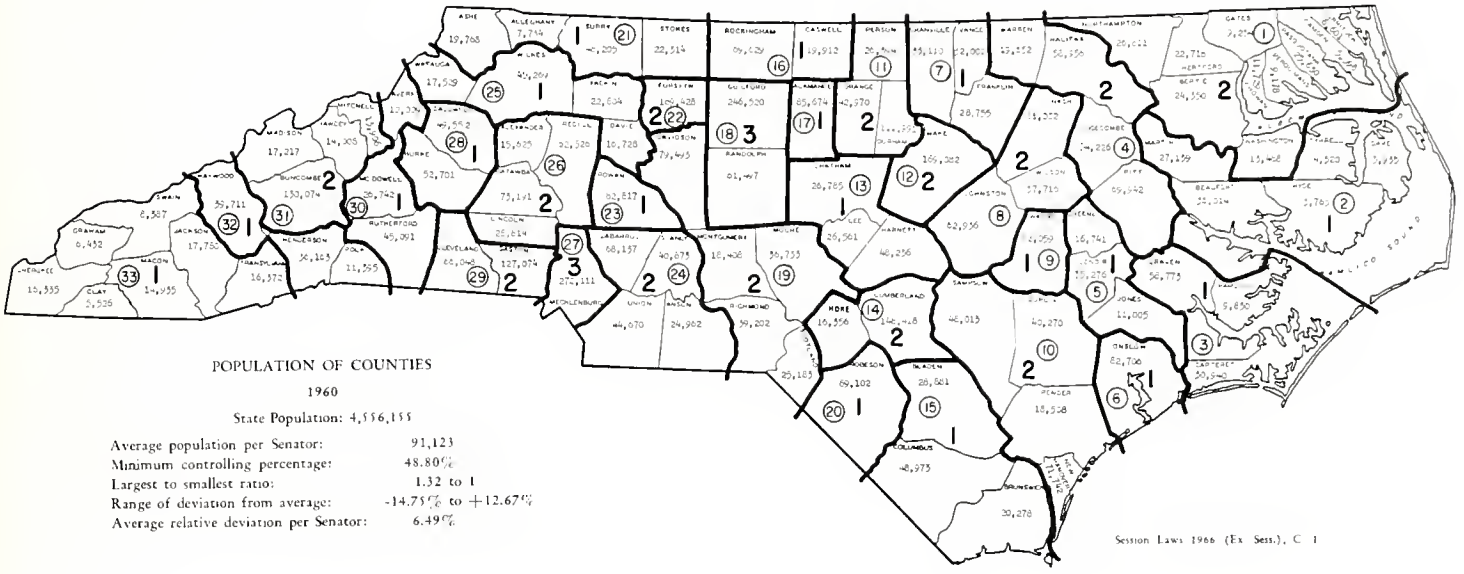
The House Committee performed its work under several constraints imposed by the federal and state constitutions and the court order: the necessity of dealing with a House of 120 seats, of composing districts of one or more whole and contiguous counties, and of using the whole population figures reported in the 1960 census. Several additional policies were adopted by the Committee for its own guidance: it would work within the present constitution and propose no amendments; it would try to keep representative districts as small as possible, preferring one- or two-member districts to larger districts with many members, where the choice was open; and in order to insure that its plans would meet high population representation standards, the maximum deviation from the ideal of 37,968 people per Representative would not exceed 15 per cent. The Committee followed these policies faithfully.

The December 8 plan was not published, but comments on it were sought from all other Representatives. At its December 13 meeting, the Committee received reports from committee members on their discussions with

12. "N.C. Won't Appeal Redistrict Order," The Charlotte Observer, Dec. 2, 1965.
13. "Committees to Map Plans for Reapportioning N. C.," Greensboro Daily News, Dec. 3, 1965.
14. "Apportionment Job to Begin January 10," The News and Observer, Dec. 7, 1965.
15. "Reapportionment Decision Thought to be Emminent," The Raleigh Times, Sept. 20, 1965; "Reapportionment Question Raised," Greensboro Daily News, Sept. 21, 1965.
16. Members of the Committee were Representatives Fred F. Bahnson of Forsyth, Mark W. Bennett of Yancey, William V. Cooper of Graham, Hoyle T. Efird of Gaston, Thorne Gregory of Halifax, James E. Holshouser, Jr., of Watauga, I. Joseph Horton of Greene, Roberts H. Jernigan, Jr., of Hertford, W. J. Lupton of Hyde, R. D. McMillan, Jr., of Robeson, J. E. Paschall of Wilson, W. Marcus Short of Guilford, Earl W. Vaughn of Rockingham, J. Shelton Wicker of Lee, Fred B. York of Alexander, and A. A. Zollicoffer, Jr., of Vance.

Figure 1

SENATORIAL DISTRICTS, 1966-



POPULATION OF COUNTIES

1960

State Population: 4,556,155

Average population per Senator:	91,123
Minimum controlling percentage:	48.80%
Largest to smallest ratio:	1.32 to 1
Range of deviation from average:	-14.75% to +12.67%
Average relative deviation per Senator:	6.49%

Session Laws 1966 (Ex. Sess.), C. 1

other Representatives and heard comments from several legislators who appeared before the Committee. The preliminary plan was revised and released to the press that day, and copies of the plan were sent to all legislators the following day.

Although the Committee re-examined its December 13 plan at its December 20 and January 3 sessions, it made no further changes in that version. The plan was finally adopted, together with implementing bills and a report explaining the work of the Committee, at the January 3 meeting. Only the Republican member dissented.[17]

In addition to legislation setting up the proposed representative districts and apportioning House seats among them, the Committee recommended legislation modifying the state election laws to establish election procedures for the new multi-county representative districts. The procedures governing elections in multi-county senatorial districts were used as a model, except that the draft bill included no provision for the rotation of House seats within multi-county districts, comparable to a long-standing authorization for senatorial rotation.[18]

Another of the Committee's recommended bills called for the numbering of seats in all multi-member representative districts. This proposal was not essential to reapportionment, but arose not unnaturally in the process of revising the basis of representation in the House. The effect would have been to convert what is now a group office into a series of individual offices, and to require each candidate in both primary and general elections to run against a particular opponent or opponents for a specific, numbered House seat, rather than against the field for any seat in the group. It was contended by the Committee that this might enable the voter to make a more knowledgeable choice among candidates.

The seat-numbering procedure would have eliminated the effectiveness of "single-shot" voting. It would have limited the range of the voter's choice to the extent that he could only have voted for one of the candidates for each seat, although he might consider both candidates for one seat more qualified than either candidate for another seat. On the other hand, it would not have restricted the right of any person within a district to run for any seat apportioned to that district, or the right of any voter to vote for as many candidates as his district was entitled to elect. It was not intended, nor could it have been used, to insure the rotation of seats within a district. It would have helped the stronger candidates, especially incumbents, by discouraging opposition to them.[19]

The plan recommended to the General Assembly by the Select Committee of the House established 49 representative districts, each consisting of from one to six counties and electing from one to seven Representatives. The minimum controlling percentage would be 47.66; the population variance ratio, 1.33 to 1. Every Representative would represent within 15 per cent of the ideal of 37,968 people, and the average deviation per member was only 6.42 per cent. Ninety-one Representatives—three-quarters of the total—would represent within ten per cent of 37,968 people; by contrast, only 11 members today have constituencies that near the ideal.

Figure 1 (above) is identical with the plan recommended by the House Committee, except that in the course of legislative consideration of the plan, Jones Coun-

17. For a full description of the working procedures and standards followed by the Committee and an analysis of its recommended plan, see REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES ON THE REDISTRICTING AND REAPPORTIONMENT OF THE HOUSE OF REPRESENTATIVES, adopted Jan. 3, 1966.

18. It was anticipated by the Committee that such agreements, if formally adopted, would be found unconstitutional here as they have been elsewhere. Fortson v. Toombs, 205 F. Supp. 248 (N.D. Ga. 1962). Mr. Drum was then threatening to sue to invalidate the existing senatorial rotation agreements. "Drum May Fight Senator Rotation," Winston-Salem Journal, Dec. 9, 1965.

19. A similar procedure is provided by law for those instances where two or more seats on the State Supreme Court, or two superior court judgeships in the same judicial district, or both of North Carolina's seats in the United States Senate, are to be filled at the same election. G.S. 163-147.

ty was shifted from the Third to the Ninth District, producing only a slight effect on the statistics of the plan.

Senate Committee

The Select Committee of the Senate on the Redistricting and Reapportionment of the Senate consisted of nine Senators, appointed by President of the Senate Robert W. Scott.[20] The President presided over most of the sessions.

The Senate Committee met on December 9 and 13, 1965, and January 4, 1966. It followed much the same procedure as did the House Committee. At the initial meeting, guidelines for the Committee's work were adopted, closely paralleling those of the House Committee. A complete initial plan was developed and circulated privately to all Senators. At the second meeting, comments from legislators were heard on the draft plan, which was then revised and published. At the final meeting, the plan was adopted unanimously without further change and a report and implementing bills were approved. Most of the Committee's work was done in executive session. The recommended bills included a seat-numbering proposal identical with that recommended by the House Committee.[21]

Due to the substantial revision of senatorial apportionment in the 1963 extra session, the required changes in the Senate map were much less extensive than those necessary for the House. The District Court had stated that it particularly wanted to see revisions in the 15th District (Cumberland County), the 21st District (Guilford County), and the 30th District (Gaston County), all of which were more than 35 per cent overpopulated; and that it expected the population variance ratio of 2.26 to 1 (the proportion between the 148,418 people in the 15th District and the 65,722 people in the Second District) brought down to 1.3 to 1. To bring these districts close to the ideal of 91,123 people per Senator (4,556,155 divided by 50, the number of Senators) required changes in several intervening districts. The 15 per cent maximum population deviation which the Committee set for itself required additional changes in several other districts.

The final plan of the Senate Committee calls for 33 senatorial districts, each containing from one to ten counties and electing from one to three Senators. Sixteen of the new districts are identical with current districts. The most extensive changes occur in the northeastern section of the State, which lost representation to Cumberland County. The new minimum controlling percentage is 48.80, the population variance ratio is 1.32 to 1, all deviations are within 15 per cent of the ideal, the average deviation per member is 6.49 per cent, and 39 Senators—almost four-fifths of the total number—will represent within ten per cent of the ideal of 91,123 persons.

Figure 2 (below) exhibits the Senate Committee's plan, which was enacted by the General Assembly without change.

Congressional Committee

Twelve Senators and 12 Representatives, appointed by the respective presiding officers on December 17, 1965, made up the Joint Select Committee of the House of Representatives and the Senate on Congressional Redistricting. One Senator and one Representative were drawn

20. Members were Senators W. Frank Forsyth of Cherokee, Ashley B. Futrell of Beaufort, F. D. B. Harding of Yadkin, L. B. Hollowell of Gaston, Herman A. Moore of Mecklenburg, Robert B. Morgan of Harnett, Ralph H. Scott of Alamance, Lindsay C. Warren, Jr., of Wayne, and Thomas J. White of Lenoir.
21. The procedures of the Senate Committee and the plan it recommended are fully described in REPORT OF THE SELECT COMMITTEE OF THE SENATE ON THE REDISTRICTING AND REAPPORTIONMENT OF THE SENATE, adopted Jan. 4, 1966.

Figure 2

REPRESENTATIVE DISTRICTS, 1966-

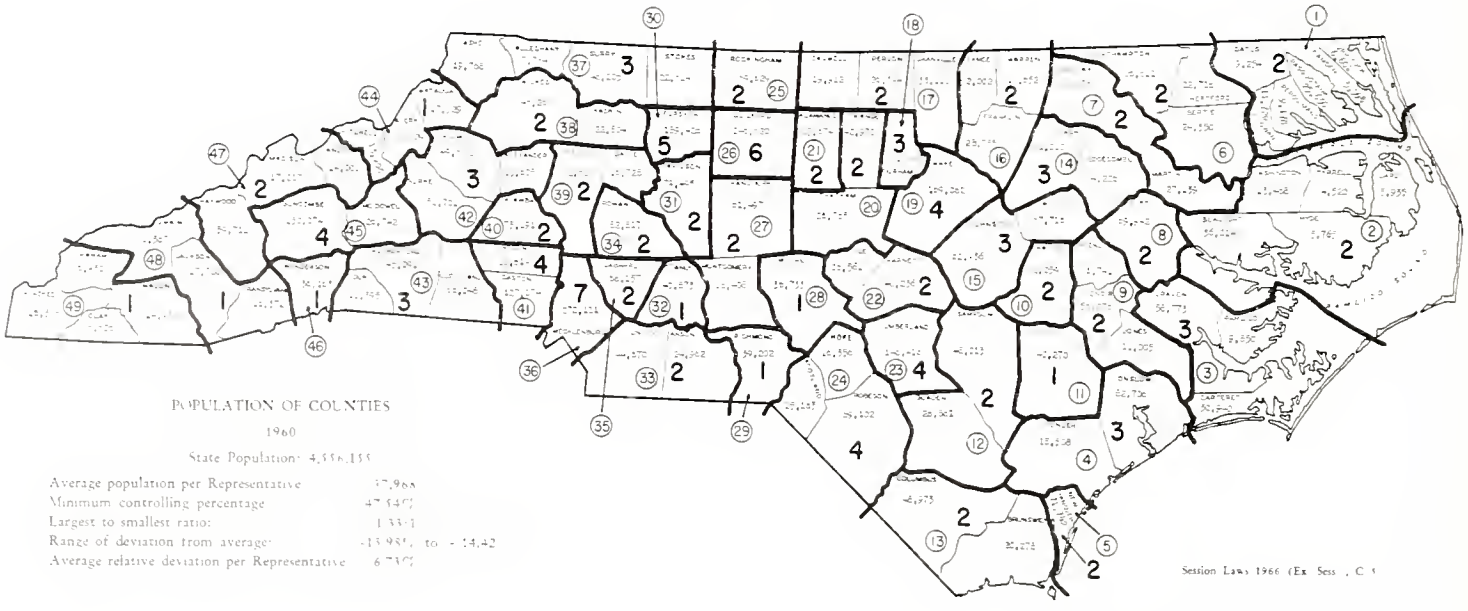
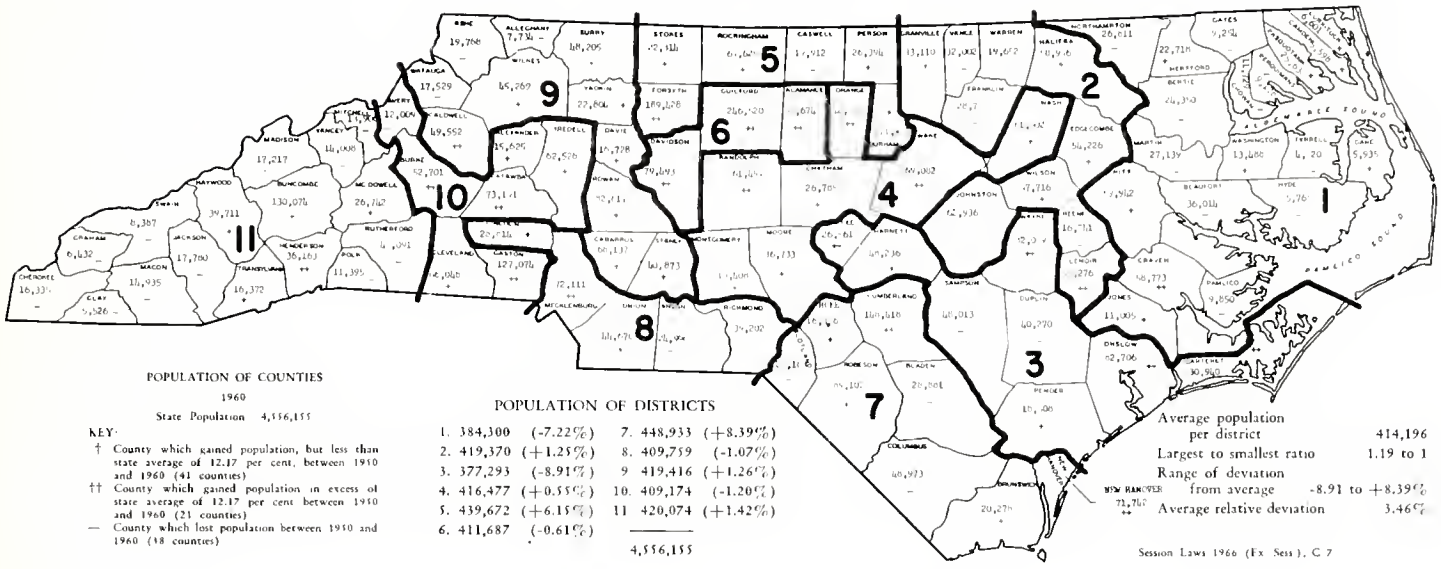


Figure 3

CONGRESSIONAL DISTRICTS, 1966-



from each of the 11 congressional districts, and two Republican members were added to represent the minority party interest.[22] The President of the Senate and Speaker alternated as Chairman of the group, which met on December 20-21, 1965, and January 3-4, 1966.

Distantly viewed, it seems that the task of revising the congressional districts should have been the simplest of the three. None of the committee members and very few legislators had a personal stake in the process comparable to that which they had in the state legislative revisions. Nor was the job as complex as the others. There was no question of the number of districts to be formed or the number of Congressmen to be elected from each district. The fact that there were to be only 11 districts meant that population equality could be achieved much more easily than among the three or four dozen Senate and House districts.

Yet congressional district revision proved far more troublesome, both in committee and in the General Assembly, than the establishment of new legislative districts. Many factors contributed to this result, including the greater political potency of individual congressmen in comparison with state legislators, the fact of seniority as the basis of congressional influence and the consequent undesirability of displacing incumbents unnecessarily, and the factor of long-standing attachment of counties to particular congressional districts. Considerations of party advantage and sectional interest, minor influences in forming the House and Senate plans, loomed large in the shaping of congressional districts, partly because of the importance of the congressional office itself and partly because of the influence of congressional contests on other races in marginal districts.

An early hope that the North Carolina Congressmen might agree on a redistricting plan for legislative consideration died of congressional unwillingness to assume that collective responsibility.[23] While the members of Congress were hardly indifferent to the fates of their districts, their efforts were exerted quietly and individually, not in concert.

