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Contents

This month's cover shot shows something of what goes on at the General Assembly outside the chambers. This is Rep. Howard Penton of New Hanover. Photo by Carson Graves.

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Elected Officials and Fiscal Management

by
Harlan E. Boyles

The principal role of the Local Government Commission is counseling with local government officials in matters of public finance. While the Commission has no desire to participate directly in the administrative functions of the local unit, it can assist local officials in securing borrowed funds at reasonable rates of interest only to the extent that the local unit's fiscal affairs are in reasonably good order. In this article the Executive Secretary to the Commission offers some helpful advice to local officials on achieving economy and efficiency in government.

Today officials in local government have burdensome assignments. They witness firsthand strong competition for the tax dollar, and yet they personally appreciate the legitimate contention that the tax question has two sides. On the one side, the taxpayer insists that more should be accomplished with the present funds available. And on the other side, the spending agency is saying that the tax yield is inadequate.

It is said that "in North Carolina we have made a habit of good government"; that we are a "government of laws and not of men." But men do count. Responsible government is not accidental. It takes dedication and effort by everyone—both the public official and the citizen who takes an active interest in the affairs of his county and city.

If you are an elected local official, you are the basic decision-maker in the democratic process. Your "yes" or "no" or "why don't we do this?" will have an important bearing on the progress of your community, region, and state. This is true because the democratic process is intended to be responsive to the will of the people and, as a local elected official, you are the voice of the people.

There are those who contend that if the decision-making process were wisely implemented at the local level, the need for bigger and bigger central government would be less and less. They further argue that before we complain about the high taxes we must pay and the ever more limited freedom to make decisions at the local level, perhaps we should ask ourselves whether we are taking advantage of our opportunity to improve things here at home.

For example, are we comparing notes with fellow officials in other towns? Are we keeping them aware of our plans for future development? Do we share our ideas for joint solutions to common problems and common goals? Are we asking ourselves "Why are we doing it this way," or "Have we looked at the alternatives?"

Change is occurring rapidly all around us and probably will accelerate. Is a policy or practice established twenty years ago a realistic one for today? Many

local public officials think not—and are taking a fresh look. Perhaps you will wish to do the same.

Priorities Behind Taxpayer Funds

As government has become more complicated, we have employed more and more specialists to deal with certain areas of the governmental process. These people possess specialized training in specific areas and, as such, have much to offer. As a consequence, government on all levels is relying more and more on a variety of people with different areas of expertise. Their job is to analyze the problems, needs, or opportunities and to recommend alternative courses of action to the decision-makers—the elected officials. The elected official thus finds himself in the role of judge—balancing improvements versus cost, improvements versus ability to pay, development versus conservation, long-range goals versus current and projected income. Contrary to some popular concepts, however, the availability of specialized assistance does not relieve the elected official of involvement. Rather, it extends his range of choices and makes his involvement more important.

An unhappy truth is that our limited resources restrict what we can do locally. Some people rail against the unfairness of this fact, and others have ready solutions that range from the grant of additional powers of taxation to increased wealth through industrial development. Both positions are valid at different times and in different communities. Each county tends to think that its problems are unique. But they must never be thought insurmountable. The task is to identify the problems that exist, to agree upon reasonable objectives, and to select those goals that will serve as catalysts to community effort.

Times have changed, and it takes more than an expression of interest by a few energetic citizens to bring about an orderly program of economic development. Problems differ—some are intermediate, others long range, some superficial; others are substantive—ones that will require concentrated effort by everyone. The point is that until you have made a full appraisal, you may be working in the wrong direction. The wealth of your community includes your people, the natural resources of the region, and the fiscal record and integrity of the various levels of government having immediate responsibility.

Economic activity that has no apparent direction is tragic. Look at the problems of the large cities in our sister states to the North. A solution today would be extremely costly, and some contend that even if resources were unlimited there is no way to bring order to the chaos that exists. Yet, North Carolina is fortunate in that we can, by orderly and responsible planning, prevent similar situations from developing in our state. The question is, with our limited financial resources, how can we accomplish the most for each dollar expended? The answer ultimately depends upon how well we can coordinate the efforts and functions of those now at work in our community. Professional planners—those supported by counties, cities, local chambers of commerce, councils of government, the state, the federal government, colleges and universities, and private industries—are busily at work, but let's ask ourselves an important question: what purpose will this effort serve if we have no prospect of getting the plans off the ground? Too often the governing body of a local unit is persuaded to embark upon a program that would require substantial capital outlay—without relating the unit's total wants and needs to its resources and the apparent willingness of its people to pay for the proposed facilities.

In private enterprise, the sequence of events adheres to the dictates of hard, cold facts. The private corporation must first establish itself in the financial world, it must demonstrate a strong and consistent demand for its product. If it should embark upon a new or expanded operation, it must establish economic feasibility—and throughout the process it is constantly evaluating the plans and objectives of its competitors. Will the consumer market absorb the undertaking and provide a reasonable profit based upon the investment required?

The functions of government and the role of private enterprise are clearly distinct, but businesslike principles are common to both. We often hear that the cost of laxity in the operation of governmental agencies is equal to the cost of the profit built into private enterprise. How can we answer this contention unless we can, with facts and figures, demonstrate that the desired results have been accomplished at minimum costs? We are also resigned to the fact that many questions must be answered before a county or city is ready to deal in bricks and mortar. But what are the questions, how do we go about answering them, and when will we know that we are ready to move forward?

First, we must involve the governing body that will ultimately make the decisions. Even this may not be clear in the beginning, and if this is true, we have our first assignment. After we have identified the appropriate unit of government to provide the desired service, after we have fully considered and evaluated the future needs and objectives of this particular governmental unit, and after priorities have been selected and agreed upon by the unit's governing board, we can then formally consider the aspects of financing the various undertakings. This includes both the original capital outlay as well as the projected operating and maintenance expense of the new facility.

Does this seem to be a reasonable approach to the problem? Let's grant that it is, but we need to be more specific. In public finance one of the first things we learn is that we must deal with facts that are

evident from the engineering or architectural survey; we don't pay the annual debt service requirements or the annual operating expenses with the taxes or user changes paid by just those select few who had responsibility for planning the project. Enthusiasm is important, but cash is essential—cash that will come from every taxpayer or user.

Opportunities in Intergovernmental Teamwork

As we have previously indicated, the governing bodies that ultimately will be asked to make the critical decisions must become involved from the outset. For the moment, let's keep our thinking within the county and develop our direction and strength at home before we take on more worldly problems. Counties can often be used to perform and support functions that have outgrown the capacities of smaller local governments. Ask the county commissioners to invite the governing boards of the cities and towns within the county to attend a leisurely meeting at which they can exchange their ideas and plans for the future development of the county. Schedule the first meeting as a get-acquainted session at which an agenda is adopted for the next meeting. The various topics for discussion in the succeeding meetings should include a review of the various functions of government and services rendered by each and a review and discussion of the respective budgets, tax levies, and other sources of revenue currently available. Other topics would include the scope of capital improvement projects currently under way as well as those goals and objectives still in their initial planning stages. Of equal interest is the outstanding debt of the respective units and the additional debt capacity that may exist. The one essential document to be presented and discussed is the audit report of each and its comments and disclosures.

The objective throughout these meetings is to keep everyone acquainted with the programs of the respective units, the new undertakings contemplated, and the consideration of cooperative effort on the part of all units of government in attaining their mutual objectives at minimum costs. There is no question that considerable duplication of effort occurs on the part of local governments, that functions and services overlap and that significant savings can be accomplished at no sacrifice to the quality of services rendered. But, the governing boards must be willing to consider and evaluate the possible alternatives and opportunities that may exist. A convenient approach to a study of the opportunities for cooperative effort and their refinement for ultimate consideration by the respective governing boards would include selecting an informal committee to do the leg work that would be necessary—periodically reporting to the full boards for independent action.

Under existing North Carolina law counties and municipalities and other units of local government have express authority to contract with each other for the performance of any function that each party to the contract can do separately. In other words, if the law permits the activity by each singly, it can be done jointly. And, as a general proposition, if two or more units are providing essentially the same service, it is very likely that a savings can be effected by consolidating its administration. Some significant areas in which joint effort reduces costs include: joint tax billing and tax collections, mechanized accounting and payroll preparation, joint purchasing, libraries, recreation facilities, jails, office buildings, water and sewer facilities, communications centers, schools, solid waste collection and disposal systems, and many others.

Motivation and Self-Analysis

We recognize that a major role of any local government is as an instrumentality for financing certain public facilities or services. Local governments are intended to be far more than financial instrumentalities; nevertheless a need now exists for a critical review and thoughtful recasting of those structural aspects of local government that, however suitable they may have been in the past, today may, in some places, actually impede responsible, orderly, efficient, and effective community-oriented governmental operations. The blunt fact is that significant adjustments in the structure, assignments, and relationships of local government are needed not only so that public services can be more effectively provided and better and more equitably financed, but also to rejuvenate and give contemporary significance to the concept of local self-government. Local governments are said to be the foundation of our federal system. These governments stand closest to the hopes and aspirations of our people, and it is primarily at the local level that public needs are translated into effective public action. There is no one grandiose remedy to offer with regard to local government relationships, but the recent growth and overlapping of governmental programs at every level of government and the equally pressing demands of government for more and more revenues have intensified citizen demands to know and understand what happens to their tax dollars.