Intimations in opinions of the Supreme Court as well as that of the District Court persuaded the Joint Committee that the plan it produced would have to come closer to equalizing population among districts than would the plans for the Senate and House. The fact that only eleven districts were to be formed made the process simpler. The first goal set by the Committee therefore was to shape districts which would come within five per cent of the statewide average of 414,196 people per district if possible, and at any rate within ten per cent of that figure.

Second, the Committee determined to follow county lines in forming districts. Although not required by the federal or state constitution to do so, the Committee believed that the efficient conduct of elections and other compelling considerations made it essential that this uniform practice of the past be respected.

Third, it was the conviction of a large majority of the Committee members that, if it could be done without significant departure from the equal population goal, no district should be devised which contained more than one sitting Congressman. This view applied to the two Repub-

(Continued on page 33)

22. This Committee consisted of Senators Dallas L. Alford, Jr., of Nash, J. Worth Gentry of Stokes, F. D. B. Harding of Yadkin, J. J. Harrington of Bertie, Hector MacLean of Robeson, L. P. McLendon, Jr., of Guilford, Fred M. Mills, Jr., of Anson, Fred S. Royster of Vance, Thomas W. Seay, Jr., of Rowan, Stewart B. Warren of Sampson, Jack H. White of Cleveland, and Oral L. Yates, Sr., of Haywood; and Representatives W. R. Britt of Johnston, Joe E. Eagles of Edgecombe, Gordon H. Greenwood of Buncombe, J. Henry Hill, Jr., of Catawba, W. R. Land, Jr., of Richmond, M. Glenn Pickard of Alamance, Dwight W. Quinn of Cabarrus, Hugh A. Ragsdale of Onslow, James E. Ramsey of Person, Wayland J. Sermons of Beaufort, J. Eugene Snyder of Davidson, and Arthur W. Williamson of Columbus.

23. "Congressmen Reject Drawing up Districts," The News and Observer, Dec. 3, 1965.

Local Government Reapportionment

By Joseph S. Ferrell

On June 15, 1964, the United States Supreme Court announced in *Reynolds v. Sims*[1] and five companion cases[2] that both houses of a bicameral state legislature must be apportioned substantially on an equal population basis. These decisions interpreted the equal protection clause of the 14th amendment of the United States Constitution to guarantee to each citizen a constitutional right to an equally weighted vote, which is denied to the extent that legislative constituencies are unequal in population. Although it is not made explicit, the Court obviously was thinking in the context of a legislative body composed of members who are selected by different electorates within the larger unit which they, as a body, govern. This context includes the United States Congress and all the state legislatures; it does not include all the local government units in the United States. In all the decisions of the Supreme Court since reapportionment came to the fore with *Baker v. Carr*[3], there is not the slightest suggestion that any legislative bodies other than state legislatures and the Congress are within the scope of the principles announced. Yet, though state legislative apportionment and congressional districting have occupied the center of attention in the wake of *Baker*, state and federal courts have become increasingly occupied with applying the *Reapportionment Decisions* to counties and cities. This article is concerned with that process of extension with particular attention to its relevance to North Carolina.

The Courts and Local Apportionment

Only eight days after the *Reynolds* decision was announced, a suit was filed challenging the apportionment of the Kent County, Michigan, board of supervisors.[4] Kent County operates, as do all Michigan counties, under a variant of the New York supervisorial system in which the county governing board is quite large and its members are apportioned among all the constituent townships and municipalities of the county.[5] Each township and incorporated municipality is guaranteed at least one member of the county governing board, and larger cities are allocated additional members in rough proportion to their population. The Kent County board of supervisors had 73 members, whose constituencies ranged in population from 945 to 15,000. It was difficult in this case to find a violation of voting rights, since none of the members of the board was elected to the board. Each member served either *ex officio* as the elected supervisor of his township or, in the case of the cities, was appointed by some other governing body to serve on the board. The trial court avoided the voting rights issue by stating the proposition that "the right protected by the Constitution is the right to equal representation in the legislative chamber—not merely the right to cast a ballot and have it counted without dilution." A trial court decision that the Kent County board was unconstitutionally composed was appealed to the Michigan Supreme Court and is now awaiting decision.

Several months later a federal district court invalidated the apportionment of the Baltimore city council in *Ellis v. Mayor & City Council*.[6] This suit had been initially filed in 1963 soon after the decision in *Baker v. Carr*. Subsequently, the Baltimore city council, acting under home rule powers, adopted a proposed charter revision to be submitted to the voters which would have reduced to some extent the population variances among the city wards. The court extended the *Reapportionment Decisions* to a municipal governing board by merely citing them without analysis or discussion, enjoined submission of the plan, and ordered the council to propose a constitutionally valid reapportionment plan.

The first major case relating to county government was *State ex rel. Sonneborn v. Sylvester*.[7] There, the Wisconsin Supreme Court held unconstitutional the general laws prescribing county governmental form in all but two counties in that state. The court observed that "since the basic principle of representative government is that the weight of a citizen's vote cannot be made to depend on where he lives, then county boards as units of representative government should not be constitutionally immune from the requirements of the 14th Amendment."

Early in 1965 a Supreme Court per curiam decision in *Bianchi v. Griffing*[8] caused some speculation that the Court had determined not to extend the *Reapportionment Decisions* to local governments. The *Bianchi* case involved a challenge to the composition of the Suffolk County, New York, board of supervisors. The federal district court had declined to interfere at that particular time in order to give the New York legislature time to consider the situation and act if it were so advised. The plaintiffs appealed the refusal to enjoin further elections under the old apportionment to the United States Supreme Court which dismissed the appeal for "want of jurisdiction." A few writers took the dismissal to mean that the Court was leaving local government outside the pale, but the more probable interpretation is that the Court did not believe the case ripe for adjudication. The Court has repeatedly warned that its per curiam orders refusing to hear a case, whether the procedural device be denial of certiorari or dismissal of an appeal, should be taken to mean nothing more than that there were not four Justices who voted to give the case a hearing.

The most recent major decision is *Seaman v. Fedourich*.[9] There, the New York Court of Appeals invalidated the city council of Binghamton on grounds that ward populations were widely disparate and therefore violative of

1. 377 U.S. 363 (1964).
2. WMCA v. Lomenzo, 377 U.S. 633; Maryland Committee v. Tawes, 377 U.S. 656; Davis v. Mann, 377 U.S. 678; Roman v. Sincock, 377 U.S. 695; Lucas v. Forty-Fourth General Assembly, 377 U.S. 713 (1964).
3. 369 U.S. 186 (1962).
4. Brouwer v. Bronkema, Cir. Ct. Kent County, No. 1855 (Mich., 1964). This decision, not officially reported, can be found in XIII Court Decisions on Legislative Apportionment 82 (Nat'l Municipal League, 1965) and is reprinted in Ferrell, Cases & Materials on Local Apportionment II-4.
5. See Wager, County Government Across the Nation.
6. 234 F. Supp. 945 (D. Md. 1964).
7. 26 Wis. 2d 43, 132 N.W.2d 249 (1965).
8. 238 F. Supp. 997 (E.D.N.Y. 1965), *appeal dismissed*, U.S. , 15 L.ed.2d 11 (1965).
9. 16 N.Y.2d 94, 262 N.Y.S.2d 444, 209 N.E.2d 778 (1965). Other cases are discussed in the notes to Ferrell, *op. cit.*, Ch. II.

the 14th amendment, since each ward elected one councilman. The court reasoned:

> It is axiomatic that local governmental units are creations of, and exercise only those powers delegated to them by, the State . . . and, certainly, if the latter may exercise its legislative powers only in a body constituted on a population basis, any general elective municipal organ to which it delegates certain of its powers must, by a parity of reasoning, be subjected to the same constitutional requirement. Viewed in another way, if, as seems evident, the thrust of the Supreme Court's decisions is that it is inherent within the concept of 'equal protection' that a person has a substantial right to be heard and to participate, through his elected representatives, in the business of government on an equal basis with all other individuals, no reason or justification exists for differentiating, so far as that right is concerned, between the general governmental business carried on in the highest legislative organs of the State and that conducted, by virtue of a delegation of authority, in municipal law-making bodies.

At least three characteristics of these decisions are of major concern to local governmental units in North Carolina. First, the cases tend to assume without much laboring of the point that the *Reapportionment Decisions* logically apply to all legislative bodies exercising general powers, whether they be state legislatures or the governing boards of political subdivisions of the states.[10] Second, the courts have tended to look beyond the "voting rights" theory of the *Reapportionment Decisions* toward a broader generalization that a right to equal representation is the basic right protected, and that while equal population representational districts are a necessity for the vindication of this right, they are but a means to a larger end.[11] Finally, there is no indication in any of the cases that significantly different standards will be applied because the defendant is a local government rather than a state legislature.

The last characteristic, equation of state and local reapportionment doctrine, makes the principles established by the *Reapportionment Decisions* immediately relevant in determining the status of present systems and the permissible scope of authority remaining to the legislature in providing for local government. Some of the principles which have particular relevance to local governing boards may be stated as follows:

1. While mathematical analysis of a districting and apportionment system is useful in determining whether a citizen's vote is being debased, the Court will not adopt any rigid mathematical test to be applied in all cases. Permissible deviations from ideal apportionment in one situation may not be permissible in another.[12]
2. The rights of the plaintiffs in reapportionment cases are personal in nature. Therefore, the fact that a majority of the electorate favors an inequitable apportionment system is irrelevant.[13]
3. The federal courts need not defer to a State court in the vindication of a federally protected right.[14]
4. The court may invalidate plans which have not yet taken effect.[15]
5. The court can set aside the results of a primary held under an apportionment scheme later held to be invalid.[16]
6. The court is not limited to considering the validity of plans adopted by the governing body itself; it may fabricate its own plans.[17]
7. When apportionment is found to be invalid, ordinarily no further election under it should be permitted.[18]
8. There is no constitutional infirmity in election at-large in multi-member districts so long as the number of representatives is proportionate to the number of residents of the district.[19]
9. Urban-rural balance is not a permissible consideration in devising an apportionment plan.[20]
10. Military population cannot be omitted in devising an apportionment plan.[21]

North Carolina

Under the general law of North Carolina, all members of the governing boards of the 100 counties and over 400 cities and towns are elected at large, by all the voters of the unit, without restriction as to the place of residence of the candidates.[22] The general law plans are thus free of any constitutional infirmity insofar as the *Reapportionment Decisions* are concerned, whether the rationale be voting rights or equal representation. No citizen's vote is debased by virtue of limitation of the franchise to districts of varying population, nor is any citizen's right of access to the processes of representative government lessened by the structuring of the governing board.

But the general law plans do not apply in a significant number of units in the state. North Carolina, to an extent equalled by few of the states, permits and encourages acts of the General Assembly applying to only one or a few counties or cities. After many years of local modifications, only three counties are organized entirely under the general law relating to the composition of the board of county commissioners, and not a single city of a population over 2,500 is without its own charter modifying the general law in some particulars.[23] The result is a governmental mosaic of nearly every conceivable shade of political organization common to the United States. Forty-nine of the counties and 36 of the cities over 2,500 in population em-

10. See Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 COLUM. L. REV. 21 (1965).
11. Generally, lawyers commenting on the *Reapportionment Decisions* have tended to take the Court at its word and view the cases as involving voting rights—nothing more. See, *e.g.*, Dixon, *New Constitutional Forms for Metropolis: Reapportioned County Boards; Local Councils of Government*, 30 LAW & CONTEMP. PROB. 57, 71 (1965); McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 MICH. L. REV. 645, 705 (1963). Political scientists, on the other hand, tend to perceive the cases as involving theories of equal representation. See, *e.g.*, DE GRAZIA, APPORTIONMENT AND REPRESENTATIVE GOVERNMENT (1962).
12. Roman v. Sincock, 377 U.S. 695, 710 (1964); Reynolds v. Sims, 377 U.S. 533, 578 (1964).
13. Reynolds v. Sims, 377 U.S. 533, 561 (1964); Lucas v. Forty-Fourth General Assembly, 377 U.S. 713, 736 (1964).
14. Davis v. Mann, 377 U.S. 678, 690 (1964).
15. Reynolds v. Sims, 377 U.S. 533, 570 (1964).
16. *Id.* at 542, 552, 586.
17. *Id.* at 552, 586.
18. *Id.* at 585.
19. Lucas v. Forty-Fourth General Assembly, 377 U.S. 713, 731 (1964); Reynolds v. Sims, 377 U.S. 533, 576 (1964); Fortson v. Dorsey, 379 U.S. 433, 13 L.ed 2d 401, 403, 404-05 (1965).
20. Davis v. Mann, 377 U.S. 678, 692 (1964).
21. *Id.* at 691.
22. N. C. GEN. STAT. §§ 153-4 (county), 160-5 (city).
23. Summaries of the governmental organization of the counties and cities which employ districting systems in the election of the governing board appear in FERRELL, *op. cit.*, Ch. V.

ploy some type of districting system for the nomination and election of their governing board members. The permutations vary from systems in which the voters of districts or wards nominate and elect some or all of the board members, to systems limiting the number of members who may reside in specified areas.[24]

Late last year two suits were filed in the federal District Court for the Eastern District of North Carolina challenging the apportionment of the boards of commissioners of Carteret and Onslow Counties. Since 1963, Carteret County has been divided into four districts for the nomination of its county commissioners. The voters of the district nominate and the nominees are elected countywide. As revised by the 1965 General Assembly, the district populations vary from 4,729 persons in District II to 7,219 in District III.[25] Overall, the districts vary from the ideal size of 6,188 persons per commissioner by an average of 12.3 per cent. The plaintiffs in *Woodard v. Carteret County* allege that these deviations violate the "one person, one vote" principle and have asked the court to order immediate new elections at large.

Onslow County operates under a 1937 local act which provides for each of the five townships to nominate one commissioner, who is then elected by the voters of the county at large. While the township populations may have been closely similar in 1937, population increases due to a large military installation have caused a variation of from 40,834 persons in Jacksonville Township to 5,486 persons in Stump Sound Township, a ratio of 7.44 to 1. The townships vary in population by an average of 62.7 per cent. The plaintiffs in *Mendelson v. Walton* also have asked for invalidation of the local act and the ordering of immediate at-large elections.[26]

The 1966 County Reapportionment Act

In response to the Onslow and Carteret litigation, and in anticipation of other suits, the 1966 Extra Session of the General Assembly enacted "An Act Relating to Reapportionment of Boards of County Commissioners."[27] The act authorizes the board of commissioners of the 49 potentially affected counties (with the exception of Cherokee) either to adopt the general law, at-large election system, or to redistrict and reapportion the county for the purpose of nominating and electing county commissioners. No guidelines for permissible population deviations are set down beyond the admonition that the districts must contain "as nearly as is practicable" an equal number of persons per commissioner apportioned to the district. Determination of "practicable" limits is left entirely in the discretion of the local boards. Nor does the act *require* any county to take action—the board of commissioners is *authorized* to act under the new statute upon a finding of fact that some citizens of the county "are denied equal representation on the board because of the degree of differences in population" of commissioner districts. The new statute *does not* authorize the board to increase or decrease its membership, alter its terms of office, or, if the redistricting option is selected, alter the present method of district or at-large nomination. It does not authorize any of the 51 counties without districting systems to alter their form of government in any manner.

Safeguards built into the act include a provision that redistricting shall not be effective for any particular election unless adopted at least 60 days prior to the primary, a clause specifically providing that the unexpired terms of incumbents will not be affected by any revision of the districts they now represent, requirements for filing copies of the redistricting resolution with the Secretary of State, the local register of deeds and the county board of elections, and a saving clause making it clear that existing local acts are not repealed until specifically superseded by a resolution adopted under authority of the act. Under the effective date provisions, a redistricting resolution will not become effective for the 1966 primary and election unless adopted before March 29, 1966, 60 days before the primary election.[28]

The North Carolina county reapportionment act is unique so far among state statutory responses to local government reapportionment. It is the first such statute passed before a court has actually held any county governing board malapportioned, and it is the first to delegate significant discretion to the board itself in performing the redistricting task. The Wisconsin statute,[29] enacted in response to *State ex rel. Sonneborn v. Sylvester*,[30] requires the local board to district the county but does not allow the at-large option. The California Government Code,[31] in typical fashion for that state, is excessively prolix and leaves little to the local board's discretion except where the lines shall be drawn.

Conclusion

Even though the Supreme Court has not yet specifically extended its "one person, one vote" decisions to local governments, most courts and writers believe this is a foregone conclusion. State courts and the lower federal courts alike have been no more reluctant to enter the thicket of local government politics than they have the adjoining forest of state legislative apportionment. In addition to completing the redistricting and reapportionment of both its houses and the state's congressional districts, the North Carolina General Assembly in its 1966 Extra Session also acted to forestall invalidation of its county governing boards, at least for the 1966 primaries, by authorizing the boards to remedy malapportionment themselves. Whether the 1967 Regular Session will revert to the accustomed method of dealing with local matters in this area by special act remains to be seen. At least the 1966 Extra Session has set a precedent for delegation of greater authority over apportionment matters to the boards themselves. □

Since the preparation of this article, both Onslow and Carteret Counties have taken action under the 1966 County Reapportionment Act. Onslow adopted the at-large option while Carteret revised its district boundaries. The Onslow lawsuit has been dropped. Woodard v. Carteret County continues on an issue not directly related to reapportionment.

24. The application of the *Reapportionment Decisions* to the district residence-election at large system is discussed in Sanders, *Equal Representation and the Board of County Commissioners*, Popular Government, April 1965, p. 1.
25. There is a dispute over the population of District III. Plaintiffs allege it is 7,219; defendants contend it is 6,919.
26. The pleadings and other papers in Woodard v. Carteret County and Mendelson v. Walton are reprinted in FERRELL, *op. cit.*, Ch. VI.
27. N.C. Sess. Laws Ex. Sess. 1966, c. 2 (HB 8).
28. N.C. GEN. STAT. §§ 163-117, -119.
29. WIS. STATS. § 59.03(2), as amended by Wis. Laws 1965, c. 20.
30. Discussed in text at note 7, *supra*.
31. CAL. GOV'T CODE §§ 25001-02, as amended by Cal. Stats. 1st Ex. Sess. 1964, c. 21, 40. Both the California and Wisconsin Statutes are reprinted in FERRELL, *op. cit.*, Ch. III.

Legal Problems in "Punishment"

By Douglas R. Gill

What punishment a judge may impose following a criminal conviction is not always clear. Although many of the statutes which describe crimes limit the punishment of that crime, many others either make no mention of punishment or expressly leave the punishment to the discretion of the court. One section of the North Carolina Statutes is devoted exclusively to stating the punishment for felonies which are described elsewhere, but for which no specific punishment is prescribed. Recently, the courts have changed their interpretation of when that section applies. The implications of that change have not yet been clarified by case law.

The section establishing the punishment for those crimes for which no specific punishment is prescribed is G.S. 14-2. It provides:

> Every person who shall be convicted of any felony for which no specific punishment is prescribed by statute shall be imprisoned in the county jail or State prison not exceeding two years, or be fined, in the discretion of the court, or if the offense be infamous, the person offending shall be imprisoned in the county jail or State prison not less than four months nor more than ten years, or be fined.

The key to the application of this section is the phrase "specific punishment" since if the substantive statute (the statute describing the particular offense) prescribes a specific punishment for that offense, then G.S. 14-2 is inapplicable. The North Carolina Supreme Court had said since 1900 that a specific punishment was prescribed so long as the *nature* of the punishment was stated. Thus, imprisonment at the discretion of the court was held to be specific since the nature of the punishment, imprisonment, was specified. Only when punishment was in no way described[1] did G.S. 14-2 have effect.

This interpretation was overruled by *State v. Blackmon*, 260 N. C. 352, 132 S.E. 2d 880 (1963). The defendant was sentenced by the lower court to eight to 10 years in prison for breaking and entering and 20 to 30 years for unlawful possession of burglary tools. He challenged on appeal the latter sentence. The statute making the unlawful possession of burglary tools a felony[2] prescribes punishment of "fine or imprisonment in the State's prison, or both, in the discretion of the court." Clearly, under the old interpretation, G.S. 14-2 would have been inapplicable in this case. However, the court held that the imposition of a sentence for this offense was limited by G.S. 14-2 to a maximum of 10 years because the substantive statute did not provide a specific punishment; a punishment was specific only if the *term* for which sentence could be imposed was limited. This interpretation newly subjected many felonies to the limitations of GS. 14-2.[3]

This change involves implications beyond limiting the judges' discretion in imposing sentences. Some of the statutes[4] which, according to the rule announced in the *Blackmon* case, are now governed by the limit on sentences of G.S. 14-2 describe the punishment as "fine or imprisonment or both," and at least one other[5] provides fine *and* imprisonment. Thus, both sentence and fine are often within the punishment permitted by the statutes from which reference to G.S. 14-2 is made. G.S. 14-2, however, prescribes a sentence of four months to 10 years *or* a fine, so it appears that G.S. 14-2 alone would not permit punishment by both a sentence and a fine.

Whether a judge sentencing under the limitation of G.S. 14-2 may only impose a fine if no sentence is given, despite the possibility of both sentence and fine under the substantive statute, is one of the questions left unanswered by *Blackmon*.

For example, one convicted of an attempted burning of a dwelling house, a felony, could be punished under G.S. 14-67 "by imprisonment. . . and may also be fined, in the discretion of the court." *Blackmon* clearly dictates that the term of imprisonment be limited by G.S. 14-2 to four months to 10 years. But may the judge sentence the felon and also impose a fine, as G.S. 14-67 says he may, or may he fine the offender only if no imprisonment is given, as suggested by G.S. 14-2? In other words, does reference to G. S. 14-2 to determine the limits on sentences necessitate following it in its entirety?

Application of G.S. 14-2 in its entirety would deny any effect to that part of the substantive statute permitting both imprisonment and fine. And *Blackmon* itself was primarily concerned with the imposition of a limit on the sentence rather than with the fine. Therefore the more reasonable conclusion seems to be to look to G.S. 14-2 for only a limitation on the sentence, and to allow the combination of sentence and fine called for by the substantive statute. However, a literal reading of G.S. 14-2 would permit application of G.S. 14-2 in its entirety.

The change effected by *Blackmon* also has implications for the punishment of misdemeanants. G.S. 14-3 provides:

> All misdemeanors, where a specific punishment is not prescribed shall be punished as misdemeanors at common law; but if the offense be infamous, or done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is conspiracy to commit a misdemeanor, be guilty of a felony and punished by imprisonment in the county jail or State prison for not less than four months nor more than ten years, or shall be fined.

Many substantive misdemeanor statutes[6] provide only for fine or punishment, or both, at the discretion of the court. If, as *Blackmon* would indicate, these are not specific punishments, the provisions of G.S. 14-3 must be referred to from these substantive provisions.

Reference in these cases to G.S. 14-

(Continued on page 14)

1. *e.g.*, G.S. 14-66, 322.1.

2. G.S. G.S. 14-55.
3. *e.g.*, G.S. 14-26, 55, 62.1, 92, 150
4. *e.g.*, G.S. 14-55, 150.
5. G.S. 14-92.

6. *e.g.*, G.S. 14-82, 84, 106, 134, 208.

Present Status of Revaluation Schedule

By Henry W. Lewis

Should a county give serious consideration to accelerating its real property revaluation date? Is special legislation needed to authorize acceleration? The answer to the second question is "no," and the answer to the first is "perhaps."

When the General Assembly of 1959 established a mandatory schedule for real property revaluation every eight years, an effort was made to give each county an opportunity to select its base year, that is, the year in which it would hold its first revaluation under the octennial schedule. Few counties were heard to complain of the base years to which they were assigned.

Under the 1959 Act counties were not permitted to postpone a scheduled revaluation, but they were allowed to accelerate if they thought it wise to do so. Thus, today,

> Any county desiring to conduct a real property revaluation *earlier* than called for under the schedule provided in [G.S. 105-278] may do so upon adoption by the board of county commissioners of a resolution so providing, a copy of such resolution to be sent forthwith to the State Board of Assessment.

If a county accelerates, it automatically fixes a new base year from which to measure the eight years before its next required revaluation.

The new schedule went into effect on January 1, 1961. Since that time 73 counties have completed real property revaluation programs. (This figure includes the nine counties whose revaluations went into effect on January 1, 1966.) Thus, when the remaining 27 counties conduct revaluations as scheduled (12 in 1967 and 15 in 1968), every county in the state will have completed such a program within the initial eight-year period.

Upon entering the seventh year under the schedule it seems advisable to examine the present status of the schedule, taking into account the ten accelerations that have been put into effect since it was established. Set out in parallel columns in Tabulation One will be found the original schedule (by divisions of counties) and the schedule as modified by accelerations. For reasons that will become explicit, the counties within each division have been classified according to broad population groupings and so identified in the tabulation.

As established in 1959, the revaluation schedule allocated the counties of the state among eight divisions and assigned a base revaluation year to each as follows:

Division I (1961)	— 10 counties
Division II (1962)	— 7 counties
Division III (1963)	— 15 counties
Division IV (1964)	— 12 counties
Division V (1965)	— 16 counties
Division VI (1966)	— 12 counties
Division VII (1967)	— 14 counties
Division VIII (1968)	— 14 counties

An equal allocation would have required assignment of 12 or 13 counties to each division. Measured against such a standard, only Divisions II and V deviated from the 12 or 13 standard by as many as three counties. In the six years in which the schedule has been in operation, however, ten accelerations have changed this picture. The present status of the schedule can be summarized as follows:

Division I (1969)	— 12 counties
Division II (1970)	— 6 counties
Division III (1971)	— 16 counties
Division IV (1972)	— 12 counties
Division V (1973)	— 18 counties
Division VI (1974)	— 9 counties
Division VII (1967)	— 12 counties
Division VIII (1968)	— 15 counties

Using the same measurement standard, four divisions now deviate from the 12 or 13 standard by as many as three counties: II, III, V, and VI.

Total figures for each division are significant, but it is also valuable to consider the manner in which counties of various sizes are divided for revalu-

(Text continues, top of page 13)

TABULATION ONE

Real Property Revaluation Schedule as of 1966

This tabulation is based on G.S. 105-278, modified according to the State Board of Assessment's record of revaluation accelerations reported as of January 1, 1966. Counties which have accelerated are marked with an asterisk (*). The following rough county population groupings have been used in this tabulation:

"A" designates counties of more than 100,000

"B" designates counties in the 75,000 to 100,000 range

"C" designates counties in the 50,000 to 75,000 range

"D" designates counties in the 25,000 to 50,000 range

"E" designates counties below 25,000 in population

Division I (base year 1961; next revaluation set for 1969)

Schedule as Established in 1959	*Schedule as Modified to 1966*
A	A
None	*Durham
B	B
Alamance	Alamance
C	C
Edgecombe	Edgecombe
Nash	Nash
Randolph	Randolph
D	D
Martin	Martin
Stanly	Stanly
	*Wilkes
E	E
Gates	Gates
Mitchell	Mitchell
*Perquimans	*Polk
Warren	Warren

Division II (base year 1962; next revaluation set for 1970)

A	A
*Durham	None
B	B
None	None
C	C
Craven	Craven
D	D
Anson	Anson
Duplin	Duplin
Granville	Granville
E	E
Alexander	Alexander
Clay	Clay

ation schedule purposes. Population figures furnish as useful a single measurement of size as any other in this connection. Tabulation Two (p. 14) measures the present composition of each annual division against an "ideal" composition, that is, one reflecting a balanced allocation of counties by size as well as by number. It also identifies the population group in which each division lacks counties or contains more counties than proper balance requires.

Division II (counties scheduled to revalue as of January 1, 1970) is seriously short in total number. Division V (counties scheduled to revalue as of January 1, 1973) is seriously crowded. Division III (counties scheduled to revalue as of January 1, 1971) is also crowded.

There are only eight counties which fall into Population Group A (over 100,000) and only seven which fall into Population Group B (75,000 to 100,000). Thus, logic suggests that revaluation dates for these large counties should not be bunched but should be spread evenly throughout the octennial cycle. Such is already true for counties in Population Group B. On the other hand, two Group A counties are found in Divisions IV and VIII, while none appears in Divisions II or VII.

As already noted, only six counties are presently scheduled to revalue as of January 1, 1970, and none of the six falls in Population Groups A or B. It is too late for a Group A county in Division VIII to accelerate, but it might be advantageous for one of the two Group A counties in Division IV scheduled to revalue in 1972 (Cumberland and Guilford) to accelerate to 1970. With fewer counties

Division III (base year 1963; next revaluation set for 1971)

A	A
Mecklenburg	Mecklenburg
B	B
None	*Wayne
C	C
Burke	Burke
Johnston	Johnston
Rockingham	Rockingham
D	D
Beaufort	Beaufort
Chatham	Chatham
McDowell	McDowell
Moore	Moore
Sampson	Sampson
Scotland	Scotland
E	E
Davie	Davie
Graham	Graham
Hertford	Hertford
Pender	Pender
Watauga	Watauga

Division IV (base year 1964; next revaluation set for 1972)

A	A
Cumberland	Cumberland
Guilford	Guilford
B	B
*Wayne	*Robeson
C	C
Cleveland	Cleveland
Harnett	Harnett
D	D
Haywood	Haywood
Northampton	*Lee
*Wilkes	Northampton
E	E
Avery	Avery
Camden	Camden
Cherokee	Cherokee
Montgomery	Montgomery

Division V (base year 1965; next revaluation set for 1973)

A	A
Gaston	Gaston
B	B
Davidson	Davidson
C	C
Caldwell	Caldwell
Columbus	Columbus
Lenoir	Lenoir
Pitt	Pitt
D	D
Carteret	Carteret
*Lee	Orange
Orange	Richmond
Richmond	
E	E
Currituck	*Alleghany
Greene	Currituck
Hyde	Greene
Pamlico	Hyde
Transylvania	*Madison
Washington	Pamlico
	*Swain
	Transylvania
	Washington

Division VI (base year 1966; next revaluation set for 1974)

A	A
Buncombe	Buncombe
B	B
*Robeson	Rowan
Rowan	
C	C
None	None
D	D
Franklin	Franklin
Henderson	Henderson
Pasquotank	Pasquotank
E	E
Ashe	Ashe
Chowan	Chowan
Hoke	Hoke
Jones	Jones
*Madison	
*Swain	

Division VII (base year 1967; next revaluation set for 1975)

A	A
None	None
B	B
Catawba	Catawba
C	C
Cabarrus	Cabarrus
Halifax	Halifax
New Hanover	New Hanover
Surry	Surry
D	D
Bladen	Bladen
E	E
*Alleghany	Brunswick
Brunswick	Dare
Dare	Macon
Macon	Stokes
*Polk	Tyrrell
Stokes	Yadkin
Tyrrell	
Yadkin	

Division VIII (base year 1968; next revaluation set for 1976)

A	A
Forsyth	Forsyth
Wake	Wake
B	B
Onslow	Onslow
C	C
Iredell	Iredell
Wilson	Wilson
D	D
Lincoln	Lincoln
Person	Person
Rutherford	Rutherford
Union	Union
Vance	Vance
E	E
Bertie	Bertie
Caswell	Caswell
Jackson	Jackson
Yancey	*Perquimans
	Yancey

in the professional appraisal market for the 1970 deadline, it is possible that acceleration to Division II would afford a county freer choice in the selection of appraisal assistance and might reduce costs.

Study of Tabulation Two will suggest other acceleration possibilities, none so obvious as that already mentioned, but, nevertheless, several are worth considering. For example, some of the Group E counties scheduled for 1973 might find themselves well served by advancing revaluation to 1970. Some of the Group D counties scheduled for 1971 might think of moving to 1969 or 1970. Individual counties aware of their own needs may see other possibilities.

By making it mandatory that each board of county commissioners annually levy and earmark a tax to finance revaluation, the General Assembly of 1959 relieved commissioners of having to make the decision of whether to lay aside tax money for this purpose. At the same time, however, the statutes leave with each board of commissioners wide discretion in determining how large or how small this mandatory levy is to be. Each year each board has to make this decision.

A prudent board of county commissioners will at all times have as reliable an estimate as possible of what its next revaluation is likely to cost. Recent experience demonstrates that the work entails substantial expenditures. Knowing the probable total cost of the job, knowing that a substantial part of the money needed for the job must be available for expenditure 12 to 24 months prior to the date on which the revaluation is to become effective, and knowing how many years remain available for amassing the money that will be needed, the commissioners should plan intelligently what tax to levy in each year's budget. Such planning, however, must be kept up to date. For example, if a county experienced marked economic changes through stepped up growth, it is entirely possible that acceleration of revaluation might be desirable.

As already suggested, the availability of competent appraisal assistance is not unlimited. The more counties crowd or bunch their scheduled revaluations, the more difficult and the more expensive it becomes to obtain reliable appraisal work. The later counties wait to begin their revaluation programs, the more expensive they become and the greater the likelihood of shoddy work. Succinctly, counties should be alert to the advantages of acceleration; to reap those advantages, however, they must think ahead in terms of planning as well as money. □

TABULATION TWO

Revaluation Schedule as of 1966 Measured by "Ideal" Schedule

The "ideal" or balanced schedule proposed as a base for measuring the effectiveness of the actual schedule as of 1966 allocates to each year of the octennial period either 12 or 13 counties. This figure is shown (by population group) in the left column under each annual division; the actual number of counties under the schedule in 1966 is shown in the middle column under each annual division; the difference between the actual and the "ideal" number of counties appears in the last column under each division—shortages are indicated in parenthesis ( ); overages are shown without any symbol.

	I (1969)			II (1970)			III (1971)			IV (1972)		
A	1	1	—	A	1	0	(1)	A	1	1	—	A	1	2	1
B	1	1	—	B	0	0	—	B	1	1	—	B	1	1	—
C	2	3	1	C	3	1	(2)	C	2	3	1	C	2	2	—
D	4	3	(1)	D	4	3	(1)	D	4	6	2	D	3	3	—
E	5	4	(1)	E	5	2	(3)	E	4	5	1	E	5	4	(1)
	13	12	(1)		13	6	(7)		12	16	4		12	12	0

	V (1973)			VI (1974)			VII (1967)			VIII (1968)		
A	1	1	—	A	1	1	—	A	1	0	(1)	A	1	2	1
B	1	1	—	B	1	1	—	B	1	1	—	B	1	1	—
C	3	4	1	C	2	0	(2)	C	3	4	1	C	2	2	—
D	3	3	—	D	3	3	—	D	3	1	(2)	D	3	5	2
E	5	9	4	E	5	4	(1)	E	5	6	1	E	5	5	—
	13	18	5		12	9	(3)		13	12	(1)		12	15	3

. . . "Punishment"

(Continued from page 11)

3 will not limit the sentence further than it would have been limited without reference to G.S. 14-3. The discretion of the court in sentencing under the substantive statute is limited by constitutional tradition to two years. That same limit is the only one applicable when sentence is imposed by way of G.S. 14-3. Thus, G.S. 14-3 embodies the same limit on sentence that had been implicit in the substantive statute itself.

Reference from substantive misdemeanor statutes to G.S. 14-3, however, has other implications. Here, too, is the question whether substantive statutes calling for fine *or* imprisonment control, or whether G.S. 14-3, interpreted to permit fine *and* imprisonment, controls. To impose both fine and sentence only if permitted by the substantive statute seems the more reasonable choice, but only a judicial decision will conclusively resolve the problem.

An expanded application of G.S. 14-3 could expand, of course, the use of its escalation clause which provides that any misdemeanor governed by G.S. 14-3 can be escalated to a felony, and punished accordingly "if the offense be infamous, or done in secrecy and malice, or with deceit and intent to defraud . . ." This device had been used to escalate some misdemeanors to felonies, for example, attempt to commit crime against nature, and attempt to commit burglary. Although the use of the escalation clause is ill-defined, the increased scope of G.S. 14-3 does give increased opportunity to escalate crimes from misdemeanors to felonies.

(Continued on page 36)

Safety Equipment Inspection of Motor Vehicles

By William A. Campbell

North Carolina Department of Motor Vehicles personnel attend a safety inspection training school at the Institute. *See page 17.*

When the 1965 General Assembly enacted House Bill Number 536, An Act To Provide For Annual Safety Equipment Inspection of Motor Vehicles, it declared its belief in the truth of two propositions. The first is that at least some automobile accidents are caused or contributed to by certain defective or missing items of equipment and that an effort should be made through an equipment inspection to discover and correct those items, thereby reducing the number of accidents that they cause. The second proposition is that the effort of making the equipment inspection is worth the time and money that it will cost the State and the motor vehicle owner. The correctness of these propositions might be difficult to prove to the satisfaction of a statistician. However that may be, the supporters of the inspection program seem to have felt that if only one life is saved by the program it will have justified its existence. And few will gainsay this.