Economy in (Local) Government

We indicated earlier that the new demands upon government would be accompanied by the need for more and more revenues. Does this mean new revenue sources? Not necessarily. In many instances additional revenues can result from efficient use of the taxes currently levied and collected. This statement will become significant only to the extent that local officials recognize that cash management is important

to responsible administration. Briefly, cash management involves a program of collecting and depositing all moneys due the local unit on a timely basis and, during the interval between the collection of the moneys and their expenditure (assuming the expenditures are wisely planned and coordinated), investing all available cash balances at competitive rates of interest.

It is simple to review the tax-collection records of the local units and determine to what extent an aggressive tax-collection program would produce cash earlier and reduce losses on uncollectible taxes, thus providing a certain amount of those needed revenues. Also, a review of how cash is handled could easily disclose investment opportunities. Here are two quick possibilities for increasing the revenues available to the respective units of government. In certain counties and cities the present practices are most effective, but unfortunately not in most.

Tools of Management

Surprisingly, the governing body typically pays little attention to the unit's independent auditor's annual report. This is true in spite of the amount paid annually for the service. Is it because the governing body erroneously believes that in the absence of fraud or embezzlement the report has little administrative value? We hope not. Actually, the report of audit is the one document that an outsider can review and by which he can decide for himself whether the affairs of the local unit are, on the surface at least, efficiently administered. The governing body, on the other hand, has the additional opportunity to hear the independent auditor's oral presentations and to read his written comments on management and management procedures. The local official should make it his business to understand the auditor's report and listen carefully to his recommendations concerning internal control and compliance with the various state laws.

Governmental financial reporting and full disclosure therein are highly complicated. The balance sheet must also be understood. Probably we should call it an "identity" problem, which arises out of fund accounting. Almost all governmental units have a group or "family" of funds—all completely self-balancing—which, for the most part, operate upon a set of rules entirely different from those applicable under recognized standards of commercial accounting. For example, there will be a "debt service fund" which receives certain set sums of money that can be used for no other purpose than debt service. Generally, there are "capital projects" (construction) funds whose moneys are generally derived from bond sales, government grants, etc., for the construction of certain facilities, and which can be used for no other purpose than the projects involved. There are other special-purpose funds completely restricted to their several respective purposes. The restrictions imposed and their observance or nonobservance require disclosure and comment by the auditor. Be sure to read the auditor's notes to the accompanying financial statements as well as any footnotes to the various supporting schedules; but keep in mind that the ordinary examination cannot be relied upon to assure discovery of deliberate misstatements by management, although it does occasionally discover them. The financial statements are representations of the administration, and the auditor's report does no more than attest to the fairness of the presentations of that particular unit. The auditor, nevertheless, must share to some extent the responsibilities of full disclosure. And, as a professional, the auditor assumes full responsibility for expertise in the governmental accounting field adequate to his assignment and sufficient for him to express (or refrain from expressing) an opinion on the financial statements as a whole.

The report of audit serves as the principal informational document from which the fiscal data are obtained and used in the preparation of bond offering circulars. Too often local officials are for the first time made aware of budgetary deficits and other critical factors when they initiate the legal proceedings in a bond authorization program. Again, facing the blunt facts, the occasion of offering bonds is a bit late to find that a county's or city's fiscal house has not been kept in order, thus forcing that county or city to pay premium interest rates if the planned program is to be financed with borrowed capital. In public borrowings, the offering circular contains the issuer's historical record for the three preceding years. It is essential, therefore, that the administrative official study carefully the reports of audit before his county or city entertains the idea of completing plans for capital improvements. The fact is, if there are fiscal problems, the local officials should become aware of them in advance and proceed in doing something about those that can be corrected through administrative action.

Preparing for Long-Term Financing

The Local Government Commission's function is to counsel with local officials in matters of finance. It has no desire to assume actual administrative responsibilities, but unless the local unit's fiscal affairs are in reasonable order, the Commission will not be in a position to help secure borrowed funds at rates of interest that the officials are willing to pay. The bond market is extremely competitive and the Local Government Commission can do no more than reflect these conditions to the borrower.

In several instances the Commission's secretary and members of his staff have attended joint meetings of the governing boards of counties and cities and have participated in discussions that led ultimately to the selection of programs and the assignment of

priorities to projects. The importance of this participation lies in the fact that the governing boards received an immediate reaction as to the practicality of the undertaking under discussion and also the probable impact of the financing requirements upon future tax levies and other charges. While the Commission staff has not been able to attend all meetings to which they have been invited, governing boards should keep this kind of session in mind as a possibility for one of their periodic meetings.

And, of course, others can offer constructive advice. The local bank official, for example, with the expert advice available from his home office, is in an excellent position to suggest to the local administrative official the ways and means of improving the unit's credit standing. The banker can also review the unit's cash-flow procedures and offer suggestions concerning cash management and investment opportunities.

Also, as we have previously mentioned, the auditor is available, and being closest to the scene, he will be able to deal in specifics. The auditor can interpret the audit report for you so that you can full appreciate its value. To what extent do you have a cushion for emergencies, to what extent are you living from hand to mouth, or to what extent does your tax and revenue structure distribute the cost of government to those receiving benefits from the services provided?

If we were asked to make a comprehensive statement about fiscal administration in local government in North Carolina, the result would include the critical need for a greater concern for efficiency and economy. The governing boards must take an active interest in the administration of the unit's operating procedures and support the manager and director of finance in implementing those programs that will promote and encourage efficiency. By conferring with the staff members of the Local Government Commission, the governing boards of the counties and cities can learn firsthand something about the financial condition of their respective units. What they learn may not be pleasing, but such a conference would, at a minimum, bring out points to work on to demonstrate their desire and willingness to strive for more effective and efficient government. Local officials should certainly have the benefit of constructive and unbiased comment so that corrective action can be taken before unhealthy circumstances develop into obstacles that prevent financing future improvements programs at acceptable interest costs.

Ill-Advised Administrative Practices

The following comments do not illustrate widespread practices, yet they do indicate that responsible administration is obviously lacking where such practices exist. Governing boards should be certain that practices like these are not condoned in their respective counties and cities. But, on the other hand, they should not be surprised if some are found at home.

—"Our council debates for hours the question of when and where we will purchase a typewriter, but pays almost no attention to the magnitude or the relationship of the various program functions of our City."

—"Our Town uses what we call a bank 'holding' account in which all tax receipts and utility collections are deposited. At the end of each month the bank transfers the accumulated funds to our regular checking account. At this point, we record the funds previously deposited in the holding account on our books, and it is not until this is done that the funds are considered available for expenditure."

It is interesting to note that this particular town just last year was forced to borrow money to pay current appropriations when it actually had ample cash in the bank that would have been available had this practice not been followed. The borrowed money cost the town interest. At other times of the year the town is losing the benefit of the earnings which would result from the investment of the idle cash, and, because of this bad practice, necessarily the town's annual tax levy is higher.

—"Our county has salaried tax collectors stationed in several towns within the county. The only justification for this is that our people are accustomed to paying county taxes in each town."

This county does not collect the taxes levied by the towns in the county.

—"Our county collects the taxes levied by the county and the cities within the county, and until recently we distributed the taxes collected to the cities on a periodic basis, some distribution dates being as much as 30 days apart. During the interim, the funds lay idle. We have changed this procedure so that the county now invests the funds daily and divides the interest earned among the units within the county."

—"Our town pays its tax collector on a percentage-of-collections basis, the thought being that this tends to encourage the tax collector to perform his duties."

Actually, the performance record of this town, as well as other towns with similar practices, is quite poor and far below the average of towns with tax collectors on straight salaries.

—"Our town-owned car is unmarked, and it is also privately licensed."

This is a questionable policy and the public could rightfully wonder what ulterior motives are behind such practice. How would the average citizen know that publicly owned vehicles are not being misused?

—"Our town does not own a police car. I am the town policeman, and among other things, I am the tax collector, the superintendent of waterworks,

sanitation and streets, the electrical inspector, and town treasurer. The town pays me mileage for the use of my car which amounts to as much as half my annual salary."

—"Our town employed the League of Municipalities to study our utility rate structure. The League discovered we were producing considerably more water than we were selling."

This is a clear indication that many unmetered customers were getting their water free.

—"Our city is selling water for only a fraction of the actual cost of producing and delivering it to the customer."

—"Our city levies taxes to meet utility debt service requirements and uses utility profits to finance recreation programs."

The law requires, however, that utility profits be used to pay debt service before any of the profits are available for other governmental purposes. Since a tax levy for recreation purposes requires voter approval, this is obviously a scheme to circumvent the law.

—"Our town combines the accounting for utility operations with the accounting for general government."

This practice is in violation of law. In addition, the governing board cannot possibly know the extent to which costs are matched with services rendered.

—"Our policy is to charge the customer the minimum or flat monthly rate when his water meter is out of order."

This is sufficient incentive for the user to keep the meters out of order intentionally.

—"Our sanitary district board uses operating receipts to build water lines outside the district boundaries and then levies a property tax against the property owners within the district to pay annual debt service requirements."

This is a clear instance when the property owner within the district is providing both the credit and the money to build facilities for customers not within their jurisdiction. The charges to the customer outside the district are obviously not on a break-even basis.

—"Yes, our town board has adopted a budget, but for the life of me I have no idea where to find it. The only reason we have a budget is because the law requires one."

Too many counties and cities adopt an annual budget, put it aside, and operate according to the availability of cash in the bank.

—"When our town board wants to buy something, the decision is made on the spot, based upon whether we will have the cash at the time the bill comes due. Budgets and other long-range planning efforts go out the window. Cash in the bank is all that matters."

—"I used to prepare monthly statements comparing actual receipts and expenditures with amounts budgeted, but our town board never looked at them, so I quit. They haven't missed them, or at least they haven't raised any questions."

—"Our city enters into lease-purchase plans for acquiring mobile equipment."

Such arrangements, including purchases on the installment-payment basis, are doubtful legality and almost always inflate the purchaser's costs.

"Our county does not have an established program for collecting delinquent taxes. We send our usual notices, and if the taxes are not paid, we naturally show them as outstanding on our reports to your office. Would you believe that our delinquent account balance exceeds our total annual levy? Would you believe also that some of our own employees owe taxes going back several years?" ■

AUTOMOBILE LIABILITY INSURANCE AND RATES —REPORT OF THE GOVERNOR'S STUDY COMMISSION

By Elmer R. Oettinger

The 113-page Report of the Governor's Study Commission on Automobile Liability Insurance and Rates was unveiled in April with a gubernatorial endorsement of some of its key provisions and amid press accolades for its comprehensiveness and usefulness as "an excellent basic course on the Tar Heel auto insurance system and its problems." There was general agreement that its "sweeping and detailed" recommendations pose both guidelines and challenge to the General Assembly, already in midstream and confronted with ample demanding legislation. A first-day run that produced a brief shortage of available copies of the Report served to emphasize the widespread and intense interest in this complex and often frustrating field.

• Recommendations: Bare Bones

A headlining of major Commission recommendations does not provide even a glimmer of the interrelationships and controls that are essential to any understanding of the conditions precedent to effective implementation. To report that the Commission recommends a different system of insurance rates, an end to compulsory insurance, a fee system for uninsured motorists, changes in the assigned risk program, review and hearing procedures for and a greater control of policy cancellations and nonrenewals, an increase in the professional and information staffs of the Insurance Department and better housing for its personnel, district offices and agent upgrading as part of a consumer protection program, a bumper law plus other tightening of the motor vehicle laws, and a continuing study of "no-fault" insurance and arbitration is to assemble the bones that make up the skeleton of the Report. It does little, however, to flesh out and show the nerves and sinews without which the proposed shape-to-come of auto liability insurance would lack form and substance.

• Analysis: Flesh and Blood

1. Rates

For example, File and Use usually means a system in which insurance companies set their own rates subject to subsequent disapproval by the Commissioner. The Commission plan to change the present Mandatory Bureau-Prior Approval system of rate-making envisages a new brand of File and Use (effective December 1, 1972) in which companies would be required to file proposed rates with the Commissioner the first time at least 90 days and after that 60 days *before* putting them into effect. This procedure would give the Commissioner a power of subsequent *disapproval* but also of *prior approval*—if his rate analysis staff can advise him quickly enough. He would have broad powers to reject any filed rate on the grounds that it is "excessive, inadequate, discriminatory, or destructive of competition or the public interest." And he could even order resumption of a prior

approval system after hearings, should he find unsatisfactory rates or an emergency. This, then, would be a File and Use system with a difference. And the difference would lie primarily in controls.

Similarly, the use of the phrase "Open Competition" to describe the recommended rating system is imprecise and requires redefinition. The true Open Competition or Open Rating states like California, and New York have a "No Filing" system that requires no filing of rates by companies but rather subjects their books to a spot check at the will of the Insurance Department and to orders for rate revisions only when examination indicates that the rates threaten the competitive process. The true File and Use states, like Georgia, require subsequent rate filings (most often 30 days after the new rates go into effect) and are subject only after that to possible disapproval by the Commissioner. The proposed North Carolina plan, then, is exactly like none other, for it deftly combines elements of File and Use with both Prior Approval and Open Competition.

2. Antitrust

The Commission's call for strong anticollusion laws and a Rate Analysis Bureau in the Insurance Department ties in with and is deemed essential to the advent of the North Carolina brand of File and Use. The Commission's travel committee received similar advice from officials in every visited state that permits insurance companies to set their own rates: don't try open competition unless you are prepared to backstop the program with strong antitrust laws and sufficient, capable state-employed rate analysts. The travel group found that other jurisdictions had beefed up public information and liaison programs in order to better learn public opinion, handle complaints, make the public aware of its rights and responsibilities, keep the Department alert to public needs, and provide an avenue for both communication and crackdown.

3. Review and Hearings

The review and hearing process, plus authority to the Commissioner to penalize violators, would add enforcement powers. The Commission believes these to be requisite to successful embarcation on the new rating system. So, in its view, are the recommendations that the Commissioner constantly maintain surveillance of the rate filing process and see that some version of the 260 Classification plan, aimed at greater equity in classifying drivers, be put in effect. The point is that all these specifics are deemed integral segments of any effective and fair File and Use system. They comprise the protections felt to be prerequisite to adoption of the plan itself.

One offshoot of moving the rate development process into the Insurance Department would be to relieve the industry-controlled Rate Administrative Office of that function and to require a reassessment and rearrangement of its duties. Another provision—that appeals from the Commissioner's ruling be made directly to the State Court of Appeals—marks an effort to overcome the tartar of delay by speeding up a long-laggard and debilitating rate-appeals process.

4. Financial Responsibility

The suggested changes in the state's assigned-risk plan and the financial responsibility laws also can be explored in terms of purposes and controls. The Commission found as fact that North Carolina has the highest percentage of passenger vehicles on assigned risk (over 25%) of any state; that many drivers with cars in this category had no driving violations; that North Carolina is one of only three states making auto insurance compulsory; that it is the only state that combines with compulsory insurance a "no deviation" clause and an unsatisfied judgment statute; that in too many instances the state's auto insurance program forces an unwilling buyer to deal with an unwilling seller; and that the combination of these factors has helped to bring on an acute case of market constriction and inequity in voluntary insurance.

5. Fee System

The Commission noted, paradoxically, that every driver should have insurance, but that compulsion and inflexibility contribute to the strangled market and the general unsatisfactory situation in cancellations, nonrenewals, and assigned-risk placement. So it moved to relax and reshape the rigidities that appeared to be handicapping the present system. As a starter, the Commission would bring the North Carolina Financial Responsibility Act into harmony with those of 47 other states that do not have compulsory insurance. To try to protect the motoring public and to avoid a drastic drop in insured motorists, the Commission would require of uninsured motorists payment of a rather costly annual registration fee. Both Virginia and Maryland have such fee programs. Virginia reports that 95 per cent of its motorists choose to buy insurance (a figure approximately equal to that in North Carolina under its compulsory law) as contrasted with figures as low as 60 per cent insured in some other noncompulsory states. (Apparently the percentage of insured motorists drops 10 per cent or more in Virginia during the year.) As a further protection, an uninsured motorist endorsement would be made mandatory on all policies and the fees would be placed in a fund to offset insurers' losses incurred from payment on this endorsement. To permit an effective check on motorists who become subject to the fee

requirement, policy cancellations would continue to be required to be reported to the Department of Motor Vehicles. Those caught driving without insurance or without having paid the fee would be subject to a larger fee (suggested $75) and to showing proof of financial responsibility for three years. The Commission would further encourage drivers to buy insurance by permitting insured drivers to purchase, along with minimum coverage, property damage coverage deductible up to $250. It also would broaden the coverage of the Uninsured Motorist Endorsement. Once again, understanding of the whole design requires a basic awareness of its parts and their linkage.

6. Assigned Risk

A similarly revealing analysis can be made of the factors underlying the proposals to change the Assigned Risk Plan. The Commission found evidence of overpopulation of assigned risk, arbitrary placement, too rigid limitations on coverage, sense of stigma, absence of surcharge, and a disproportionate loss ratio. It appeared that a relatively profitable voluntary market in the state was more than offset by an unprofitable assigned risk experience. To remove the stigma, the Commission would rename the Assigned Risk Plan the "North Carolina Automobile Plan." To make the plan less limited, less rigid and more adequate, it would add medical pay coverage up to at least $500, increase available limits to $25,000 $50,000 $5,000; and permit a voluntary nonstandard market for those who prefer shopping to placement on assigned risk. To make rates more accurately reflect driving experience, it proposes separate rating of assigned risk on the basis of the experience loss ratio and the retention of Prior Approval authority by the Commissioner over assigned-risk rates. The Commission also wants steps to stop agents from profiting through premium financing, further studies of (a) tie-ins between premium finance companies and agents and (b) ways of improving methods of premium financing, and consideration of the possibility of a centralized facility for writing assigned risk and a reinsurance pool for insuring all assigned risk. Once again, the interrelationship of the parts of this program segment to the whole is significant.