The statute makes the Department of Motor Vehicles responsible for administering the safety equipment inspection program, although the actual inspections will be conducted by private business firms licensed by the Department. The day to day administration of the program will be conducted by a field staff composed of experienced inspectors from the Department's license and safety inspection division, highway patrol troopers, and weight station inspectors.

Vehicles Covered and Time for Inspection

Every motor vehicle registered, or required to be registered, in North Carolina — including towed as well as self-propelled vehicles — when operated on the highways must display a current approved certificate indicating that it has been inspected and found to comply with the standards for safety equipment prescribed by Chapter 20 of the General Statutes. Two classes of vehicles come readily to mind that could be operated on North Carolina highways without displaying an inspection certificate. These are vehicles owned by the federal government and hence not required to be registered in North Carolina, and vehicles belonging to servicemen stationed in North Carolina that are registered in the servicemen's home states.

The earliest date upon which motor vehicles must be inspected under the new safety equipment inspection law is February 16, 1966. On and after that date all motor vehicle dealers in North Carolina prior to the retail sale of any new or used motor vehicle must have that vehicle inspected by an approved inspection station and have affixed thereto an inspection certificate. Vehicles regularly registered in North Carolina will follow the schedule set out below for 1966.

If the last digit on the 1966 license plate is:	The vehicle must be inspected on or before:
3	March 31, 1966
4	April 30, 1966
5	May 31, 1966
6	June 30, 1966
7	July 31, 1966
8	August 31, 1966
9	September 30, 1966
0	October 31, 1966
1	November 30, 1966
2	December 31, 1966

This schedule is for 1966 only; in subsequent years the month designated on the inspection certificate will determine when a new inspection must be made and a new certificate obtained. Each inspection certificate will be valid for at least 12 months, and will expire at midnight on the last day of the month designated on the certificate.

Whenever a new or used vehicle required to be inspected under the statute and not bearing a current inspection certificate is sold or exchanged between private parties, that vehicle may be operated on the highways for not more than 10 days without an inspection. This provision will affect very few vehicles after 1966 because after that year most vehicles so exchanged will have current inspection certificates. When a vehicle is brought into North Carolina from another state and is required to be registered here, it may be operated on the highways for not more than 10 days without an inspection certificate. Presumably, if a motor vehicle is registered in a state that has a reciprocal registration agreement with North Carolina under Article 1A of Chapter 20 and is brought into this state and is required to be registered here, it may be operated on the highways without an inspection certificate for not more than 10 days after its base state registration has expired.

Items to be Inspected and Required Standards

The inspection will cover the following six items of safety equipment: brakes, lights, horn, steering mechanism, windshield wiper, and directional signals. A ve-

hicle cannot be disapproved because it does not have a certain piece of equipment if it is not already required by Chapter 20 of the General Statutes to have that item. A good example of this is trailers with a gross weight of less than 2500 pounds. Trailers in this category are not required to have any of the items of equipment required to be inspected and are therefore exempt from all of the inspection requirements.

The standards required of the six items enumerated above do not exceed the standards already provided in the General Statutes for such equipment. Thus the new safety equipment inspection law adds no new standards; it only provides for an annual enforcement check of the existing standards. It should be mentioned here that a current inspection certificate will not exonerate a vehicle owner from an equipment violation. If at any time a vehicle is found to have equipment falling below the standards required by Chapter 20, that vehicle is in violation of the statute, even though it is displaying a valid inspection certificate. For example, if an automobile is inspected and approved on Monday morning, has a headlight damaged Monday afternoon, and is operated in that condition on the highway Monday night, the owner may be cited for an equipment violation. No attempt will be made here to describe completely the inspection requirements and procedures for each item of equipment, for they are long and detailed, or to summarize briefly the requirements for each item, for that would only be misleading. Instead—to illustrate the thoroughness of the inspection—the requirements for two items, taillights and steering mechanism, will be discussed in detail.

Taillights:

All self-propelled motor vehicles and all trailers and semitrailers, except those with a gross weight of not more than 2500 pounds, must carry at the rear a lamp that exhibits a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of the vehicle. A rear light must project a white light on the license plate. The vehicle will be disapproved if the lens is cracked, discolored or of a color other than red, if the taillights do not operate properly or do not project white light on the license plate, or if the taillights are not securely mounted. If a vehicle meets all the equipment requirements except those for taillights, it may be approved for daylight driving only.

Steering mechanism:

Every self-propelled motor vehicle must be equipped with a steering mechanism that is maintained in good working order and is adequate to enable the operator to control the vehicle's movements and to maneuver it safely. Vehicles will be disapproved if any of the following defects are noted:

1. With the front wheels in a straight ahead position there is more than 3 inches of free play in steering wheels up to 18 inches in diameter, or more than 4 inches of free play in steering wheels over 18 inches in diameter.

2. Either the front or rear springs are noticeably sagging or broken.

3. The front wheels or front end assembly is bent or front end assembly is twisted or bolts, nuts, or rivets are loose or missing.

4. The power steering system shows visible leaks or the power system fan belt is loose or worn.

In the usual inspection the wheels of the vehicle will not be removed; the inspector will, however, have to get under the vehicle, and this may entail the use of a jack or floor stands.

If a vehicle is disapproved, the disapproval must be based upon a defect in one of the six items of equipment enumerated above, and it must be based upon a defect that is listed as such in the Safety Equipment Inspection Regulations. The defect cannot be in an item of equipment other than the six enumerated, and it cannot be for a defect in one of the six that is not listed as a ground for disqualification in the regulations. If, for example, a vehicle does not have a windshield wiper on the right side, this is not ground for disapproval; it need only have a wiper in good working order on the driver's side.

Fees and Disapproval Procedures

When a vehicle is inspected, inspection stations other than self inspectors must charge a fee of $1.50. Self inspectors need only pay the 25 cents for the approval certificate. The language of the statute is mandatory, a fee of $1.50 *must* be charged. This means that an inspection station may not lower its fees to attract business, nor may it offer such package deals as a tank of gas and an inspection thrown in for nothing, or a lubrication job and a free inspection. The reverse of this is unclear. It may be possible under the law for an inspection station to charge $1.50 for the inspection and give a tank of gas or a lubrication job free, but few stations that adopted such a practice would remain in business for very long. It is worth noting that a tractor-trailer rig consists of two vehicles; therefore two $1.50 fees must be paid and two certificates obtained. The inspection station retains $1.25 of the total fee, the remaining 25 cents is forwarded to the Department of Motor Vehicles in payment of the approval certificate. The proceeds collected in payment of the approval certificates are to be placed in a fund designated as the Motor Vehicle Safety Equipment Inspection Fund and will be used for administration of the Safety Inspection Law.

When a vehicle has been inspected and the fee has been paid, the owner or operator will receive a receipt with the items inspected marked approved or disapproved. If all of the items have been approved, an approval certificate will be affixed to the inside of the windshield—if the vehicle has a windshield—with the left edge of the certificate in line with the pivot arm of the windshield wiper; if it does not have a windshield, the certificate

Position of Approval Certificate

will be placed on the front as near the right side as possible. The owner of a disapproved vehicle can have that vehicle reinspected free of charge at any time within 90

days of the date of disapproval by presenting his receipt to the inspection station that issued it and requesting another inspection.

Two points should be made about the 90 day free period. First, it means only that a disapproved vehicle may be re-inspected within 90 days without additional charge; it does not mean that the date upon which such a vehicle must display a current approval certificate is extended for 90 days. A vehicle required to display an approval certificate on or before May 31 that is inspected and disapproved on May 30 is still required to display a certificate on May 31; its deadline is not extended for 90 days. Second, if the vehicle is re-inspected at another station than the one that made the original inspection, a second fee of $1.50 must be paid. The owner of a disapproved vehicle may have the defect corrected at the station making the inspection, and probably most will do so, but under no circumstances is he to be required to have it corrected there.

Requirements for Inspection Stations and Self Inspectors

All safety equipment inspections must be made by licensed inspection stations or by designated self inspectors. To qualify as an inspection station or self inspector a garage, service station, or other place of business must meet two groups of requirements. The first group concerns the place of business itself: the owner or operator must be of good character and have a good reputation for honesty (although not made explicit in the statute, this requirement surely applies to the station owner as well as to his employees), the station must be open to conduct inspections during normal business hours, it must have a specified area used primarily for the repair of motor vehicles, it must have at least 45 lineal feet of approximately level floor surface at least 10 feet wide when using a light chart for testing lights, or at least 25 lineal feet of approximately level floor surface at least 10 feet wide when using a light testing machine, it must have an enclosed area sufficient to permit a thorough inspection at all times regardless of weather conditions, and it must have 16 specified items of equipment, including a toe - in gauge, a creeper, and a headlight testing chart or approved headlight tester.

The inspection station must also have in its employ a person certified by the Department of Motor Vehicles as qualified to conduct safety equipment inspections, and this is where the second group of requirements becomes relevant. To be certified, a person must work in a place of business that has qualified as an inspection station, be of good character and have a good reputation for honesty, have adequate knowledge of the equipment requirements of the Motor Vehicle Laws of North Carolina, be able to satisfactorily conduct a safety equipment inspection as contemplated by the regulations, and have a sufficient knowledge of motor vehicles to be able to recognize an unsafe mechanical condition. Any person, firm, corporation, the State of North Carolina or any subdivision thereof, may be designated a self inspector provided it meets the requirements listed above for regular inspection stations and provided it owns or operates a minimum of 10 motor vehicles. A self inspector may inspect only those vehicles that it owns or operates.

A few comments on the licensing requirements for inspection stations and self inspectors may be helpful. The "good character" requirement is a vague one, capable of much elasticity in application. It probably means that a person will be disqualified from being certified as an inspector or from operating an inspection station if there is something in his background or reputation that would lead an investigator from the Department of Motor Vehicles to believe that his ability to conduct inspections honestly and capably was impaired. That the applicant had been a defendant in a suit for alienation of affections, for example, would probably not disqualify him. But if he had a reputation of overcharging for mechanical repairs or a conviction for falsifying records, he probably would be disqualified. It appears that an inspector must be able to do something more than "to satisfactorily conduct a safety equipment inspection," he must also be able "to recognize an unsafe mechanical condition." That is, an inspector must be able to recognize a condition that may not cause the vehicle to be disapproved under the inspection law but that nevertheless renders it unsafe to operate. A certified inspector does not carry his certification with him from job to job. If he leaves a licensed inspection station, that station must return his certificate to the Department of Motor Vehicles and he must be recertified if he begins working at another place of business.

Perhaps one of the most controversial requirements for inspection stations is the space requirement. A place of business that does not have a light testing machine must

(Continued on page 19)

Safety Inspection Training School Held at Institute

December 8-10, the Institute of Government and the North Carolina Department of Motor Vehicles conducted a safety equipment inspection training school for the Department's field staff that will be responsible for administering the new Safety Equipment Inspection Law. Approximately 110 members of the Department of Motor Vehicles attended the school held at the Institute. The group comprised inspectors already employed by the Department's license-theft division, highway patrol troopers, and weight station personnel.

Those participating in the school as instructors were C. D. Lindsay, director of the Department of Motor Vehicle's license and safety division; R. B. Parker, safety inspection administrator; William A. Campbell of the Institute of Government, Major C. A. Speed and Captain E. W. Jones of the Highway Patrol; Mrs. Claire Scarboro, license and safety division; Gonzalie River, license and safety division; Dwight Fee, Director of the North Carolina Traffic Safety Council, A. L. Craig, equipment engineer, and T. R. O'Neal, foreman of the Highway Patrol body shop.

The object of the school was to acquaint the field staff with the inspection law, regulations, and procedures so that they can perform the tasks of investigating applications for inspection station licenses, orienting mechanics and garage foreman who will conduct the inspections, and supervising the licensed inspection stations.

Planning and Zoning

By Philip P. Green, Jr.

Every once in a while, persons concerned with planning the development and redevelopment of their communities would do well to broaden their perspectives by studying relevant experience from other climes and other times. On such occasions, it always comes as a shock to learn of the universality of the problems confronting planners—and even more so, to learn that nostrums confidently hawked as cure-alls today sometimes have already been tried elsewhere with less-than perfect results.

Just such an opportunity for study is made available to planners by a recent book, *Town Planning in London: The Eighteenth & Nineteenth Centuries* (New Haven: Yale University Press, 1964). Belying its title, the book has nothing to do with local governmental planning nor even (except in an incidental manner) with the process of preparing plans for the guidance of physical development of land. Furthermore, the author (Donald J. Olsen) is not himself a professional planner nor even a member of one of the allied design professions; he is a history professor at Vassar. Withal, his work casts unusual light upon many of the perennial problems confronting planners and seems to have particular pertinence to some of the urban renewal programs of today.

The starting point of the study is recognition of the unusual land ownership situation in London (and England generally), where a remarkably high percentage of the land is held by a comparative handful of large landowners. This land has been and is kept in their hands over long periods of time. The British laws of descent (combined with their own practice) have operated to consolidate holdings rather than to break them up among a mass of descendants. And when dealing with persons outside the family, the landowners have leased their land, rather than selling it outright. Thus, the common pattern has been for landowners to make their lands available to developers under leases ranging from 21 years to 99 years in duration. The developers constructed buildings and other improvements and subleased them to tenants. At the expiration of the lease, the buildings as well as the land reverted to the landowners.

Olsen recognized the advantages that such an arrangement might have in permitting planned development and redevelopment. In the first place, the size of the tracts involved permitted their planning and development almost independently of what was taking place around them (indeed, some of the neighborhoods described in the book were physically closed off, with manned gates on the streets leading into adjacent neighborhoods). Since the property was to remain in his family (and since in many cases the landowner was wealthy enough not to need an immediate return), there was an incentive for the landowner to insist that development be of a high order of quality. Under the leasehold arrangement there were continuing controls over the maintenance and use of the property, by means of which there could be assurance that plans would continue effective. And finally, at the expiration of the leases, there would be periodic opportunities to redevelop the property. In other words, there was full opportunity for planning, continuing land-use regulations, and eventual redevelopment—all without any necessity for governmental action and the political problems related thereto.

The purpose of the book, then, was to examine how these theoretical advantages worked out in practice over period of several centuries. The author relied upon two major sources of information. First, he made an intensive examination of the records of two of the larger landowners in London — the Bedford Estate, which comprised the holdings of the successive Dukes of Bedford, and the Foundling Hospital, a charitable institution. The former owned and developed the Covent Garden area, the Bloomsbury area (including Russell, Bloomsbury, Tavistock, Gordon, Euston, Woburn, and Torrington Squares and the sites of the British Museum and the University of London), and the Figs Mead area to the north. The Foundling Hospital owned a large area to the east of the Bloomsbury holdings of the Bedford Estate. Secondly, Olsen went through a mass of contemporary materials, notably including the testimony before the Royal Commission on the Housing of the Working Classes (1884-85) and the Select Committee on Town Holdings (1886-90), which investigated practices in the real estate business in some depth. The end result is a book of surprising interest.

To summarize Olsen's findings (perhaps to a degree of oversimplification), he found first that the development of these large estates was indeed pre-planned—to some extent by the landowner and to some extent by developers, subject to approval of the landowner. He found that for the most part such planning produced a higher quality of development than was general. Particularly in the Bloomsbury area with its many squares there was a degree of openness and a quality of construction which attracted upper-class tenants and held up well over the years.

On the other hand, he found that the powers of the landowner under lease agreements, extensive though they were in theory, were insufficient to preserve the original planned character of the areas involved—and where an area was not originally de-

veloped to a rather high standard, it was very apt to slip into slum conditions if the landowner relaxed his vigilance in any degree.

Finally, he found that the possibility of area-wide redevelopment at the expiration of the lease period had real value but that the landowner was less free than might be supposed to reshape the character of the area and that in some instances (e.g., substitution of Victorian for Georgian architecture) the redevelopment could be thought positively harmful.

The predominant impression left by the book is that of the strength of the forces of fashion, taste, technological change, and the "market", which proved strong enough to frustrate even the extensive powers of the landowners.

At the beginning of the developmental process, there was conflict between the landowners and the builders. The landowners prepared very extensive contracts governing the nature of development and the specifications (including architectural elevations) for construction. As the author points out, they were interested in buildings whose value would remain at the expiration of a 99-year lease. The builders and developers, on the other hand, were interested in a short-term profit, so they attempted to build to cheaper construction standards and to erect houses for which they thought there was a more ready market. In this conflict, the landowners were apt to compromise by cutting back on their standards, for fear that the builder would go bankrupt or that no builder would undertake the development of their land—fears that were apt to be borne out in practice. All too often, such compromises proved unwise in the long run, because the areas where construction was less expensive tended to recede much more readily into slum conditions.

Next, while there were strong potential powers for the landowners to control maintenance and use of the property under their lease agreements, these powers too were subject to "reality." In the first place, some necessary provisions were overlooked in the drafting of the earlier leases—such as provisions preventing the erection of additional structures on the land in the back gardens or preventing the occupancy of stables by people. Secondly, the legal procedures for enforcing such provisions proved cumbersome. And most important of all, it was found that overuse of lease restrictions and particularly of the most powerful enforcement weapon, ejectment of the tenant, might simply leave the landowner "holding the bag" of an unoccupied piece of property. So he compromised.

This fact that the owner could not force anyone to occupy his property proved the key disadvantage in efforts both to maintain the character of an area through lease agreements and to restore such character through eventual redevelopment. All the planning and regulatory powers available proved insufficient to stem the exodus of the upper classes and of the upper middle classes from Covent Garden and Bloomsbury to the West End and to the suburbs opened up by the new railroads. The Bedford Estate made a strenuous but unavailing effort at one time to get rid of the boarding houses which had sprung up in the Bloomsbury area and to restore the area's character of "residences for gentlemen." It just could not overcome these forces.

So perhaps the chief lesson for planners of today is this: no matter how powerful your enforcement powers may seem to be, unless your plans somehow can take into account and make use of the forces of fashion, taste, technological change, and the market, they are doomed to eventual failure. It is a humbling prospect. □

Safety Equipment Inspection of Motor Vehicles

(Continued from page 17)

have 45 lineal feet of floor surface; this much space is required to properly test headlights with a chart. If a place of business has a light testing machine it needs only 25 lineal feet of floor space. If a service station or garage has only 25 feet available, then it must have a testing machine, many models of which can be purchased for $50 or less.