7. Consumer Protection

The consumer protection recommendations, endorsed by the Governor, bind together proposals to restrict and review policy cancellations, nonrenewals, and assigned-risk placements; a rate analysis division; a new division with field offices to handle complaints and insurance information programs; and the upgrading (through required training programs and apprenticeship experience) of the licensing and functioning of insurance agents and adjustors.

The Commission ties in other recommendations to meet Insurance Department needs: adequate office space, better personnel classification and pay scales, and the addition of the office of General Counsel to represent the Department in rate cases. The Commission also would strengthen the role of the Insurance Advisory Board in consulting with the Commissioner on the rate-making process.

8. Motor Vehicles

On highway safety, it endorses further federal study and action to improve motor vehicle design and other facets of car and road safety and a restudy of driver licensing, testing, suspension, and revocation laws and procedures in North Carolina. Legislatively, it proposes enactment of a law to require that bumpers on cars sold in the state be built to survive low-speed crashes without damage and action to prevent mistaken revocations and confiscation of driver registration plates. Like the other Commission concepts, the motor vehicle proposals relate to each other and, in sum, they constitute recognition that the cost of accidents contributes largely to the cost of auto insurance.

9. New Study Commission

Finally, a new or continuing commission is urged to study the operation of the new program and specified continuing aspects of the present system. That commission would determine the feasibility and desirability of a No-Fault insurance program for North Carolina and report back for the 1973 General Assembly. The Report specifies present options in "No-Fault" and the nature and initial experience of programs in operation in Massachusetts and Puerto Rico. The Commission also asks the General Assembly to request the Courts Commission to consider the usefulness of arbitration to this state. Underscoring these suggestions is awareness of a Department of Transportation Report revealing that motorists recover less than half of actual loss from auto accidents, over-all, and stressing the need for a more efficient, rapid and appropriate system of compensation for accident victims.

One sensitive question concerns the compatibility of File and Use with Compulsory Insurance. Most Commission members appear to feel that any adoption of File and Use would require a repeal of the Compulsory Insurance laws. One state, New York, combines Compulsory Insurance with Open Competition without apparent conflict.

Another important question relates to financing the proposed program. The Commission's answer is to point out that only about $1 million of the more than $25 million paid into the General Fund annually through insurance premium tax receipts presently is allocated to the Insurance Department, and to advise a larger allocation.

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STATE OF NORTH CAROLINA

Local Government Commission

The Bond Buyer Index[1]

Date	*20 Bonds*	*11 Bonds*
5-27-71	5.86	5.65
5-20-71	5.96	5.71
4-29-71	5.69	5.46
6- 4-70	6.92	6.80

National Volume Outlook,

Blue List Supply	$ 570 Million
30-day visible	864 Million
Total Supply	1,434 Million
Total Supply last week	1,453 Million

Yields Currently Available on North Carolina Issues (%)

	Aaa	*Aa*	*A*
10 Year	4.35	4.50	4.60
20 Year	5.35	5.50	5.60

Recent Bond Sales in North Carolina

Issuer	*Date of Sale*	*Purpose*	*Amount*	*No. of Bidders*	*Years Average Life*	*First Second and Last Bids*	*Winning Manager*	*Moody's Rating*	*NCMC Rating*
Hertford, County of	5-11-1971	Sanitary Landfill	$ 55,000	3	5.27	4.75, 5, 5	J. Lee Peeler & Co., Inc.	Baa	85
Maiden, Town of	5-18-1971	Water and Sewer	450,000	1	22.12	5	FHA[2]	NR	74
Aberdeen, Town of	5-25-1971	Water and Sewer	150,000	5	9.00	6.1074, 6.1740, 6.4425	Wachovia	NR	73
Monroe, City of	5-25-1971	Water	3,500,000	3	13.05	5.2633, 5.3223, 5.3638	Wachovia	A	87
Walstonburg, Town of	5-25-1971	Water and Sewer	73,000	1	20.22	4.25	EDA[3]	NR	NR
Dare, County of	5-25-1971	Sanitary Landfill	40,000	1	6.05	5	FHA[2]	NR	70

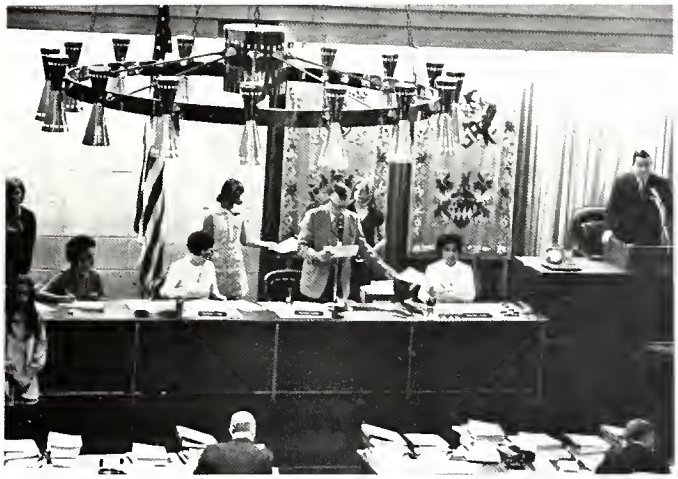
Visible Bond Issues, June, 1971

Kenansville, Town of	6- 1-1971	Water and Sewer	212,000	NR
Swain, County of	6- 1-1971	Water and Sewer	87,000	NR
Charlotte, City of	6- 8-1971	Various	7,400,000	Aa
Asheville, City of	6- 8-1971	Various	5,300,000	A
Rose Hill, Town of	6- 8-1971	Municipal Building	130,000	NR
Gaston, County of	6-15-1971	School Building	8,000,000	A
Mayodan, Town of	6-15-1971	Various	300,000	NR

Edwin Gill, Chairman and Director
Harlan E. Boyles, Secretary
Edwin T. Barnes, Deputy Secretary

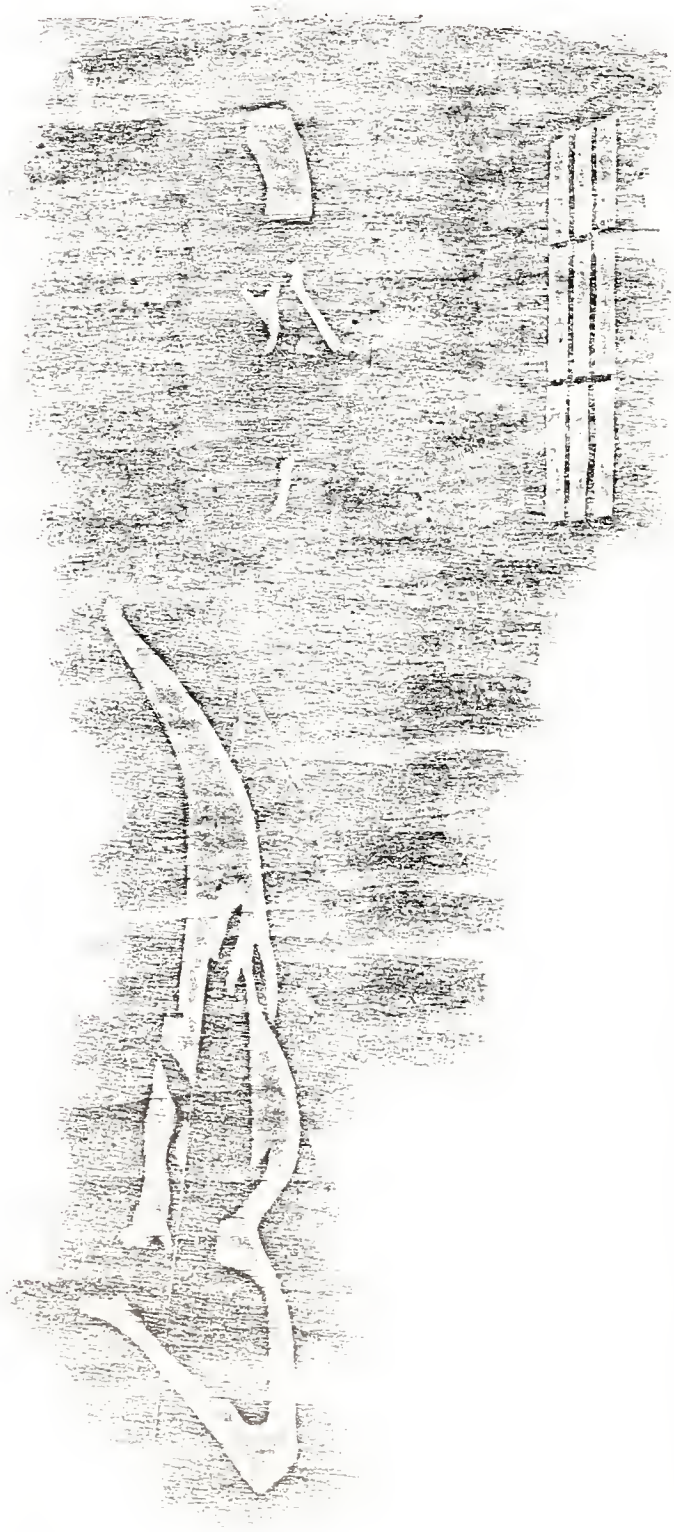
1. Weekly Bond Buyer, June 1, 1971.
2. United States Government Financing—Farmers Home Administration.
3. United States Government Financing—Economic Development Administration.