Revocation and Suspension of Licenses

The Commissioner of Motor Vehicles is directed by the statute to cause periodic checks to be made of the inspection stations to determine that inspections are being conducted in accordance with the law and regulations. He is also directed to investigate all bona fide complaints concerning any inspection station. If any applicant for a license has his application denied he will, upon request, be afforded a hearing by the Commissioner. He may then petition the Superior Court of Wake County or the superior court of the county of his residence for review of the Commissioner's decision. From the law and the regulations it appears that an applicant who is refused a license may by-pass the hearing before the Commissioner and appeal directly to the superior court. It is quite likely, however, that such an applicant would be required to exhaust his available administrative remedies before appealing to the courts. A licensee can have his license revoked or suspended only after a hearing by the Commissioner. A suspension is defined as a temporary withdrawal of a license for a definite period of time; a revocation is the complete termination of a license. A licensee whose license has been suspended or revoked also has a right of appeal to the Superior Court of Wake County or to the superior court of the county of his residence. Although the statute and regulations are not explicit on this point, it seems certain that the principles concerning the denial, suspension, or revocation of an inspection license and the appeal and hearing procedures relevant thereto are also applicable to the denial, suspension, or revocation of a self inspector designation. □

Bonding of Municipal Employees

By Michael G. Allen

[*Editor's Note: The following article has been adapted from the author's address to the Municipal Finance Officers Conference, March 3, 1965, at the Institute of Government. A companion article on municipal insurance purchasing appeared in the November 1965* Popular Government. *Allen is executive secretary of the Charlotte-Mecklenburg Insurance Advisory Committee.*]

Bonding is probably the least understood but most important protection required of the municipality. Unfortunately, the majority of today's municipal bonding programs are inadequate, since they were prepared or reviewed many years ago. Times and bonding requirements have chnged, making an annual review of bonding programs an absolute necessity.

What Is Bonding?

What does bonding actually mean? Bonds are not a form of insurance, although fidelity bonds are written by insurance companies or their bonding departments. Instead the bond is a three-party agreement among employee, city or county, and bonding company, whereas insurance is a two-party agreement between city or county and insurance company. The bond company is simply a third party in an agreement to reimburse the municipality for any loss it may suffer through the acts of an employee. Technically, a bonding company is not supposed to lose money. When the bonding company reimburses a municipality, it in turn recovers the amount of loss from the employee, if that is possible.

Kinds of Bonds

Various types of bonds are available to a municipality. The two broad categories include *public official bonds* and *public employees blanket bonds*.

Public Official Bond

The public official bond is simpler and the more common. This bond is required by statute on specific employees. It protects the public against loss of public funds and property resulting from a fault of the public official or employee. The individual public official is the principal under the bond. The insurance company is the surety and the political subdivision is the obligee.

Public official bonds, although simple, are not standardized. They merely state that the bonding company agrees to reimburse the political subdivision for acts within the scope of the official's authority. If the official defaults or fails to act according to the statute, the bonding company will reimburse the political subdivision. When the application for a public official bond is signed by the official, he becomes *personally liable* for any loss of public funds or property and he is required by law to reimburse the bonding company.

The bond remains in force during the public official's entire term of office and is canceled only when the principal has performed faithfully the duties of his office and has paid over all monies that came into his hands by virtue of his office. When this is done, the bonding company is discharged from its responsibility. Otherwise the bond remains in force until the above conditions have been met.

The cost of public official bonds is normally higher than other types of bonds on individuals, since public officials who are required to be so bonded usually have access to large amounts of money and property. It is important that the market be thoroughly searched because of the expense of these bonds and the fact that premiums are not standardized. With some serious "shopping" considerable amounts can be saved on these bonds; but quality must not be sacrificed for price. It would be foolish to obtain a half million dollar public official bond with a company whose assets don't even come close to a half million dollars or with a company which would have to be sued to force payment. The bonding responsibility of a municipality should be discharged through a good reputable company.

All statutes, including city charters, must be thoroughly researched to determine which positions must be covered by separate public official bonds. Many years ago when a position was created or mentioned in a statute or charter, wording was automatically inserted to require the official to furnish bond. If the wording is there, an *individual* bond must be furnished. Examples of positions that must be individually bonded are clerks of court, sheriffs, registers of deeds, treasurers, and tax collectors. Some city charters may require bonds of various department heads such as airport managers or water department supervisors.

If consideration is being given to rewriting a city charter, it may be wise to eliminate some of these bond requirements for various department heads. The bond of the public official is very expensive. If the charter requires that he be bonded, he is not covered by the blanket bond. If this charter requirement is eliminated, the employee is automatically covered by the blanket bond at a lesser cost. Normally the blanket bond is (or should be) much larger than the run of the mill individual bonding requirement for department heads.

For example, in the old Charlotte city charter, the airport manager and assistant manager were required to give bond in the amount of $2,500. This particular bond cost the city $35 a year for each job. Had this requirement not been in the city charter, these two jobs would have been covered by the city's public employees blanket bond at a cost of $1.68 per year for coverage much higher than the required $2,500. When Charlotte's city charter was redrawn by the 1965 General Assembly, that requirement was eliminated to permit the more economical full blanket bond coverage for these positions.

Public Employees Blanket Bond

The public employees blanket bond is designed to cover all employees of a political subdivision except the treasurer, the tax collector, and those required by statute to furnish bond.

The public employees blanket bond can be written under one of four forms. There are two broad cate-

gories — an *honesty* form and a *faithful performance* form— and each of those may be purchased on either a blanket bond basis or a blanket position bond basis (explained below). The honesty form is cheaper but does not offer the broad coverage of the faithful performance form. The honesty form covers only losses resulting from dishonest or fraudulent acts, whereas the faithful performance bond covers losses resulting from failure to perform faithfully or account properly for all money or property. The wording indicates a much broader type of bond, and the most desirable type is the faithful performance form. The following examples illustrate the desirability of the broader coverage.

Suppose the water department superintendent was counting the day's receipts from water bills on his desk when a salesman entered. The telephone rang and the superintendent turned to answer it. While his back was turned, the salesman pocketed three $100 bills. Since this loss was not caused by a dishonest act on the part of the employee, there would be no coverage whatsoever under an honesty blanket bond. However, the loss would be covered by a faithful performance bond, since the $300 loss would result in the superintendent's failure to account properly for all monies in his possession.

In another example, a purchasing agent failed to take bids on new automobiles and purchased one brand of car at a price higher than that for which another brand could have been purchased. The resulting loss to the municipality was covered by the faithful performance bond since the purchasing agent had failed to perform faithfully.

Both the honesty and faithful performance bonds can be purchased on a blanket bond basis or a blanket position bond basis. The only difference in these two classes is that the blanket bond grants an amount of coverage per loss regardless of whether one or more employees were involved in the loss. The blanket position bond grants an amount of coverage per employee involved in the loss.

As an example, let us consider two employees in a motor transport department, who, working in collusion, cause a $10,000 loss. Under a $5,000 blanket bond, the total recovery for the municipality would be only $5,000. But under a blanket position bond the total recovery would be $5,000 per employee, a recovery of the total $10,000 loss. Obviously the blanket position bond is the more expensive of the two. However, I would not recommend the purchase of such a bond. I feel that for the same amount of money, the blanket bond in a higher amount could be purchased, offering far more adequate coverage. The statistics available for all commercial risks indicate that fewer than five per cent of the losses that occur under bonds involve more than one person. And with the very strict audit provisions of municipalities, I don't believe that the increased cost of the blanket position bond is worthwhile.

Bond Coverage

Who is covered by the blanket bond? The blanket bond on municipal employees covers any person employed by the insured (municipality) who is not required by law to furnish an individual bond to qualify for office. It does not cover any treasurer or tax collector by whatever title known. This blanket bond will not cover employees required by law to give bond regardless of whether they have given bond or not. All employees other than these mentioned are automatically covered. New employees are automatically covered with no increase in premium during ther term of the bond, and employees as they leave municipal employment are automatically eliminated. The bonding companies require no notification of new employees or terminations.

A bond stays in full force and effect up to the full amount of the bond on all employees. The bond company can, at its discretion, refuse to cover a specific employee, and is required to give 30 days notice that coverage will no longer be afforded that employee. This is most unusual and would occur only when a bonding company locates something detrimental in the background of an employee.* Should this occur, it is unlikely that many municipalities would retain the employee of the payroll. Second, the bond is canceled upon the death, resignation or removal of any such employee. Third, and most important, the bond is canceled immediately upon discovery by the insured of *any* act of any employee which would constitute a liability of the surety. For example, an employee of some years standing took three or four dollars out of petty cash. The employer asked him to make restitution of this small amount, promising that nothing further would be said about it. Although the employer did not notify the bonding company, he was aware that this employee had committed an act which would be a liability under the bond had it been reported. Five or six months later this employee took $5,000, which was reported to the bonding company. The company, however, could deny liability for the second act on the ground that the employee was no longer covered after the first incident.

*Bonding companies will investigate the backgrounds of all new employees as a free service. Although it is not required by law, I recommend the use of this practice. If an employee has anything detrimental in his background, the municipality will be informed. Bonding companies have substantial files on prior claims and dishonest acts

Bond Costs

A blanket bond is rated by the bonding company on the number of employees on the date that the bond goes into effect. This premium, be it for one, two, three, or four years, is the premium during the entire term of the bond. Although the number of employees increases, the premium does not.

Employees are divided into three classifications, A, B, and C, for the purpose of figuring bond premiums. Class A includes all supervisory officials and employees who handle receipts, expenditures, and accounts for property or money. These are the key employees, and obviously the rate for Class A employees is higher than for the other classes.

Class B employees are all those engaged in inside or outside clerical activities: office workers such as typists, stenographers, file clerks, switchboard operators, or business machine operators and all operators of vehicles transporting passengers for cash fares or tickets. These employees are not such risks as those in Class A, and consequently the rate is much lower on them.

In Class C are all other employees such as skilled and unskilled laborers, craftsmen, mechanical operators of automotive equipment, and nonclerical workers in the medical and nursing professions. Teachers or outside field workers of nonclerical nature are also in this class. Class C

includes all employees not otherwise classified—the majority of employees. No charges are made for Class C employees.

As an example, let us consider the city of Allentown with 20 employees in a supervisory capacity (Class A), 25 clerical employees (Class B), and 150 Class C employees. The rate for an honesty blanket position bond in the amount of $100,000 would be as follows: the Class A employees would cost $1,015.54; the Class B employees would be 85 cents each or $21.25; and the Class C employees would be covered free. Thus the total cost of this bond in the amount of $100,000 would be $1,036.79 per year.

These costs emphasize how important it is to classify employees properly before bonding is secured. Class A employees cost Allentown a little over $1,000, but the B employees cost only $21. Advancing just one employee from B to A would make a very significant cost increase.

The rates above are for the *honesty blanket position bond*— the bond that gives $100,000 coverage on each employee. Let's compare this cost with that of the *honesty blanket bond* which gives $100,000 coverage on one loss. The 20 Class A employees would cost $895.73 and the 25 Class B employees $20.75, a total of $915.98. This bond costs $120.81 less than the blanket position bond, and I do not feel that the increased cost of the honesty blanket position bond is justifiable.

I strongly recommend consideration of the faithful performance form. This bond immediately calls for a 25 per cent increase in cost, but I believe that it is money well spent. The faithful performance bond in the amount of $100,000 would cost $231 more than the honesty blanket bond, or a total of $1,146.98. However, this cost can be reduced considerably by considering some of the points below.

Experience Rating

One method of reducing costs is by experience rating. If a municipality has suffered no losses under its bond in the previous three years, maximum experience credits can be given. This applies to any bond with a premium in excess of $150 per year. Of course if some losses have been suffered, the credits will be less than the figures below.

Let us assume that Allentown has never suffered a fidelity loss. Therefore, the bonds of its employees are subject to the maximum credits using the cost figures already quoted. Reducing the $915.98 premium for the honesty form with a maximum experience credit (25 per cent) would result in a net premium of $686.98. With the faithful performance form, because of the larger premium and the experience credits being on a graded scale, the premium falls into a higher scale, subject to a 30 per cent credit. The cost of the faithful performance form, originally $1,146.98, would be reduced to $802.89. Thus the faithful performance bond is now increasing the cost only $115.91 per year over the honesty form. It is interesting to note that by increasing the bond, the premium enters a higher experience classification, which results in the increased bond costing very little more than the lower coverage bond.

Prepayment, Extended Terms

The bond costs mentioned previously have been on an annual basis. The blanket bond can be written on a one, three, or four year prepaid basis. Of course, when municipalities have to operate on an annual budget, the prepayment of a bond is most unusual. However, the bond can be written on a three year or four year basis with annual installment payments, which spreads the cost over several budget periods. The advantage in having the bond for three or four years prepaid is an additional 16 2/3 per cent discount. The one year bond is multiplied by four for a four year bond to grant the 16 2/3 per cent credit. The installment charge is only five per cent over the prepayment charge. If the bond is payable on an annual basis, one would multiply one year's bond by four and only grant 11 2/3 per cent credit. But even this 11 2/3 per cent credit can amount to a considerable sum of money.

While the cost advantage is good, the biggest advantage for a four year installment bond is the fact that the bond is rated on the basis of the number of employees on the date the bond goes into effect. All new employees are automatically covered and the bond company cannot increase the cost of the bond during its term. Thus by writing the bond for a maximum of four years, regardless of whether there are annual payments or prepayments, the cost is set for the next four years. Most municipalities are growing. As new employees are added, the bond cost does not change. However, if the bond is written on an *annual* basis and renewed each year, the bond cost will increase annually by the number of employees added. This is perhaps the only type of insurance that can be written for a four year period. Few people realize that this is possible, although many municipalities have bonds on a three year basis.

This factor can work in reverse, however. If, for some reason, a municipality has recently reduced its employees in substantial numbers, it may be wise to investigate the possibility of canceling and rewriting the bond. For instance, the city of Charlotte transferred approximately 185 employees in the Health Department from the city to the county. It would be folly to change the county's bond, for there are 185 new employees, mostly Class A, who are automatically covered *free* for the next four years. But the city's employment was reduced by 185 and the city bond was canceled and rewritten to take advantage of the reduction in employees.

These figues show how much money can be saved by properly writing and constantly checking bond coverage. By obtaining competent help and advice on blanket bond coverage, a municipality will find many ways to make money-saving changes.

Bond Amount

What size bond should be purchased? Often the bonds carried by various cities and counties are grossly inadequate. In many cases no bond would be better than the amounts presently being carried. A municipality with a budget of $20 or $30 or $40 million a year is not adequately covered by a $2,500 or $5,000 bond. This is false economy. By increasing that bond to approximately $100,000 with proper rating, a different type, and experience modifications, the cost would not be increased as much as one might think.

We read every day that fidelity losses are on the increase. Municipalities are certainly not immune to fidelity losses. Following are examples of four bond losses that have occurred and could occur in any municipality:

(Continued inside back cover)

At left are three key speakers during the Public Service Career Opportunities conference at the Institute. Far left is Institute Director John Sanders, who discussed the role of State government; center is E. Charles Woods, Administrative Assistant to the Director, Bureau of the Budget, Executive Office of the President, Washington, D. C., who spoke on the Federal government; and right, Edward L. Rankin, North Carolina Director of Administration, Raleigh, whose topic was the challenge of public service.

UNC students went job shopping for positions in federal, State, county and city government during the annual "Careers for Carolina" program jointly sponsored by the Institute of Government, the University of North Carolina and the UNC Student Government. Thirty-five students attending the one day conference on opportunities in public service heard speakers from the State's top posts in public administration, education, social services and specialities such as planning, public law and recreation, as well as an FBI representative.

INSTITUTE SCHOOLS MEETINGS CONFERENCES

In progress above is a school for State ABC Peace Officers conducted at the Institute by Ben Loeb, Jr., shown addressing the group. Other Institute staff members who participated in the school included Director John Sanders, Norman Pomrenke, William Campbell, and Dexter Watts. Sixty-five attended the four-day sessions which covered report writing as well as the laws pertaining to ABC enforcement.

Problem sessions, such as the one pictured at left, were featured during the position classification workshop held at the Institute in December. Sponsors included the Institute, the North Carolina Chapter of the Public Personnel Association and the North Carolina State Personnel Department. Conducting problem sessions were Gardiner Parker, Chief of Classification, North Carolina State Personnel Department, and Conway Rees, Chief of State Personnel Classification, Virginia. Fifty-one personnel officers attended.

The Clerk of Superior Court and the New District Court

By C. E. Hinsdale

Editor's Note: This is the fourth in a series of articles on officials of the General Court of Justice, created by the 1962 amendments to the State Constitution and the Judicial Department Act of 1965 (Chapter 310, S. L. 1965). Earlier articles in this publication dealt with new offices of the Judicial Department—the Administrative Office of the Courts (October, 1965), the District Court Judge (November, 1965), and the District Court Magistrate (December, 1965).

This article deals with a pre-existing office—a centuries-old office which is continued under the amended Constitution and the 1965 Act—the clerk of superior court. While the title of this important office remains the same, the changes in the office wrought by the 1965 Act are the most far-reaching since 1883, when the probate judge was abolished and his functions transferred to the clerk of superior court.

Constitutional Provisions

Article IV, Section 7(3) of the Constitution now provides:

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

Sec. 10(2) provides that ". . . The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall provide by general law uniformly applicable in every county of the State." Sec. 15(3) provides that "Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges . . . Any Clerk so removed from office shall be entitled to an appeal as provided by law."

These provisions are the same in substance as those contained in the former Article IV, except for the section on removal from office. "Misconduct" has been added as a cause for removal, the removing judge is now the senior regular resident superior court judge rather than the "judge riding the district," and the right of appeal "as provided by law" replaces a constitutionally guaranteed ultimate appeal to the Supreme Court. (The 1965 Act continues this right of appeal to the Supreme Court).

Judicial Department Act

The principal objective of the Judicial Department Act of 1965 was to implement the Constitution by establishing a District Court Division of the General Court of Justice. The Act did not attempt to reorganize the Superior Court Division, including the office of the clerk of superior court. But the process of creating the District Court Division inevitably affected portions of the superior court's organization, structure, and jurisdiction. For example, although Chapter 2 of the General Statutes, dealing with the office of clerk of superior court, was left intact, many sections of it are superseded, directly or by implication, by the provisions of the 1965 Act, which take effect in December, 1966, in 22 counties of the State, and by statutory schedule in all other counties in 1968 and 1970. This situation must be kept in mind in following this discussion. When the 1965 Act is silent, earlier laws are still in effect. A complete picture of the clerk's office thus must include both the earlier laws and the 1965 additions, but it is the purpose of this article to discuss only those aspects of the clerk's office which were affected by the 1965 Act.

True to the constitutional concept of one unified statewide General Court of Justice, Sec. 7A-39.1 of the Act makes it clear that the clerk of superior court, in the exercise of his judicial powers as *ex officio* judge of probate, and with respect to special proceedings and the administration of guardianships and trusts, is an officer of the superior court, and *not a separate court*. This section pointedly omits any reference to the judicial powers of the clerk with respect to juvenile matters; these powers are specifically taken from the clerk and given to the district court judge by Sec. 7A-277. This change affects not only the 90 counties in which the clerk is now judge of juvenile court; in all 100 counties, including those 10 in which the clerk now has no connection with the juvenile court, the clerk inherits the clerical responsibilities attendant upon the discharge of juvenile matters in the district court.

Clerical Functions of District Court

Most clerks will accept the loss of the function of juvenile judge with equanimity, if not joy. Another change will be greeted with different emotions. This thrusts upon the clerk all of the clerical functions of the district court in his county. The Courts Commission and the General Assembly felt that efficiency, convenience and economy would be best served if all the clerical functions of *both trial divisions* of the General Court of Justice in each county were placed under one official. Logically, such an official should be called simply "Clerk of Court" or "Clerk of Trial Courts," but "Clerk of Superior Court" is the constitutional title. (A clerk of district court is also mentioned in the Constitution, but only in passing, in the section on removal; there is no constitutional mandate to create such an officer). The title of "Clerk of District Court" could not also be given to the clerk of superior court, as this might run afoul of the dual office-holding prohibition of the Constitution. The only solution was simply to provide that the clerk of superior court's judicial, clerical, administrative and fiscal duties with respect to district court

matters would be the same as in superior court matters. This responsibility includes the duty to maintain consolidated records of all judicial proceedings in both the superior court and the district court in his county.

New Powers of Clerk

The clerk is given two important new functions in his enlarged role as clerk of both the superior and district courts. The first of these is the power to accept written appearances, waivers of trial and pleas of guilty to certain traffic offenses listed by the chief district judge, and the second is the authority to issue warrants of arrest valid throughout the State, and search warrants valid throughout the county. The clerk shares each of these duties with the magistrate, and assistant and deputy clerks are also so empowered. This promotes flexibility and convenience during normal working hours and after hours as well, since assistant and deputy clerks may be assigned irregular hours when desirable to supplement the limited number of magistrates which may be available for these important functions. Under this new system, law enforcement officers will be prohibited from issuing warrants.

Compensation

The advent of the District Court brings to an end the era of the fee-compensated clerk. Clerks (including assistants, deputies, and other clerical employees) are placed on the State payroll, and salaried according to a scale keyed to county population. The scale runs from $6500, in counties of less than 10,000 people, to $18,000, in counties of 250,000 people and more. This scale represents some increase in compensation for the majority of clerks. Population groupings are subject to adjustment after each federal decennial census. Any additional compensation by means of fees or commissions is forbidden, but county commissioners, by virtue of a provision of Sec. 7A-101 are authorized to supplement the salary of the clerk from certain costs of court. Salary supplements of this kind are likely to be uncommon.

All clerks will become members of the Teachers' and State Employees' Retirement system. Clerks who are now members of the Local Government Employees' Retirement system will be automatically shifted to this system without loss of coverage under existing law. Special legislation will probably be needed for the benefit of those clerks not now covered by the Local Government Employees' Retirement System. Social Security coverage, of course, continues.

Assistants and Deputies

All employees of the clerk's office are also shifted to the State payroll. The number of such employees is to be determined by the Administrative Officer of the Courts, as well as their salaries, the latter to be set after consultation with the clerk and the county commissioners concerned. Salaries must also be fixed with "due regard to the salary levels and the economic situation in the county." The clerk appoints all his office employees to serve at his pleasure.

Additional Seats of Court

The District Court is required to sit at the county seat in each county, and at such additional places as the General Assembly may authorize. In the 22 counties activated in 1966, additional seats are authorized in the counties of Catawba (Hickory), Haywood (Canton), and Robeson (Fairmont, Maxton, Red Springs, Rowland, St. Pauls). Many of the counties to be activated in 1968 or 1970 will probably have one or more additional seats of court. The clerk will be responsible for supplying necessary clerical assistance at these locations, but only such records as are necessary for the efficient processing of current judicial business are to be kept at these sites. Office space and furniture at the additional site must be provided by the city concerned.

Nomination and Supervision of Magistrates

The constitution (Article IV, Sec. 8) creates the new office of magistrate, a minor judicial officer of the district court, and assigns to the clerk of superior court the duty to make nominations (to the senior regular resident superior court judge) for appointment to this new office. Each county will have at least one magistrate, and a few counties may have 10 or more. In advance of the nominations, the salary for each magistracy will be fixed by the Administrative Officer, and, although not required by the law, the duties and location of each magistracy will probably also be known. The clerk must then find qualified candidates for each magisterial position and submit his nominees to the judge. While the chief district judge prescribes the times and places at which magistrates will be available for duty, and assigns small claims cases to them for trial, the clerk is charged by law with general supervision of the record keeping functions of the magistrate. This arrangement makes it highly desirable that the clerk nominate the most highly qualified candidates he can find for the position of magistrate.

Mechanical Court Reporting Equipment

The new law anticipates a continuing shortage of competent court reporters, not only in the superior court, but in the district court as well. When live reporters are not available, the local judge concerned may request the State to supply mechanical court reporting equipment. When such equipment is furnished it is the duty of the clerk to provide for its operation, to preserve the record of trial so recorded, and to transcribe the record as required. An employee trained in these functions will be necessary. Transcription costs, presumably at the rate currently prevailing in the locality, are assessable on appeal from district court to superior court.

Financial Accountability

Procedures for the "receipt, deposit, protection, investment, and disbursement" of all funds coming into the hands of the clerk of superior court will be promulgated by the State. The State Auditor will conduct an annual post audit of the fiscal transactions of each clerk. Each clerk will be bonded to the State for faithful performance of duty. The administrative Officer fixes the amount of the bond and the State pays the premium. Assistant and deputy clerks are bonded similarly, except that a blanket bond is authorized for all clerical assistants.

Clerk's Jurisdiction in Probate and Administration

Earlier it was noted that, except for loss of his juvenile judgeship, the jurisdiction of the clerk remains substantially unchanged. This is emphasized in Sec. 7A-241, which specifies that exclusive original jurisdiction for the probate of wills and the administration of decedent's estates is exer-

cised by the superior court and the clerk thereof as *ex officio* judge of probate, according to established practice and procedure.

Original civil jurisdiction of all other matters (except claims against the State) is vested in the trial divisions. Current procedure with respect to special proceedings, guardianship and trust administration, and condemnation actions remains undisturbed; technically, either trial division has "jurisdiction," but the superior court is the *proper* division. (A detailed explanation of the terms "jurisdiction" and "proper" is beyond the scope of this discussion.) And Sec. 7A-251 provides that all matters properly heard originally before the clerk are appealable to the judge of the superior court, as provided in Chapter 1 (Civil Procedure) of the General Statutes.

Clerical Procedures in Civil Actions

All civil actions and proceedings in either trial division of the General Court of Justice are instituted in (and the original records maintained in) the office of the clerk of superior court "*without regard to the trial division in which a particular cause may be pending from time to time.*" Of course, this does not mean that labelling of papers to indicate the trial division involved is forbidden; in fact, the complainant is required to indicate on the complaint or other initiating paper which division he deems proper. If no designation is made, the clerk dockets the cause for the superior court division. If, upon motion of the parties granted by the judge, or on the judge's own motion, a cause is transferred from one division to the other, the clerk merely makes appropriate notations on the dockets and the case file. If the volume of business is great, separation of pending cases by trial division may be convenient but it is not required by law.

Civil Appeals from District to Superior Court

Civil actions finally decided in the district court are appealable to the superior court on the record, for error of law. These appeals are governed by a set of rules set out in Sec. 7A-286 of the Act. The procedures vary materially from the procedures on appeal from the superior to the Supreme Court. The role of the clerk in such appeals is specified in detail in the Rules, and will not be repeated here other than to say that the clerk prepares the record on appeal, which consists of the original papers and exhibits filed in the case, the transcript of proceedings, if and to the extent requested, and a certified copy of all docket and minute entries. Upon assembly of the record on appeal, the clerk dockets it on the appellate docket of the superior court in his office and notifies the parties. Judgments are entered by the clerk in the civil judgment docket in the same manner as judgments of superior court trials.

Criminal Appeals from District to Superior Court

Criminal actions (misdemeanors) tried in the district court are appealable to the superior court for trial *de novo*, with jury. If notice of appeal is given in open court or within 10 days thereafter, the clerk transfers the case to the superior court criminal docket.

Special Small Claims Procedures

Civil actions in which the amount in controversy does not exceed $300 (including claim and delivery and summary ejectment actions), upon request of the plaintiff, are assignable by the chief district judge to a magistrate for trial. Assignment will probably be made in most cases by the clerk, pursuant to standing order or rule of the judge. Art. 19 of the 1965 Act sets out special procedures for these cases. The plaintiff requests assignment by stamping "Small Claim" on the face of his complaint, which is filed with the clerk. In assigned cases, the clerk issues a "magistrate summons," which commences the action, and notifies the parties and the designated magistrate of the assignment. If a small claim is not assigned within five days, it is treated as a regular civil action. Special, simple forms for use in small claims are set forth in the Article. Service of process may be obtained by certified mail, if the plaintiff so requests and pays the clerk the fee (postage) for this service. Trial is had before the magistrate, who signs the judgment and returns the papers to the clerk for entry of judgment on the consolidated civil judgment docket, in the same manner as civil judgments rendered by a district or superior court judge. On appeal the clerk places the action on the district court civil issue docket for trial *de novo* before a judge.

Expenses of Clerk's Office

The Constitution provides that the operating expenses of the Judicial Department will be paid by the State. This means, in addition to the salaries of all personnel in the clerk's office, other expenses of the office, including ". . . supplies and materials, postage, telephone and telegraph, bonds and insurance, equipment, and other necessary items," (Sec. 7A-300 (5)). The State is authorized to establish local procedures for the prompt payment (from State funds) of the fees of jurors, certain witnesses, and other small expense items. The county (or the city, if an additional seat of court is located in a city), must provide the courtroom and related judicial facilities, however, including the clerk's office spaces, furniture and vaults. Supplies and equipment in the clerk's office on the date a district court is established in any county become the property of the State.

Costs of Court

The principal features of the uniform costs of court bill have been explained in the March and June, 1965, issues of *Popular Government*. In place of the lengthy, detailed costs bill with which most clerks now struggle, there will be a simplified, all-inclusive lump - sum - per - major-category-of-judicial-business type of bill. While it may take some effort to adjust to the new system of costs, the time saved in computing separate costs in countless cases will more than compensate for this temporary inconvenience.

Relations with Administrative Officer of the Courts

While the clerk continues to be elected to his office by the voters of his county, he is responsible primarily to the State—in particular, to the Administrative Officer of the Courts—for the proper discharge of the nonjudicial functions of his office. Sec. 343(c) specifies that the Administrative Officer prescribes ". . . uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court." This sweeping authority will eventually re-

(Continued on page 32)

UNC is being considered as a possible site for the National College of State Trial Judges summer school beginning in 1967. Shown at right inspecting the Institute of Government library are, left to right, Wyoming attorney Edward Murane; A. Pilston Godwin, North Carolina Bar Association president; U. S. Supreme Court Associate Justice Tom Clark; (partly hidden); George Fountain, president, North Carlina Conference of Superior Court Judges; and Institute Director John Sanders. Harvard and the University of Pennsylvania are also being considered for the training sessions which would be attended by 100 trial judges comparable to State superior court judges.

Members of the Commission on the Study of the Board of Trustees of the University of North Carolina are shown during their first meeting at the Institute of Government. From left to right are Davidson College President D. Grier Martin; Brodie S. Griffith, Editor, The Charlotte News; *Miss Naomi Morris, Wilson attorney and Secretary to the Commission; The Honorable Luther H. Hodges, Commission Chairman, Chapel Hill; Institute Director John L. Sanders; State Representative Neill L. McFayden, Raeford; and State Representative Hugh A. Ragsdale, Richlands.*

INSTITUTE SCHOOLS, MEETINGS, CONFERENCES

Dr. Robert Levinson, Chief Psychologist, U.S. Bureau of Prisons, Washington, D. C., met with prison teachers and correctional officers who are group leaders at the Polk Youth Center, Raleigh, in a three-day training seminar at the Institute. John Galvin, then assistant Director, U.S. Bureau of Prisons, assisted with the group counseling training program.

Lee Bounds, North Carolina Prisons Director, conducts a session with supervisory personnel in the prison system during a meeting at the Institute.

Attorney General's Rulings

ABC ACT: Conflict of Interest

November 23, 1965
A.G. to Ray B. Brady

Questions: Can the local governing body which appoints the local ABC board appoint as a member of that board a brother or the father of one of the members of the local governing board?

Can the local ABC board negotiate a purchase of property or buildings from a corporation in which a member of the local governing board is an officer and stockholder?

Answer: Yes, to both questions. We find no provision in the ABC Act or in G.S. §14-234 which would prohibit these activities. Although such action may not be politically wise, we do not believe it constitutes a violation of the General Statutes.

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ADMINISTRATIVE BODIES: Authority to Hold Hearing

November 12, 1965
A.G. to L. P. Hornthal, Jr.

Question: Would it be permissible, under G.S. §115-42, for a Board of Education to hold a preliminary hearing for the purpose of considering issues collateral to the principal question involved at the hearing, i.e., the truth or falsity of charges preferred against a superintendent?

Answer: Yes. In 73 CJS (Public Administrative Bodies and Procedure) p. 440, sec. 121, it is stated that "A hearing should be confined to the points at issue, so as to insure to the persons affected full opportunity to be heard on any matter before a ruling thereon is made. *An administrative board may authorize a preliminary hearing limited to a particular issue.*" (Emphasis added) Also, in 2 Am. Jur. 2nd (Administrative Law) p. 155, sec. 340, it is stated that "Where the statute does not require any particular method of procedure to be followed by an administrative agency, the agency may adopt any reasonable method to carry out its function."

We are of the opinion, therefore, that a Board of Education would have the right to hold a hearing in the nature of, or analogous to a pretrial hearing. In such a hearing the Board could dispose of preliminary or collateral issues with the right to then go into the hearing on the merits or to continue the hearing on the merits until another time.

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CONFLICT OF INTERESTS: Public Officers

4 October 1965
A. G. to H. S. Ward, Jr.

Question: A man owns and operates a plumbing business in a county where he is employed by the county consolidated school system as a high school principal. He submits a low bid to the county board of education for a plumbing contract in connection with the construction of a new school building in the county. State funds are used to pay his total salary and to finance the construction of the school. Can the principal be prosecuted and/or removed from his office under G.S. §14-236 if his bid is accepted and he commences work on, and receives remuneration from, the project?

Answer: Yes. G.S §14-236 would apply and the principal would be subject to prosecution thereunder *if* the bid is accepted and he performs work pursuant thereto. *We do not* believe the principal would be subject to removal under this section *until* the bid has been accepted and he enters upon performance of the contract.

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COUNTIES: Authority to Hire Special Traffic Officers

11 October 1965
A. G. to David Clark

Question: Can the county commissioners hire employees for the purpose of assisting in handling traffic at congested crossings, or is this a matter to be handled by the State Highway Patrol and Sheriff's office?

Answer: There does not appear to be any statutory authority for county commissioners to hire such traffic officers. This would appear to be handled by either the State Highway Patrol or the Sheriff's office and, no doubt, the county commissioners could work out some arrangement with the sheriff's department to furnish part-time deputies or special deputies for the express purpose of directing traffic unless such an arrangement is prohibited by local act.

Conveying Property to the State

15 October 1965
A. G. to Herman A. Moore

Question: Can a county convey land to the State without consideration? [in order to place itself in a competitive position for a desired State agency]

Answer: G.S. §153-9 authorizes a county to sell or lease real property and to make deeds to the purchaser. G.S. §160-59 authorizes municipalities to sell and convey real or personal property at public sale or if the sale is to a governmental unit, private sale of personal property may be made. This office has previously ruled [17 March 1964 to Frank Turner] that a county or municipality has no statutory authority to donate or give property to the State without consideration.

Expenditures for Public Purpose

November 1, 1965
A.G. to Marshall Staton

Question: Is the expenditure of public funds for air hygiene lawful?

Answer: There is no reason why the expenditure of public funds for air hygiene would not be a lawful expenditure of county funds as being for a *public purpose.* Whether such an expenditure is a *necessary expense,* however, within the meaning of Article VII, Section 7 of the Constitution depends upon the circumstances under which the expenditure is contemplated.

Industrial Development

November 19,1965
A.G. to John R. Jenkins, Jr.

Question: Would a township development commission have legal authority to use the 'interest or other income' from its fund to make a contribution to, or to buy stock in, a private development corporation organized under the laws of North Carolina,

for the purpose of constructing and equipping on land located in the township and owned by the development corporation a factory building or other industrial improvements to be made available to an industrial prospect on a lease or lease-option-to purchase?

Answer: This office has often expressed the opinion that governmental funds could not be used to subsidize a private industry. A governmental unit would not have authority to make a gift of land or a building to a private industry or to sell the same at a price greatly below its actual value inasmuch as the latter would constitute a partial gift. It has been our opinion that such a gift would violate the State Constitution in that it would constitute the use of public money for a private as opposed to a public purpose and that it would constitute a conferring of special privileges and emoluments upon private individuals or a set of individuals for something other than public service. If a governmental agency cannot do this directly it follows that it could not do the same thing indirectly by buying stock in a corporation which, in turn, would make gifts to private industry.

Question: Upon a transfer by a county treasurer to a development commission of funds held in a savings account, under the name of a railroad bond fund, will the entire amount of the savings account and all interest accrued thereon to the date of such transfer constitute a new principal fund in the hands of the township development commission or, can that commission properly set up its records on that fund to show as principal only the amount of money originally placed in the savings account for the township railroad bond fund by the county treasurer and show and use and apply as interest or other income that part of the fund transferred to the commission which has accrued as interest on the savings account in which the fund has been held?

Answer: Apparently the enabling statute contemplates that both the principal and accrued interest shall be paid over to the commission and the total of both principal and interest shall be invested and the interest on that total may then be expended for the purposes set out with respect to use of interest and income.

Necessary Expenses

November 24, 1965
A.G. to Frank M. Armstrong

Question: Can counties make expenditures for the purpose of furnishing secretarial assistance to Superior Court Judges?