General Assembly in action



This melange of photographs records the 1971 General Assembly in full steam. The two at the top show Milton Heath, Jr., who heads the Institute's legislative reporting service, and the wonder machine that helps keep track of legislative business. At the lower right is Rep. Clifton T. Hunt of Guilford.

Is Suicide a Crime in North Carolina?



By Michael Warren

The author is a 1971 graduate of the Duke University Law School who has been working at the Institute of Government as a research assistant in the field of public health law.

Each hour of every day in the United States an average of three deaths are reported as suicides.[1] In 1960, for every reported homicide, two suicides were reported. The number of reported suicides equals approximately half the deaths by automobile accidents.[2] These alarming statistics do not include the great number of deaths that are reported as accidents but are actually suicides.

For each person who succeeds in his suicide attempt, eight others fail. The number of attempted suicides is estimated to be from 175,000 to 200,000 annually in the United States alone.[3]

Suicide is therefore a major problem. It is as old as Socrates and as new as the latest LSD tripper. Suicide is and always has been sociological, psychological, medical, religious, and philosophical as well as legal in its implications. However, this discussion will deal with the relationship between suicide and the law, particularly North Carolina law.

Western Civilization has generally accepted the moral doctrine that suicide is wrong.[4] The pertinent questions become: How did this idea make its way into the law? Is suicide a crime today? Are attempted suicides and related acts criminal?

SUICIDE AS A LEGAL TERM has been defined as being "[s]elf destruction; the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties."[5] The courts of North Carolina have not been compelled to define suicide specifically; however, a generally accepted case law definition is that "[s]uicide is the intentional, voluntary, unaccidental act of a sane man which results in his own death."[6]

1. Schulman, *Suicide and Suicide Prevention: A Legal Analysis,* 54 A.B.A.J. 855, 856 (1968), reported approximately 19,000 suicides per year. THE 1971 WORLD ALMANAC reported 21,281 in 1966 and 21,325 in 1967.

2. Markson, *The Punishment of Suicide—A Need for Change,* 14 VILL. L. REV. 463 (1969).

3. Schulman, *supra* note 1, at 857.

4. See generally G. WILLIAMS, THE SANCTITY OF LIFE AND THE CRIMINAL LAW (1957).

5. BLACK'S LAW DICTIONARY (4th ed. 1957).

6. Markson, *supra* note 2, at 464.

THE ATTITUDES OF SOCIETIES and philosophies toward suicide have been inconsistent. Some primitive peoples have totally rejected it as abhorrent while others have calmly accepted it. Hinduism and Buddhism do not absolutely condemn suicide. Yet the Jewish writer-soldier Josephus rejected suicide even after his army had been captured by the Romans; thereafter the condemnation of suicide frequently appeared in rabbinic writings.[7] The Greeks often denied the usual burial rites to those who committed suicide,[8] but the Stoics found it proper.[9] In Roman law it is clear that punishment would lie for committing suicide to avoid criminal prosecution, but suicide for a number of reasons—pain, sickness, grief, lunacy, or fear of dishonor—but not suicide without cause, was excepted from punishment.[10]

Following St. Augustine's writings in *The City of God* (413–427 A.D.) the Church forbade suicide in 452, and in 533 the churches were forbidden to receive oblations for those who died by their own hands even while they were permitted to receive the offering for one who had died while committing a crime. In 563 the Church denied suicides the usual funeral rights. Canon law accepted only insanity as an excuse for suicide; all other suicides were punishable by excommunication as well as denial of Christian burial.[11]

The canon law denying burial rites to suicides was adopted in England in 673 A.D. It continued in force for centuries, with a suicide victim buried at a crossroads with a stake driven through his body as recently as 1823.[12]

UNDOUBTEDLY THE ENGLISH COMMON LAW borrowed heavily from both Christian doctrines and Roman law when, in the tenth century, a secular statute was passed forbidding suicide.[13] It is most probable that the common law crime of suicide was a lineal descendent of the Roman practice of punishing one who committed suicide to avoid trial or conviction. Since a person who was executed by the state forfeited his property, suicide would have saved it for his heirs. But by Roman law suicide by an accused was treated as a presumptive confession of the crime charged and, unless rebutted, resulted in the confiscation of his property. Although this presumption was deleted at common law, forfeiture was retained and related solely to the act of suicide itself rather than to the other crime charged. Drawing on this wealth of historical confusion, suicide became a crime unto itself at English common law and was punishable by denial of Christian burial, dishonoring the corpse, and confiscation of the suicide's property by the sovereign.[14]

It is interesting to note that at common law, for all offenses except suicide, the crime itself was described in the definition of the illegal act, e.g., "larceny is the felonious taking. . . ." Suicide, however, was defined by describing the criminal, not the crime; "*felo de se* is he who kills."[15] This distinction reflects the difficulty the common law had in making criminal an act in which the aggressor and the victim were the same person. Speaking of suicide and alluding to the confusion surrounding it, Blackstone wrote in 1765, "[T]he law has therefore, ranked [suicide] among the highest crimes, making it a peculiar species of felony, a felony committed on oneself."[16]

At the time of Blackstone, forfeiture because of suicide applied only to personalty; realty passed unhindered to the heirs of the suicide. During the eighteenth century the Crown usually waived forfeiture when the suicide was not committed to avoid felony prosecution or conviction. When forfeiture was sought by the sovereign, coroner's juries frequently avoided it by returning a finding of insanity instead of *felo de se*.[17] The Forfeiture Act of 1870 abolished forfeiture in England for suicide and all other felonies.[18] The custom of coroner's juries' finding a suicide insane rather than returning a verdict of *felo de se*, though established before the abolition of forfeiture, survived its abolition. Of the 4,846 inquests in 1928, only 88 verdicts of *felo de se* were returned.[19] This phenomenon may partially be explained by the maintenance of the religious burial sanctions and the possible effects on the insurance claims of the decedent's survivors.

Although the historical development was slower,[20] attempted suicide was treated as a misdemeanor at common law. The reasoning of the common law courts was entirely consistent. Following the premise that every attempt to commit a crime was punishable, it necessarily followed that if suicide was a crime, attempted suicide was a punishable act.[21]

Culminating a long public debate on the propriety of punishing suicide and attempted suicide, England abolished both as crimes in 1961.[22]

THE TRANSFER TO THE UNITED STATES of the English common law as it related to suicide was never complete because the common law punishments

7. WILLIAMS, *supra* note 4, at 249 et seq. See also Schulman, *supra* note 1, at 856.

8. "In Athenian law the hand that committed the suicide was cut off and buried apart from the rest of the body, which was denied the usual solemnities. In Thebes, too, the bodies of those who killed themselves were deprived of the accustomed funeral rites." G. WILLIAMS, *supra* note 4, at 251.

9. SCHNEIDMAN AND FABEROW, THE CRY FOR HELP, 80 (1961).

10. *Id.*

11. *Id.*

12. WILLIAMS, *supra* note 4, at 255.

13. Schulman, *supra* note 1, at 556.

14. SCHNEIDMAN AND FABEROW, *supra* note 9, at 81.

15. *Id.* at 81-82.

16. Schulman, *supra* note 1, at 856, from 4 BLACKSTONE COMMENTARIES 189, 190.

17. WILLIAMS, *supra* note 4, at 262.

18. Schulman, *supra* note 1, at 856.

19. WILLIAMS, *supra* note 4, at 265.

20. Schulman, *supra* note 1, at 856: "[O]nly as late as 1854 was the criminality of attempted suicide adopted by the common law courts of England."

21. See generally WILLIAMS, *supra* note 4, at 273.

22. The Suicide Act of 1961, 9 & 10 Eliz., c. 60, § 1, provided, "The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated."

of forfeiture and unholy burial were never accepted.[23] "The matter of punishment seems to give the courts, in states where the common law is recognized, the greatest difficulty in deciding whether or not suicide is a crime. Nearly all agree that suicide is *malum in se*."[24] This is the point of departure from which there is an interesting, though possibly irreconcilable, split of authority among the various jurisdictions over whether suicide is criminal, though punishable. The importance of this distinction is, of course, not relevant when suicide is accomplished, but it may determine the criminality of attempted suicide, aiding, abetting, or advising suicide, a suicide pact, and the accidental death of another while attempting suicide.