Answer: Although there is no Supreme Court ruling directly on point, the Court has varied between a liberal and restrictive view of the term "necessary expenses." One proposition which seems to be accepted by all of the cases is that the courts are to determine the *class of expenditures* falling within the term "necessary expenses," but the County Commissioners, as to counties, are to determine, in their discretion, what particular expenditures *in that class* are necessary to the particular county and the means by which the object of the expenditure is to be accomplished.

In *Nantahala Power & Light Company v. Clay County,* 213 N. C. 698, 197 S.E. 603 (1938), the Court assumed that the expense of holding courts is a necessary county expense. The Court held, however, that such expenses as maintaining the sheriff's office and the clerk of court's office were ordinary recurring expenses and, therefore, were not special purposes and had to be kept within the confines of the 15 cent general fund constitutional limitation. (This limitation has now been increased to 20 cents on the $100 valuation.) The expense of holding courts and other expenses incidental to the administration of justice are not specified, but it is our opinion that if it is expedient to furnish the Judge of the Superior Court with secretarial assistance, that such expense could properly be considered as an expense incident to holding courts and to the administration of justice and would, therefore, fall within the category of a necessary expense.

Water and Sewer Systems

29 October 1965
A. G. to W. E. Easterling

Question: Is there a risk for counties to commit themselves to finance water and sewer systems, either through appropriation of tax moneys or by bond issue, when neither has been approved by the voters at an election?

Answer: This is a matter which lies within the discretion of the several boards of commissioners. There is no guarantee and there can be no guarantee until the Court has spoken directly on the question. G.S. §153-289 provides that the acquisition and maintenance of water and sewer systems are necessary expenses of the counties and that expenditures therefor are for a special purpose. While the Court has held expenditures to be for necessary expenses in cases in which the legislature has not applied the label "necessary expense," the Court has also held that the expenditure is not for a "necessary expense" in spite of a legislative declaration. If the first case presented should be concerned primarily with the protection and promotion of the health and welfare of the people in congested areas in the county rather than with the promotion of industrial development, a tax or bond issue without a vote of the people probably would have a better chance of judicial approval.

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COUNTY COMMISSIONERS: Conflict of Interest

November 12, 1965
A.G. to Sankey W. Robinson

Question: Can a Board of County Commissioners accept a bid and enter into a contract, for the supply of fuel oil for county buildings, with a corporation which was formerly owned by the Chairman of the Board of County Commissioners — the corporation now owned by the Chairman's two sons, neither of whom live in the home of the Chairman, and the Chairman having disposed of all stock and interest in the corporation two years earlier and prior to his election to the Board of County Commissioners, and exercising no control or receiving no monetary benefit from the corporation.

Answer: Yes. The facts indicate that the Chairman would receive no monetary benefit from the contract and that he was not concerned or interested in the making of the contract

and would receive no direct or indirect benefits from the corporation. Therefore, we do not believe that the provisions of G.S. §14-234 would apply. Whether the Board of County Commissioners wants to accept this contract is a matter for them to decide within their discretion.

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COURTS:
Justices of the Peace

20 October 1965
A. G. to Ralph B. Carmichael

Question: When a financing agency purchases a contract *under* $200 does it also secure the rights to bring action, or must the financing agency be held to the $50 valuation as contained in the first sentence of G.S. §7-122?

Answer: When a security instrument is assigned, the assignment generally carries to the purchaser all rights held by the assignor; however, G.S. §7-122 is specific in stating that the plaintiff and the defendant must have a vendor-vendee relationship as to the property in question before the Justice of the Peace would have jurisdiction of the action in claim and delivery where the value *does not* exceed $200. The assignment of a chattel mortgage or other security instrument does not carry with it the vendor-vendee relationship. Without such a vendor-vendee relationship the financing agency *cannot* avail itself of that portion of the statute which permits claim and delivery where the value does not exceed $200.

Service of Process

26 October 1965
A. G. to Frank Harrington

Question: Can a Justice of the Peace tax a defendant with the constable's fees for service of process when, in actuality, process has never been served upon the defendant?

Answer: This office has uniformly expressed the view over a number of years that the fee for service of process would not ordinarily be required to be paid when the process is not in fact served, even though a diligent effort has been made to serve the same. Corpus Juris indicates that fees are not usually allowable in such circumstances unless the fee statute expressly so provides. Therefore, the officer *is not* entitled to a fee as a matter of law unless service has been made.

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DOUBLE OFFICE HOLDING:

4 October 1965
A. G. to H. P. Taylor, Jr.

Question: Does membership on a county board of commissioners and membership on a school board advisory committee, established pursuant to G.S. §115-70(1965), constitute double office holding in violation of Article XIV, Section 7 of the North Carolina Constitution?

Answer: While there is no exact criterion as to what does or does not constitute a public office, it has been said that a public office embraces the ideas of tenure, duration, powers and duties. As noted in G.S. §115-70 a member of a school board advisory committee acts only "in an advisory capacity," and has no definite duties or specific authority as are generally attached to a public office.

It would appear, therefore, that membership on a school board advisory council does not constitute a public office and that an individual who is a member of a county board of commissioners and a school board advisory committee is not violating Article XIV, Section 7 of the North Carolina Constitution.

15 October 1965
A. G. to Louis H. Smith

Question: Can a person hold the position of Town Attorney and Chairman of the Town ABC Board at the same time without violating Article XIV, Section 7, of the North Carolina Constitution?

Answer: This office has consistently held that a town attorney *is not* a public officer; therefore, the holding of the two positions would not be in violation of the Constitution.

22 October 1965
A. G. to Kenneth Youngblood

Question: Would membership on an economic development commission, established pursuant to G.S. §158-8, be considered a public office within the meaning of Article XIV, Section 7, of the North Carolina Constitution?

Answer: We believe the powers, duties and authority conferred upon an economic development commission would constitute members thereof public officers within the meaning of the Constitution.

November 30, 1965
A.G. to George R. Ragsdale

Question: Is a trustee of a State college a public officer for purposes of construing the double office holding provisions of the North Carolina Constitution?

Answer: It is our opinion that a trustee of a State college is a public officer. However, for a number of years this office has held that trustees of State institutions of higher learning are also commissioners of public charities and, therefore, are exempt from the double office holding provisions of Article XIV, Sec. 7, of the North Carolina Constitution.

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ELECTIONS:
District Judges

November 17, 1965
A. G. to Marion B. Person

Question: What is the procedure with regard to filing notice of candidacy for the office of Judge of District Court?

Answer: It is the opinion of this office that a district judge is a State officer and, therefore, should file his notice of candidacy with the State Board of Elections as required by G.S. §163-119. While G.S. §163-119 does not refer to a district judge per se, it does require that every candidate for the office of Governor and *all State officers,* (emphasis added) judges of the Superior Court, United States Senators, members of Congress and solicitors shall file notice of candidacy with the State Board of Elections by 12:00 noon on or before the Friday preceding the 10th Saturday before the primary.

Organization of County Executive Committee

18 October 1965
A. G. to A. E. Leake

Question: What is the effect upon the composition of a County Democratic Executive Committee when subsequent to the election of the party's precinct officers, the number of precincts is reduced by action of the board of county commissioners?

Answer: There is nothing in the Democratic Plan of Party Organization which covers this situation. There is a provision for filling the vacancy as to the Chairman of the County Executive Committee and there is also a provision for filling the vacancy when a member of the County Executive Committee is removed for cause, but there is *no provision* that deals with a re-organization of the County Executive Committee after the Committee has been properly organized, and subsequently the number of precincts is reduced.

We are compelled to rely upon the analogy of public officers who, when they are appointed or elected, hold their offices until their successors are elected or appointed and inducted into office. This has been the policy in this State and was the rule at common law, and our General Assembly has approved the policy in G.S. §128-7. G.S. §128-6 reflects State policy that all persons admitted to office are deemed to hold lawfully and rightfully.

The members of a County Democratic Executive Committee, appointed according to precincts then in existence, are entitled to hold their positions until they are properly replaced according to the Democratic Plan of Organization. There being no provision in the Plan of Organization which serves to vacate or cut short the tenure of members of the Executive Committee, individuals who have been duly elected as chairmen and vice-chairmen in their respective precincts *prior to* county precinct consolidation will continue to be valid members of the party's County Executive Committee until their successors are appointed. Under the present Plan of Organization, this would occur in an election year.

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MUNICIPALITIES: Applicability of Municipal Fire Ordinance to County Buildings

7 October 1965
A. G. to Neill McK. Ross

Question: Can a municipality with a population in excess of 1000, in the enforcement of its fire ordinances, prohibit the erection of a county facility in a municipal fire district?

Answer: We have been unable to find any court decisions or previous opinions of this office which answer this question specifically. However, we are inclined to the belief that a municipality has the authority to require the county *to comply* with its fire ordinances in the erection of buildings within the fire district. G.S. §160-181.1 provides that all provisions of this article (Article 14) are hereby made applicable to the erection and construction of buildings by the State of North Carolina and its political subdivisions. Therefore, it would appear that the proposed building would be subject to the town's zoning ordinance.

Article 11 of Chapter 160 concerns regulation of buildings within a municipality and requires a fire chief as well as the establishment of fire limits, under G.S. §160-124, which shall include the principal business portions of the cities and towns. This article sets forth requirements of building permits and the materials and requirements for the construction of buildings. G.S. §160-154 makes the article applicable to cities and towns of over 1000 inhabitants. There is no provision in this article making it specifically applicable to buildings erected by the State or its political subdivisions. By the same token, it does not exclude the application of the article to such buildings.

G.S. §143-135.1 provides that buildings constructed by the State or any agency or institution of the State, under plans and specifications approved by the budget bureau, shall not be subject to inspection by any municipal authorities and to municipal building codes and requirements. Obviously, other buildings not within the exceptions would be subject to such building codes and requirements.
G.S. §143-138(b)(3) provides that no building permit shall be required under the State Building Code from any State agency for the construction of a building which costs less than $20,000, except public or institutional buildings.

G.S. §58-193 requires plans for the erection of buildings for the use of the State of North Carolina, its institutions, or for the use of any county or city, to be submitted to and approved by the Commissioner of Insurance as to the safety of the proposed buildings from fire.

We have discussed this matter with the State Insurance Department, and have been advised that in its opinion such *compliance* would be necessary unless the building came within one of the exceptions of the building code.

11 October 1965
A. G. to Neill Mck. Ross

Question: Does the term "extra territorial jurisdiction" in G.S. §160-181.2 mean that a municipality with a population less than 1250 *cannot* exercise the power granted by Article 14 ["Zoning Regulations"] to zone within its corporate limits?

Answer: No. G.S. §160-181.2 *would not* permit a municipality with a population of less than 1250 to exercise *extra territorial zoning jurisdiction*. The caption "extra territorial jurisdiction" is not editorial phraseology, but is a portion of the legislative enactment of Chapter 1204, Session Laws of 1959, entitled "An Act Authorizing Municipalities With Populations Over 2500 or More to Zone for a Distance of One Mile Beyond Their Corporate Limits." It is our belief that the words "may exercise the powers granted in this article, not only within its corporate limits, but also within the territory extending for a distance of one mile beyond such limits in all directions" is simply a restatement of the authority already conferred upon all municipalities, regardless of size, for the enactment of zoning ordinances within the corporate limits and only places a population limitation for the exercise of extra territorial jurisdiction.

Therefore, we believe that G.S. § 160-181.1 and all of Article 14 of Chapter 160, is applicable to any municipality regardless of population, except of course as to the extra territorial jurisdiction as contained in G.S. §160-181.2.

Condemnation Ordinances

November 5, 1965
A. G. to Z. Creighton Brinson

Question: May a town, pursuant to an

ordinance relating to the repair, closing and demolition of dwellings, contract with a private contractor for the removal and demolition of a building or must the dwelling be removed or demolished by town employees?

Answer: No provisions of Article 15, Chapter 160 of the General Statutes require a town to remove or demolish an unfit dwelling by its own employees. If the town's ordinance does not require the town to remove or demolish an unfit dwelling, it is our opinion that the municipality may contract with a private contractor for this purpose.

Question: If a town can contract with a private contractor for the removal or demolition of the dwelling, would the awarding of such a contract be governed by the provisions of Article 8 of Chapter 143 of the General Statutes of North Carolina relating to public contracts?

Answer: We believe that it would be advisable for a municipality to award the contract under the provisions of Article 8, Chapter 143, of the General Statutes, relating to public contracts, since this would afford a municipality a certain measure of protection and assurance that the work was being accomplished at the lowest cost possible. If the municipality is equipped to remove or demolish the building by town employees, and this procedure would be cheaper than letting to private contractors, the property owner should be afforded the more economical method since the cost will be taxed against him.

Off Street Parking

2 Sept. 1965
A. G. to Fred G. Morrison, Jr.

Question: Under the ruling in *Britt v. Wilmington*, 236 N. C. 446 (1952), can a city enforce the violation of overtime parking in off-street parking lots by means of criminal process?

Answer: This office does not know of any way a municipality can enforce overtime off-street parking violations other than through civil process. It is our understanding that some municipalities, instead of using parking meters on the off-street lots, are using parking attendants who collect the fees when the vehicle leaves the lot.

Public Officers

25 October 1965
A. G. to James A. Wellons, Jr.

Question: Must a member of a town police force reside within the city limits?

Answer: For many years this office has held that members of a town police force are public officers and, therefore, under constitutional provisions, must be a resident of the area in which they serve.

Zoning Ordinance

November 3, 1965
A.G. to Emmett C. Willis

Question: May a city, acting within its police power, pass an ordinance which prohibits the construction of commercial radio and television antennae within the city limits?

Answer: While there is no statutory or case law directly on point, it is unlikely that a municipality would have the authority to place an *absolute* prohibition against the construction of commercial radio and television antennae within the city. We believe, however, that a municipality may, through proper zoning ordinances, control the location and height of such structures. □

CLERK OF COURT

(Continued from page 26)

sult in overturning 100 different ways of doing routine business in the offices of the clerk, and substitute one uniform, statewide method. To this end the Administrator has already asked a select committee of clerks of superior court to advise him as to just what "methods, systems, forms and records" should be utilized in the clerks' offices. Since November, this committee* has been at work, meeting weekly. It will make its recommendations to the Administrator in late summer.

*Members are D. M. McLelland, Alamance (Chairman); W. E. Church, Forsyth; Alton Knight, Durham; Ben Neville, Nash; Russell Nipper, Wake; Mrs. Frances Rufty, Rowan; and J. P. Shore, Guilford. All are clerks of superior court.

For each clerk's office the Administrator must "Procure, distribute, exchange, transfer, and assign . . . equipment, books, forms and supplies . . ." (Sec. 7A-343(f)). Looking to the State rather than the county for office equipment and supplies may initially cause some inconvenience, since neither individual clerks nor the Director of the Administrative Office can be expected all at once to anticipate accurately and completely all the needs of a new court system and a new supply system. Passing inconvenience, however, should be more than offset by the advantages of statewide uniformity and centralized procurement. Understanding on the part of the clerks will facilitate these transitional adjustments, with minimum difficulty for all concerned.

The Administrative Officer will undoubtedly have need of certain statistics and reports in order to discharge his statewide responsibilities efficiently. These reports in large measure must be supplied by the clerks. Sec. 7A-345 makes it their duty to supply to the Administrative Officer, on request, information and statistical data relative to the work of the courts. Submitting statistics to the State is, of course, nothing new. The nature of the data requested, however, may be. Information on which the budget for the entire judicial department can be compiled, for example, will be needed, and again the cooperation and accuracy of the clerk will greatly assist the State office in accomplishing this task of mutual concern.

Not All Procedures Changed

After this long catalogue of changes, it may be a refreshing relief to many clerks to hear that some things are not changed. For example, civil procedure generally, as set forth in Chapter 1 of the General Statutes, remains unchanged. Criminal procedure, in general, also remains as set out in Chapter 15, and other chapters, of the statutes. Juvenile court procedures are likewise specifically retained as now set out in Chapter 110, Article 2; and procedures for drawing jurors for the district court are the same as prescribed for the superior court. While it is likely that major portions of each of these procedural fields will be revised in

(Continued on page 36)

The Uniform Courts Committee of the Association of Clerks of Superior Court has been holding weekly meetings at the Institute. The Committee has been requested by the Director of the Administrative Office of the Courts to recommend to him for adoption throughout the State "uniform methods, systems, forms and records" for the office of clerk of superior court. (See related story on page 24). Pictured below is the full committee including, left to right, Superior Court Clerks W. E. Church, Forsyth County, and Alton Knight, Durham County, with Institute of Government staffer Ed Hinsdale, Superior Court Clerks Russell Nipper, Wake; Marsh McLelland, Alamance (Chairman); Mrs. Frances Rufty, Rowan; Joe Shore, Guilford; Taylor McMillan, Institute staff member; and Nash County Clerk Ben Neville.

Legislative Representation in North Carolina

(Continued from page 7)

Drum v. Seawell Decided

On February 18, after the accompanying article was written, the District Court handed down its order and opinion in *Drum v. Seawell*. The Court approved the plans for the reapportionment of the Senate and House of Representatives and dismissed the action as to them. It held that the congressional redistricting plan did not meet the constitutional test, but in view of the imminence of the 1966 primaries, permitted the primary and general elections of this year to be held under it. The 1967 General Assembly must revise the congressional plan for 1968 and subsequent elections, and to insure that result, the Court retained jurisdiction of that aspect of the case. □

lican incumbents as fully as to the Democrats. The announced retirement plans of Congressman Ralph J. Scott freed the Fifth District from the restraints of this policy. The First District (currently without an incumbent, due to the death of Representative Bonner) was treated as if it had an incumbent residing in Pitt County, the home of both the Democratic and Republican congressional nominees.

Fourth, continguity and compactness of district area should be sought, but the latter objective would be the first to yield to the necessities of the previously-mentioned goals.

In contrast to the House and Senate Committees, the Joint Committee was offered several complete congressional redistricting plans. It favored none of them.

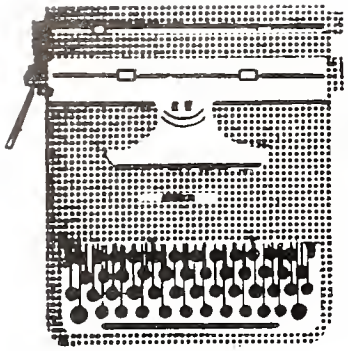
After an inconclusive first day's effort, the Committee returned to its work on December 21 determined to agree on a plan. After considering several alternative schemes, the Committee agreed on and published a plan which had the combined virtues of attaining fairly high population standards while pitting no two incumbents against each other. Seven committee members, chiefly from the Piedmont, dissented.