CLEARLY, IF A STATE REJECTS the common law as a source of crimes,[25] then, without a statute specifically establishing it as such,[26] neither suicide nor any of the related acts is criminal.

The different approaches taken by the various jurisdictions may be divided into two main categories—states without controlling legislation and states with such legislation. These two general categories may be further subdivided.

States Without Controlling Legislation

1. *Except when repealed by statute, the common law is in effect*

Under this approach, if there is no statute to the contrary, direct reference is made to the common law. Since at common law suicide was a felony and attempted suicide a misdemeanor, they would be treated as such under this approach. New Jersey courts have upheld convictions for attempted suicide on this purely common law basis on two separate occasions.[27] More recently, the Supreme Court of North Carolina adopted this approach.[28] Although it recognized that suicide itself was not a punishable crime, it concluded, nevertheless, that suicide was of sufficient criminal nature to support the crime of attempted suicide as a misdemeanor.

2. *The common law has been repealed*

The Indiana courts relied on the absence of any specific statutes acclaiming attempted suicide to be a crime and the presence of the statutory rejection of the common law as a viable source of crimes to reject attempted suicide as a bar to recovering disability insurance.[29] They later [30] paid respects to the bifurcated aspects of suicide by holding it not to be criminal but "nevertheless unlawful as contrary to the law of God and man."[31]

3. *Emphasizing the unpunishable nature of suicide*

In attempting to determine the possible criminality of attempted suicide, the courts of a number of states[32] have looked to the status of suicide itself. They have reasoned that since suicide is not punishable, it is not criminal,[33] and therefore on the theory that "it cannot be a crime to attempt an act which is not a crime if accomplished,"[34] they have concluded that attempted suicide is not criminal.

States With Controlling Legislation

1. *By implication*

The Massachusetts legislature has revised the law of criminal attempts, basing it on the length of punishment possible for completion of the crime attempted.[35] The courts of that state have interpreted this legislative action as having repealed the common law as it pertained to suicide by implication.[36] Since there could be no imprisonment or other punishment of a suicide, there can be no reference on which to base an attempted suicide.

2. *By specific legislation*

Some states have passed statutes rejecting the common law as a source of crimes.[37] If there is no statute specifically making suicide a crime, neither it nor attempted suicide is criminal.

ON FEBRUARY 13, 1961, one Willis slashed his throat and hanged himself by the neck from a barn rafter. Remarkably, these acts failed to cause his death. He was subsequently charged by criminal indictment with attempted suicide. The trial court, on motion by the defendant, quashed the indictment on the ground that "it failed to state a crime." The state appealed, presenting the Supreme Court of North Carolina with a question of first impression:

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23. N.C. CONST., art. XI, § 1, indirectly eliminates both types of punishment by limiting proper punishment to "only" the following: "death, imprisonment with or without hard labor, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State."

24. State v. Willis, 225 N.C. 473, 475, 121 S.E.2d 854, 855 (1961). *See also* Note, 40 N.C. L. REV. 324 (1962).

25. *E.g.*, HAWAII REV. LAWS § 1-1 (1955); WIS. STAT. ANN. § 939.10 (1958).

26. *E.g.*, N.J. STAT. ANN. § 2A:170-25.6 (Supp. 1968); OKLA. STAT. ANN. tit. 21, § 812 (1958); S.D. CODE § 13.1905 (1939); WASH. REV. CODE § 9.80.020 (1961).

27. State v. Carney, 69 N.J.L. 478, 55 Atl. 44 (1903); State v. LaFayette, 117 N.J.L. 442, 188 Atl. 918 (1937).

28. State v. Willis, 255 N.C. 473, 121 S.E.2d 854 (1961).

29. Prudential Life Ins. Co. v. Rice, 222 Ind. 231, 52 N.E.2d 624 (1944).

30. Wallace v. State, 232 Ind. 700, 116 N.E.2d 100 (1953).

31. Markson, *supra* note 2, at 466.

32. *E.g.*, Commonwealth v. Wright, 26 Pa. Co. Ct. 666 (1902); State v. Campbell, 217 Iowa 848, 251 N.W. 717 (1933); Blackburn v. Ohio, 25 Ohio St. 146 (1872); Grace v. State, 44 Tex. Crim. 195, 69 S.W. 529 (1902).

33. This conclusion was rejected by the North Carolina Supreme Court in State v. Willis, 255 N.C. 473, 121 S.E.2d 854 (1961).

34. Markson, *supra* note 2, at 466.

35. Other states with similar statutes include: CAL. PENAL CODE § 644 (1955); FLA. STAT. ANN. § 776.04 (1965); KAN. STAT. ANN. § 21-101 (1964); MASS. ANN. LAWS ch. 274, § 6 (1968); MINN. STAT. ANN. § 609.17 (1964); MO. ANN. STAT. § 556.150 (1953); MONT. REV. CODES ANN. § 94-4711 (1949); N.H. REV. STAT. ANN. §§ 590:5, 590:6 (1955); ORE. REV. STAT. ANN. § 161.090 (1968); UTAH CODE ANN. § 76-1-31 (1953); VT. STAT. ANN. tit. 13, § 9 (1958); W. VA. CODE ANN. § 61-11-8 (1968).

36. Commonwealth v. Dennis, 105 Mass. 162 (1870); May v. Pennell, 101 Me. 516, 64 A. 885 (1906); ME. REV. STAT. ANN. tit. 17, § 251 (1964).

37. *E.g.*, HAWAII REV. LAWS § 1-1 (1955); WIS. STAT. ANN. § 939.10 (1958).

"Is an attempt to commit suicide a crime in North Carolina?"[38]

In reversing the judgment, the Supreme Court concluded that attempted suicide was a criminal offense, and North Carolina became the second state to base this conclusion solely on the common law.[39] Unless it is "destructive of, or repugnant to, or inconsistent with, the freedom and independence of this state" or has been "abrogated, repealed, or become obsolete,"[40] the common law is in force in North Carolina. In accordance with the universal blackletter rule that the act attempted must be a crime for the attempt to be criminal, the Court asked the further, collateral question: "Is suicide a crime in this jurisdiction?"[41]

In its reference to the common law of England, the Court found "[a]t common law suicide was a felony."[42] It recognized the limitations placed on the common law crime of suicide by the disallowance of the punishments—forfeiture and ignominious burial. The importance of the jurisdiction was not lost on the Court: "The matter of punishment seems to give the Courts, in states where the common law is recognized, the greatest difficulty in deciding whether or not suicide is a crime."[43] It concluded that "suicide may not be punished in North Carolina,"[44] but "[o]ur Constitution and statutes have repealed and abrogated the common law as to suicide only as to punishment and possibly the quality of the offense."[45]

The Court rejected the argument that since it cannot be punished, suicide as a common law offense is obsolete and should be given no effect. Its rationale was not directly expressed, but seems to have been that since "in the absence of statute to the contrary," such offenses as aiding or abetting another in suicide, making a suicide pact in which the means used was effective only on one, and attempting to commit suicide and accidently killing another, "would not be criminal offenses in a jurisdiction in which suicide is not a crime," suicide must be a crime in order to protect society from these other offenses.[46] As a consequence, the Supreme Court of North Carolina, relying completely on the fact that attempted suicide was a misdemeanor at common law, declared an attempt to commit suicide to be "an indictable misdemeanor in North Carolina."[47]

38. State v. Willis, 255 N.C. 473, 474, 121 S.E.2d 854, 855 (1961).
39. Note, 40 N.C. L. REV. 323 (1962).
40. N.C. GEN. STAT. § 4-1.
41. State v. Willis, 255 N.C. 473, 474, 121 S.E.2d 854, 855 (1961).
42. *Id.* at 475, 121 S.E.2d at 855.
43. *Id.*
44. *Id.* at 476, 121 S.E.2d at 856. See also N.C. CONST., art. XI, § 1, *supra* note 23.
45. State v. Willis, 255 N.C. 473, 121 S.E.2d 854 (1961). In its reference to the quality of the offense, the Court was making reference to the North Carolina statutory definition of a felony. The caveat was necessary because, by this definition, a felony had to be punishable by death or imprisonment in the state penitentiary. In 1967, G.S. 14-1 was amended to read in part: "A felony is a crime which was a felony at common law." This amendment probably made the caveat unnecessary.
46. State v. Willis, 255 N.C. 473, 477, 121 S.E.2d 854, 857 (1961).
47. *Id.* at 478, 121 S.E.2d at 857.

ONE OF THE PRIMARY OBJECTIVES of the criminal law is to protect the property, person, and freedom of society's individuals from the illegal actions of others. The offending person is punished by society in the hope that his punishment will prevent a recurrence of improper action. Regardless of how undesirable suicide is from a moral, philosophical, or religious point of view, punishing is useless since it is totally inconsistent with the aforementioned theory of criminal punishment. This idea, though rarely expressed, underlies the unanimous conclusions of the courts in the United States that ignominious burial and forfeiture of property to the state are improper.

Likewise many authorities[48] have made an equally cogent case for nonpunishment of the person who attempts suicide when no one except the intended suicide is harmed. It seems patently absurd to think that punishing a person for failing in his attempt to destroy his existence will somehow prevent a reoccurrence of the suicide attempt. The more likely result is to reinforce the suicidal tendency and encourage the beleaguered person to try harder to be successful. When society imposes criminal sanctions against one who attempts suicide and does not punish the successful suicide, the irony is complete in that since one attempting suicide usually does not contemplate failing, the only impact the knowledge that punishment awaits failure might have is to insure a greater effort for success. This is not to intimate that the prevention of suicides and attempted suicides is anything other than a socially desirable end, but rather that the criminal law may well not be the best means to achieve the ends sought.

At this point it may be suggested that although the State of North Carolina has not used the *Willis* case for other prosecutions for attempted suicide to any great extent,[49] the result of flourishing prosecutions is predictable. As the early English coroner's juries so often failed to find *felo de se* in suicide cases, modern criminal juries would probably attempt to avoid punishing an attempted suicide by using some helpful contrivance such as the insanity defense or the finding of an "accidental" act. The lack of prosecutions in North Carolina, a failure to enforce the law, might also encourage disrespect for law.

In this age of relative enlightment, most would agree that, although one who attempts suicide might not meet the technical qualifications of legal insanity,[50] he needs psychological, sociological, and emotional help to deal with his problems and prevent him from later repeating his attempt. That the North Carolina Supreme Court did not agree is probably evidence of its overwhelming concern that "[i]ntentional or criminally negligent harm to another, even

48. *See e.g.*, R. PERKINS, CRIMINAL LAW 68 (1957 ed.).
49. At least no cases have been reported since *Willis* in which an attempted suicide was prosecuted.
50. The test espoused by the Court in *Willis* was whether the party could at the time of the act distinguish right from wrong.

though caused in the course of a suicide attempt, is and must remain punishable."[51] Certainly this concern is valid and justifiable. Society has a clear interest in preventing harm to its members by an attempted suicide.

Difficulties arise when the common law is the sole means used to seek prevention of the aiding or abetting of another's suicide, the making of suicide pacts, and the injury of another person while attempting suicide. As the North Carolina Court did in *Willis*, this approach requires that suicide itself be treated as retaining sufficient criminal characteristics to support the associated acts as criminal offenses. Even so, were this alone involved, the desirable result of protecting society's interest in preventing harm to other individuals would be accomplished painlessly, since punishment cannot be meted out to a suicide. The larger problem is that incorporation of the common law also makes attempted suicide a criminal act. Given the historic failure of the criminal process to deal adequately with attempted suicide, this result is undesirable. Whether the benefits of protecting society's interest in preventing harm to individuals other than the attempted suicide is worth the consequences of continuing to approach attempted suicide from the direction of the criminal law is a question to be answered only by weighing and balancing alternatives. In the view of the *Willis* Court, the first interest outweighs the second concern.

It is ironic that this difficult balancing process need not have been endured had North Carolina followed the example of forty-eight other states and rejected the common law as the sole basis for decision. A process of selective adoption of the common law by the Court, though possibly not logically consistent, would have been decidedly preferable because it would have allowed the problem of attempted suicide to be attacked with sociological, psychological, and emotional approaches rather than with criminal sanctions. Even more preferable would have been the conclusion that, in the instance of suicide and related areas, the common law is obsolete or at least abrogated and that the decisions about what is a criminal offense in these circumstances should be reached by the state legislature. ■

51. SCHNEIDMAN AND FABEROW, *supra* note 10, at 91.

Automobile Insurance, continued from page 9

• Legislation

Commission legislation has been introduced to implement these recommendations. The new bills will be compared and contrasted with the dozen bills earlier introduced in the General Assembly. The Senate and House Insurance Committees have been holding joint sessions to consider the various proposals as they relate to one another. Among noncommission bills awaiting committee consideration are those introduced by Senator Flaherty to repeal the Financial Responsibility Act . . . i.e., compulsory insurance (S.26), change the rating system to a competitive type of File and Use with anti-collusion provisions (S.27), set up a Rate Analysis Division in the Insurance Department (S.28), and require higher impact standards for bumpers (S.53); by Representative Ingram, to remove age discrimination in fixing rate classifications (H.82, H.83); by Senator Burney, to limit the cancellation and nonrenewal of policies (S.308); and by Representative Combs, to revise the statutory motor vehicle policy, to require an uninsured motorist endorsement (S.455), provide for administering a proposed Uninsured Motorist Fund (S.456), and to revise rate regulation statutes (S.457).

The concerns evidenced in these bills, in general, parallel those of the Commission. Some of the ideas anticipate or relate to the Commission recommendations. On the other hand, the bills do not square with Commission proposals on all points, nor do they cover a number of the specifics that have been made part and parcel of the implementing Commission bills.

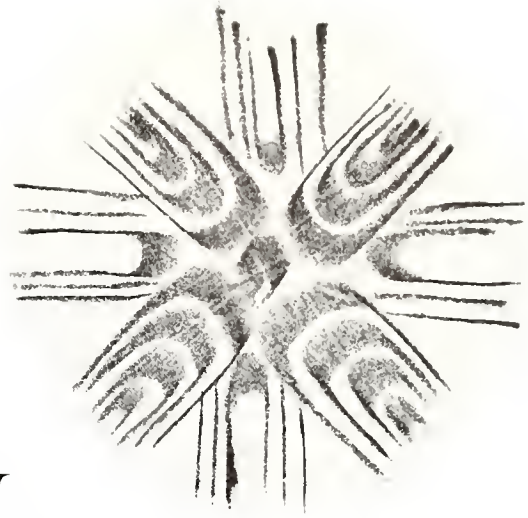
• Conclusion

What the Commission calls "the very complexity and depth" of automobile liability insurance problems will assure some diversity of viewpoint and controversality of some key measures. Nor can there be any assurance that bills relating to No-Fault, arbitration, comparative negligence, reinsurance funds, or any of a number of other matters not given specific Commission recommendation will not find their way into the hopper. If the Report has done nothing to shorten the legislative session, it has come to grips with pressing problems, defined the challenge and broadened legislative horizons on auto liability insurance.

Perhaps if any one thing in this troublesome area is subject to near universal agreement, it is the valedictory objective stated by the Commission and read aloud by Governor Scott in accepting the Report: "The ultimate challenge in automobile liability insurance, as in other areas of current society, is to bring conflicting forces back together in an atmosphere where mutual trust, harmony, and fair dealing will prevail. Only in such a climate is that any real assurance of a fair and effective process which serves the common weal." ■

The author is an Institute staff member who worked closely with the Governor's Study Commission.

By David G. Warren



Modern Midwifery -a new approach to Obstetrical Care

The practice of midwifery is as old as the human race. Its history and its function antedate any record we have of medicine as an applied science.[1]

It has been estimated that the acute physician shortage—of both obstetricians and general practitioners—will result in four of every ten babies' being delivered in the United States in 1976 without a doctor of any kind in attendance.[2] Estimates of this type, together with the appallingly high infant mortality rate in the United States,[3] have resulted in an urgent search for new approaches to maternal care.

One suggestion that has been put into limited operation is to return to the basic principles of midwifery, training and educating registered nurses to make them valuable members of an obstetrical team. This article will examine the use of nurse-midwives as a possible solution to the obstetrical problems of the United States and North Carolina.

The first records of midwife training in North Carolina date from the 1770's. Dr. Jacob Bonn, the Moravian community doctor in Salem, trained midwives as early as 1772.[4] Midwifery was fostered by both economic necessity and the unavailability of doctors. It survived on inertia and was surrounded by superstition. That the "midwife or 'granny' depended entirely upon 'toddies, cheerful conversation, and numerous concoctions' for aid in her deliveries"[5] is evidence of the level of her "skill." That if "the midwife failed to place an axe or knife under the bed to cut the after pains, the family would do so immediately"[6] is evidence of her clientele's ignorance and superstition.

Though it improved little, the institution of midwifery grew rapidly as North Carolina entered the twentieth century. By 1920, 4,000 midwives were managing at least one-third of all deliveries.[7] Pregnancy was second only to tuberculosis as the leading cause of death.[8]

A "war" against the granny-type midwife was declared. In 1917, the General Assembly required midwives to secure a permit to practice midwifery from the State Board of Health or a local department of health[9] and to register with the local health director.[10] A statewide educational program was also launched.[11]

1. E. R. Hardin, "The Midwife Problem," **Southern Medical Journal** 18 (1925), 347.

2. "Return to the Midwife," **Newsweek** 73 (March 31, 1969), 107.

3. D. D. Rutstein, "Why Do We Let These Babies Die?" **Reader's Digest** 85 (August 1964), 56.

4. R. L. Wall, Jr., "Three Centuries of Obstetrics in North Carolina," **North Carolina Medical Journal** 17 (1956), 355.

5. **Ibid.** p. 361. Citing Guy Johnson, **Ante-Bellum North Carolina** (Chapel Hill: University of North Carolina Press, 1937).