At the January 3-4 meeting, the Committee heard objections and alternative proposals to its preliminary plan offered by several legislators and political leaders, and again tackled the map. Several partial or complete plans were considered and rejected. Two draft plans which seemed least objectionable to the Committee were assigned to a subcommittee with instructions to bring back a single recommended plan. After several hours' work, the subcommittee returned the following morning with three plans. The Committee debated each plan, finally approving (with eight votes in opposition) a modification of the plan it had agreed upon at the December session. A committee report and redistricting bill were adopted, and the work of the Committee was done.

The plan recommended by the Joint Committee consisted essentially of a modification of the district plan enacted in 1961, not a fundamental revision of the districts. Every one of the 11 districts underwent some alteration, 20 counties being shifted in the process, but no two incumbents were put in the same district and no Congressman was shorn of his main base of support. The two Republican Congressmen saw their usual majorities somewhat strengthened, to the relief of their neighbors and the distress of committee members residing in those two districts. The populations of the districts ranged from 3.50 per cent below to 6.15 per cent above the average of 414,196 inhabitants, compared with the existing range from 32.9 per cent below to 18.6 per cent above the average. The average population deviation of the proposed plan was only 1.96 per cent, compared with the present 12.6 per cent average. The largest-to-smallest ratio (now 1.77 to 1) was reduced to 1.10 to 1.

The shapes of some of the resulting districts have been productive of complaints both humorous and serious. The Committe was aware, however, that of the 15 or more congressional district plans invalidated by courts throughout the county, not one has been struck down for any reason other than population disparities among the districts. And under the circumstances, it felt that a higher form of art than mere visual symmetry was wanted.

Figure 3 on page 7 embodies the plan recommended by the Joint Committee, except for the placement of Bladen and Warren Counties, which it had put in the proposed Third and First Districts respectively. □



● NOTES FROM . . . CITIES AND COUNTIES

Airports

The Federal Aviation Agency has recommended that new airports be constructed at the following locations: *Bryson City, Charlotte, Concord, Durham, Elkin, Erwin, Franklin, Henderson, Kings Mountain, Lexington, Lincolnton, Louisburg, Marshall, Monroe, Mooresville, Mount Olive, Reidsville, Roxboro, Rutherfordton, Smithfield, Tarboro, Taylorsville, Waynesville, West Jefferson, and Rocky Mount-Wilson.* The FAA says its projection of needs is based on a predicted rise in activity of both scheduled air carriers and private planes.

Airports cited for improvements include those at *Aboskie, Albemarle, Andrews, Asheboro, Asheville, Beaufort, Boone, Brevard, Burlington, Chapel Hill, Charlotte* (Douglas Municipal), *Clinton, Edenton, Elizabeth City* (Municipal), *Elizabethtown, Fayetteville, Gastonia, Goldsboro, Greensboro, Greenville, Hatteras, Hendersonville, Hickory, Jacksonville, and Kinston.*

Improvements are also needed at *Long Beach, Lumberton, Manteo, Marion, Maxton, Mount Airy, New Bern, Raeford, Raleigh* (Municipal and Raleigh-Durham), Roanoke Rapids, *Rockingham, Rocky Mount* (Municipal), *Salisbury, Sanford, Shelby, Siler City, Southern Pines, Spruce Pine, Star, Statesville, Wadesboro, Wallace, Warsaw, Washington, Whiteville, Wilkesboro, Wilmington, Wilson* (Municipal), and *Winston-Salem.*

* * *

A bond proposal for airport expansion in *Gastonia* won by a close vote of 850 to 779. Local funds will amount to $150,000 with an added $70,000 in federal matching funds for completion of the runway and acquisition of property for safety zones.

* * *

CATV

Requests for community antenna television services in *Winston-Salem* have been tabled by the finance committee of the board of aldermen until more in known about CATV and how it can be regulated.

* * *

Greensboro councilmen have passed an ordinance to permit CATV but without granting exclusive rights to any firm.

* * *

Central Business District

Following a heated controversy all two-hour on-street parking meters in *Fayetteville* have been removed. City councilmen have agreed to a one-hour-for-one-nickel plan at all meters except the 12-minute spaces in front of the post office and city hall.

* * *

Raleigh councilmen have approved a part-way mall to be constructed across Market Street downtown. The proposed mall will be 70 feet long at the Fayetteville Street end of Market.

* * *

A contract to proceed with the beautification project in the immediate area of *Fayetteville's* Market House has been let.

* * *

Education

Federal funds totaling $871,878 have been allocated for unemployed-worker training at seven North Carolina industrial training centers. The funds were allocated under the Manpower Development and Training Act to the Holding Technical Institute, *Wake* County; *Wayne* Technical Institute, *Rose Hill; Fayetteville* Technical Institute; *Guilford* Technical Institute, *Jamestown; Wilson* County Technical Institute; *Ansonville* unit, Central Piedmont Community College; and *Gaston* College.

* * *

Fire Prevention

Goldsboro aldermen in a three-two vote nailed down a position prohibiting use of wooden shingles as a roofing material. A letter from the North Carolina Fire Insurance Rating Bureau was a key factor in the decision. An ordinance allowing wooden shingles could put the city in a higher rating classification, forcing insurance rates to rise.

* * *

Winston-Salem's fire department has a new service—ridding buildings of smoke odor after a fire. A gadget does the job by throwing out a dense fog of deodorizing chemical which penetrates clothing and other porous materials. Besides deodorizing, the treatment decontaminates and disinfects, reducing airborne bacteria and infectious virus.

* * *

Health

Commissioners in *Northampton* County have appointed a committee to look into advisability of constructing a county hospital.

* * *

Approval for the proposed new 100-bed *Lincoln* County hospital has been granted by the North Carolina Medical Care Commission. The commission also approved a federal grant of $999,000 toward the cost of the facility.

* * *

Housing

Contracts have been let for construction of 36 units of low-rent housing on the Cherokee Indian Reservation by the *Qualla* Housing Authority. Contracts have also been let for constructing 200 units in *Durham* and 115 in *Wilmington.*

* * *

Lincoln Hospital Foundation, Inc., has taken out building permits in *Durham* for construction of its 150-family semi-low-rent housing development which will be used chiefly to house families being relocated by Durham's urban renewal projects. The project consists of a number of two-story buildings at various locations in southeastern Durham.

Law Enforcement

Sweeping changes in the organization and operating procedures of the *Mooresville* Police Department went into effect January 1. Among the changes is establishment of a definite chain of command and a three-shift basis for operation.

* * *

Gates County commissioners have authorized new kitchen facilities for the county jail. Only two meals a day will be served.

* * *

"Immediate" is the important word in *Charlotte* councilman Jim Whittington's proposal to develop a plan for centralization of Charlotte-*Mecklenburg* police and court records. The error and duplication of effort spawned by the far-flung files of the two metropolitan area's five courts and two police departments has been the subject of off-again-on-again debate for the past 17 years.

* * *

Yadkin County commissioners hope to see construction begin on a new 30-bed jail this spring. It will take approximately six months to build the $130,000 structure adjacent to the present jail.

* * *

Libraries

Cumberland County Public Library has gained federal approval for acquisition of the United States Post Office property on Hay Street in *Fayetteville*. Plans are to use the present post office building temporarily and to later construct a larger building to house library facilities.

* * *

Local Legislation

Wrightsville Beach's controversial leash law has been amended to eliminate the provision that owners of animals found running loose would be subject to arrest and the animal to possible extermination. The modification is to the effect that owners of animals which have "unlawfully injured or killed any person or unlawfully damaged the property of any person, or which unlawfully represent a definite threat to human life, well being and health, or which unlawfully present a definite threat to the property of others" will be arrested.

* * *

Chapel Hill's flower ladies have lost out in their battle to sell running cedar during the Christmas season. Aldermen have banned the sale of the plan in view of its scarcity in *Orange* County.

* * *

Planning and Zoning

Mapmaking will proceed in *Brookford* following recent annexation. The town board also agreed to new street surveys.

* * *

Dallas is going full speed into zoning, both inside the town and within the one mile perimeter area. In some cases in the perimeter, Dallas will be overlapping *Gastonia's* authority. However, Legislative action gives Dallas territorial zoning authority.

* * *

A task force charged with producing a master plan to meet present and future *Statesville* needs has been appointed by Mayor J. Garner Bagnal. The study will deal with problems the industrial city of 21,000 can expect to face in the near future. Statesville seems to have escaped the usual maladies of downtown death, traffic snarls and haphazard growth, but does suffer from a labor shortage and related problems.

* * *

Public Works

Wrightsville Beach voters passed by a seven to one majority a $375,000 public works improvement bond issue. Although only 223 of 579 voters cast ballots in the referendum, officials termed it a "good turnout" in view of the non-controversial issue. The $250,000 sanitary sewer issue passed 195-28; the $70,000 water bond issue, 190-30; the issue to provide $35,000 in storm sewers, 195-25; and the $20,000 street improvements bond, 190-29.

* * *

Raleigh will begin pumping more than 500,000 gallons of water a day into *Cary* early next summer. Cary residents have approved a water bond issue in a 1965 referendum which provides for the tie-on to the Raleigh water system. Under terms of the agreement, Cary residents will pay 25 per cent more for water than Raleigh residents do.

* * *

Dunn councilmen have agreed to confirm water and sewer tapping charges after comparing them to those in other towns of comparable size. Charges in town for water taps are $125 and $50 for a sewer tap. Cost to out-of-town customers is $250 for water, $100 for sewer.

* * *

Recreation

An addition to the Schiele Nature Museum in *Gastonia* was okayed by a vote of 1056 to 567 in a bond referendum. Voters also gave the go-ahead to a recreation center for western and southwestern Gastonia and a gymnasium at Erwin Park. The Nature Museum addition will cost $60,000; the recreation center, $167,000; the gym, $87,500. Fewer than one-eighth of the city's registered voters made it to the polls.

* * *

Safety

The North Carolina State Motor Club considers traffic-fatality-free *Concord* to be the safest city in North Carolina with 10,000 plus population during 1964. Figures are calculated per 10,000 vehicle registrations.

Wilson shared honors by having the lowest population death rate — no fatalities for a 28,753 population. Other cities listed in the safest category for 1964 were *Lenoir, Thomasville, Sanford, Elizabeth City, Chapel Hill, Jacksonville, Reidsville* and *Monroe*, in that order.

Statesville, with eight traffic fatalities, received the dubious title of most dangerous city.

* * *

Following two months of preliminary work and study, *Washington's* city council has named a Citizens' Traffic safety committee to work toward improvement of traffic safety in the community.

* * *

Kings Mountain commissioners have approved two safety measures in the way of restricting traffic in a school area and providing for sidewalks and street lights in another area.

* * *

Fayetteville's city planning board has okayed the idea of a city ordinance requiring sidewalks on at least one side of all streets in new subdivisions.

* * *

Sanitation

Four more trash trains have been approved by *Fayetteville's* councilmen, doubling the number already in use.

* * *

Streets and Highways

In hopes that the road between *New Bern* and *Aurora* can be im-

proved and some of the curves eliminated, *Craven* County commissioners have toured the area with District Highway Commissioner Cameron Langston.

* * *

Carteret County Commissioners have urged the State Highway Commission to construct additional highway facilities across Bogue Sound from the Carteret County mainland to Bogue banks. The existing two-auto ferry and two-lane highway bridge are insufficient to accommodate present summer traffic or the commercial and tourist traffic expansion expected in the future.

* * *

An 11-foot widening of a segment of *Carrboro's* main street has been approved by local commissioners. The widening, curbing and guttering will be accomplished at no expense to the property owners involved.

* * *

Gastonia voters have okayed a street improvement bond in the amount of $150,000 by a vote of 1081 to 550. The city will also use about $1.4 million from State road bond funds for the project.

* * *

Welfare

A switch to data processing this month will provide some advantage for county welfare departments. Under the new system all case records will be filed by account numbers instead of alphabetically. Codes will be used to indicate the type of case. A new kind of check with an attached stub will be beneficial to people who are entitled to inpatient hospital care, outpatient clinic services and drugs.

. . . "Punishment"

(Continued from page 14)

The hesitant adoption of this device by the courts in the past, however, suggests that increased application of the escalation clause will not be a major effect of the *Blackmon* holding.

The immediate result of holding punishments to be non-specific when no limit to the length of imprisonment was included in the statute was to limit the judge's discretion in prescribing the length of many sentences. The broader effects in other areas of the expanded application of G.S. 14-2, and probably of G.S. 14-3, remain to be worked out. □

BOND SALES

From November 30, 1965, through December 21, 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:			
Bostic	120,000	Water	3.87
Carthage	190,000	Sewer System	3.87
Chapel Hill	240,000	Parking Facilities Revenue Refunding Bonds	3.25
Morganton	750,000	Water	3.36
Newlands	135,000	Sewer System	3.75
Sanford	55,000	Street Land Acquisition	3.54
Wallace	265,000	Sanitary Sewer	4.14
Counties:			
Franklin	325,000	County Hospital	3.62
McDowell	175,000	Water, Sanitary Sewer	3.37
Moore — Taylortown Sanitary District	138,000	Waterworks	4.00
Pitt	93,000	Courthouse, Jail and Office Building	3.29

Clerk of Court

(Continued from page 32)

the next decade, most of these changes will come after the new organizational changes have taken place and become settled routine. By now it should be clear to all clerks, however, that the decade ahead will be marked by the biggest upheavals in the clerk's office in nearly a century. □

Legislative Service Works Extra Sessions

Under the direction of Milton Heath, the Institute of Government's Legislative Service saw action during both extra sessions of the 1965 General Assembly. Staff members working the Raleigh shift included Joseph S. Ferrell [illegible]n Loeb, Jr., Taylor McMillan, and David Warren. □

Book Reviews

THE METROPOLIS: ITS PEOPLE, POLITICS, AND ECONOMIC LIFE. By John C. Bollens and Henry J. Schmandt. New York: Harper & Row, 1965. 643 pp. $8.95.

In a time of rapid urbanization and the development of huge metropolitan complexes across the nation, it is useful to have a centralized (and simplified) collection of information concerning the nature of these new organisms; some of the governmental, social, and economic problems they are producing; and the efforts which have been made to meet such problems. This book is just such a collection. In its brief compass it manages to cover an astounding range of subject matter. In addition, it offers a bibliographic commentary concerning major publications relating to particular aspects of metropolitan development, which will serve as a useful starting point for anyone interested in pursuing his studies in greater depth. While presumably designed as a text for a college-level course, this book will be a useful addition to any library for governmental officials. P.P.G.

REAPPORTIONMENT: THE LAW AND POLITICS OF EQUAL REPRESENTATION. By Robert B. McKay. New York: The Twentieth Century Fund, 1965. 498 pp. $7.

The legislator, judge, or scholar in need of a comprehensive and current introduction to the subject of state and congressional reapportionment could hardly hope for a better book than this one.

Professor McKay has done a thorough and timely job of summarizing the theoretical underpinnings of representative government, surveying the fast-growing body of apportionment law down to the late fall of 1965, and speculating upon the implications of reapportionment for the future of state government and politics. He also offers suggestions for improved redistricting and reapportionment procedures, including the use of representatively constituted reapportionment commissions to perform this periodic task which many legislatures have found so painful.

Two hundred pages of appendices summarize each state's representation system as it has evolved from statehood to late 1965, including litigation over state and congressional apportionments and compliance efforts of recent years.

The author, who is Associate Dean of the New York University Law School, has already established himself as a leading advocate, theorist, and chronicler of reapportionment. He is currently applying his wide knowledge of this subject as Chairman of the Advisory Council to the Joint Legislative Reapportionment Committee of the New York State Legislature. He runs no small risk in tackling the Byzantine complexities of apportioning the Empire State. Macaulay suggested that James I might have gained fame as a theorist on the art of kingcraft if he had not tried to put his theories into practice. Bob McKay is the kind of fellow who deserves a better fate. J.L.S.

Bonding of Municipal Employees

(Continued from page 22)

1. In Chicago, Gerard Luxem, treasurer of the St. Michael's Parish Credit Union, was accused of embezzling at least $131,549.99. The Illinois Department of Financial Institutions said that he had deposited certain checks in his own brokerage account.

2. In Whittier, California, John P. Marcus, $40,000 a year general manager of Bob Sorenson Chevrolet, was arrested for embezzling up to $121,000 in company funds. He was charged with seven counts of grand theft. The embezzlements are said to have begun in early 1962.

3. In Endicott, New Jersey, Harold A. Meserau, for 10 years executive vice president and treasurer of Endicott Trust Company, was placed on five year's probation for embezzling $43,103. He is said to have made restitution of the funds.

4. In Elizabeth, New Jersey, Joseph J. Farrell was sentenced to three years in state prison for embezzling $40,000 in S. & H. Green Stamps from Sperry and Hutchinson Company, where he was a salesman.*

These are not small losses and anything can be taken as noted by the man who ran away with $40,000 worth of trading stamps. These examples point out that bonds must be of an adequate amount. Municipalities should review their bond programs and bring them up to date, along with giving serious consideration to increasing the amount of the bond if it appears inadequate.

Increasing the amount of the bond is not so costly as might be imagined. Consider that $100,000 faithful performance blanket bond which costs Allentown $802.89 after experience credits. For Allentown to double the amount of that bond to $200,000, the cost would rise; but the advantage would be that the cost would enter another experience rating column with a larger experience rate. Therefore, the cost for the $200,000 bond would be only $1,138 a year, an increase of only $335 per year. Thus Allentown could double its coverage with only a one-third increase in cost. These increases could again be reduced by having longer terms and installment payments.

Summary

In summary, I believe that the honesty form of bond is false economy. I also feel that the blanket position bond, which grants coverage of a certain amount on each employee, is not the best program. The faithful performance blanket bond in an adequate amount is the best blanket bond coverage a municipality can carry. Municipalities should investigate the statutory bonds to be certain that they are properly written and are in full force. Municipal bonding programs should be reviewed at least on an annual basis; and competent help, assistance, and advice should be sought. Assistance is available in any town from local insurance agents. □

*[*Editor's Note: North Carolina has not been immune to embezzlement in local government. Several recent instances have been widely publicized.*]

Credits: Cover and all other photos, diagram and maps, Charles Nakamura. Format and design, Lynn Igoe.