6. Wall, "Three Centuries of Obstetrics in North Carolina," p. 361.

7. **Ibid.**, p. 362.

8. **Ibid.**

9. **N.C. Gen. Stat.** § 90-172 (1917, as amended in 1957).

10. **N.C. Gen. Stat.** § 130-112.

11. See generally, Wall, "Three Centuries of Obstetrics in North Carolina, p. 362.

Predictably, midwifery steadily declined, yet in 1925, with 45,000 midwives in the nation, North Carolina still led the country with 6,500.[12] The percentage of births in the United States attended by midwives fell from almost 10 per cent in 1940 to just over 1 per cent in 1968.[13] There were 915 registered midwives in the state in 1950[14] and around 50 in 1970.[15] Stricter regulations, the age of most midwives, and the fact that very few new permits are issued led one commentator to predict the end of midwifery in North Carolina.[16]

The demise of the practice of the granny-type midwife signals a victory for modern health care in the state. After centuries of her practice and generations of battling her existence, the granny is gone—hopefully, never to return.

The departure of the granny helped over-all obstetrical care statistics, but it did not solve all the obstetrical problems. In the United States, 25.3 deaths occurred at birth or during the first year of life for every 1,000 infants born in 1960.[17] At that time, ten countries had infant mortality rates substantially lower.[18] By 1967, the infant mortality rate in the United States had improved slightly, but had dropped to twelfth position worldwide.[19] North Carolina's infant mortality rate is even higher than the national average.[20]

The number of physicians available has inevitably had an impact on obstetrical statistics and successes. The ratio of physicians to population has remained fairly constant for a number of years, but this fact is misleading. Since the number of physicians involved in teaching, research, and administration has risen, the ratio of physicians who provide personal health services has declined.[21] It was conservatively estimated that 20,000 additional practicing physicians were needed to meet the nation's personal health care needs in 1966 and that 40,000 more will be needed in 1975.[22]

Since the chances are 50–50 that a mother giving birth in the United States will not be attended by an obstetrician,[23] figures about family medical practitioners (general practitioners, internists, and pediatricians) are relevant. Nationally, the ratio of this group has declined from 89 per 100,000 population in 1940 to 50 per 100,000 population in 1965.[24] An estimated 100,000 American women each year do not see a doctor of any kind during pregnancy.[25]

North Carolina has one of the nation's lowest physician-to-population ratios—about 69 physicians per 100,000 civilian population in private practice.[26] Since the shortage of obstetricians has forced much of the obstetrical load on general practitioners, the low and declining number of general practitioners, especially in rural areas, is even more distressing. In 1966, there were approximately 1,225 general practitioners—or one for every 4,000 persons in the state. There are only 30 physicians per 100,000 population in rural areas compared with 96 per 100,000 population in metropolitan North Carolina.[27] Also, some 22 per cent of all the physicians practicing in rural areas are over seventy.[28]

The United States and North Carolina are are faced with a disturbingly high infant mortality rate and an increasing shortage of physicians. Some have questioned whether solving

12. **Ibid.**, p. 363. In 1938, 2,200 were registered. North Carolina State Board of Health, **A Manual for Midwife Practice in North Carolina** (Raleigh, N. C., 1969).

13. **Statistical Abstract of the United States**, 1970, p. 48.

14. A. Lamb and R. Swindell, "Training and Supervision of Midwives in North Carolina," **The Health Bulletin** 69 (May 1954), 13.

15. Estimate received in personal correspondence with the North Carolina State Board of Health, April 7, 1970.

16. J. Donnelly, "Public Health Obstetric Facilities in North Carolina," **The Bulletin of Maternal Welfare** (May-June, 1956), 3.

17. **Statistical Abstract**, 1970, p. 57.

18. Rutstein, "Why Do We Let These Babies Die?" p. 56. Sweden and The Netherlands both had infant mortality rates of 15.3 in 1960.

19. **Statistical Abstract**, 1970, p. 57.

20. **Ibid.**, p. 57.

21. "Report of the Committee on the Physician Shortage in Rural North Carolina to the Legislative Research Commission of the North Carolina General Assembly," (Raleigh, General Assembly of North Carolina), p. 3.

22. **Ibid.**, p. 4. The estimate was 50,000 according to **Newsweek**. "Return to the Midwife," p. 107.

23. **Ibid.**

24. R. Fein, **The Doctor Shortage** (Washington: The Brookings Institute, 1967), Table III-4.

25. L. Hellman, "Let's Use Midwives—To Save Babies," **Saturday Evening Post** 237 (November 21, 1964), 8.

26. "Report of the Committee on the Physician Shortage," p. 5. The East South-Central states average 89 physicians per 100,000 population while the Middle Atlantic states average 171.

27. **Ibid.**

28. **Ibid.**

the second problem is possible and, if possible, likely to solve the first. No one is seriously advocating a return to the granny-midwife as a possible solution to either problem. However, a number of highly respected individuals and institutions are forcefully advocating a modern, educated, well-trained corps of nurse-midwives or obstetrical assistants as one good answer to these problems.

The only similarity between the granny-midwife and the modern nurse-midwife is their name. The history of midwifery and the retention of the old name is enough to cause initial shock when one learns that from 1959 to 1968 a staff of 25 nurse-midwives delivered more than 8,000 babies in a major New York medical center.[29] The shock is obviated by the recognition that these women are not ignorant, illiterate, superstitious, infection-spreading grannies but highly trained, highly skilled nurse-practitioners.

There are approximately 1,000 certified nurse-midwives in the United States today.[30] A modern nurse-midwife is a registered nurse who has graduated from one of the ten midwifery schools approved by the American College of Nurse-Midwifery,[31] including New York Medical College, Johns Hopkins Hospital, Downstate (N. Y.) Medical Center, Presbyterian Hospital-Columbia University, and Yale University School of Nursing.[32] Post-registered nurse programs from six to eight months and master's degree programs from twelve to twenty-four months are offered. Whereas the average physician will probably deliver ten babies during medical school and approximately 100 during the obstetrics part of his internship, the nurse-midwife will perform 120 deliveries during her training period.[33] The typical nurse-midwife is in her late twenties and earns from $9,000 to $12,000 a year in New York.[34] She can expect to choose from among at least fifteen job openings.[35]

Though the nurse-midwife of today is equipped to give excellent prenatal, delivery, and postnatal care, she is a member of an obstetrical team and is always in close contact with and under the supervision of a physician.[36] Being in a hospital, she is **never** an independent practitioner. An expectant mother is thoroughly examined by an obstetrician. If he decides the pregnancy and the delivery will probably be normal, he may turn the patient over to a nurse-midwife. The nurse-midwife is trained to detect deviations from normal pregnancy and will return the patient to the obstetrician if any abnormality is noted. The doctor will also check the patient from time to time. The interrelationship of the nurse-midwife and the obstetrician has been emphasized by one of the most avid proponents of the nurse-midwife concept. The director of obstetrics at Kings County Hospital in Brooklyn has said, "Nurse-midwife care is not doctor care, but an adjunct to doctor care. The midwives are not called upon to make decisions that only doctors must make. The midwife carries out the doctor's orders."[37]

As a result, because they work with normal deliveries under a physician's supervision and because of their own skills, practicing nurse-midwives have an exceptionally good record.[38]

What this means is that in a day when only 45 per cent of the deliveries in this country are attended by obstetricians and there is a shortage of obstetricians and obstetrical skill,[39] the use of midwives for normal deliveries will allow doctors to devote their primary attention to the cases that need them most. This would not be a revolutionary development; 80 per cent of the world's babies are delivered by midwives, and trained midwives are extensively used by most of the eleven countries with lower infant mortality rates than ours.[40]

One of the greatest advantages of the nurse-midwife is that she does not have a large medical practice that could make her too busy for her patients, as the overworked obstetrician often is. She has time to listen, to explain, to talk with, to reassure her patients.[41] This

29. D. Davis and L. Middleton, "Rebirth of the Midwife," **Today's Health** 46 (February 1968), 28.

30. "New Status for the Midwife," **Roche Medical Image** 11 (February 1969),

31. **Ibid.**

32. **Bulletin of the American College of Nurse-Midwifery**, Educational Issue 10 (1965).

33. "Return to the Midwife," p. 107.

34. **Ibid.**

35. "New Status for the Midwife," p. 28.

36. Davis and Middleton, "Rebirth of the Midwife," p. 28.

37. Hellman, "Let's Use Midwives—To Save Babies," p. 8.

38. "Return to the Midwife," p. 107.

39. "New Status for the Midwife," p. 10, quoting Dr. Allan C. Barnes, director of the Department of Gynecology and Obstetrics at Johns Hopkins University School of Medicine.

40. **Ibid.**

41. Davis and Middleton, "Rebirth of the Midwife," p. 28.

extra-medical care has proved most helpful in dealing with unwed mothers.[42] Some of the strongest supporters of midwifery are the patients themselves. What else but a satisfying personal experience in childbirth can explain the return of the same woman to be delivered three or four times by the same nurse-midwife.[43]

North Carolina has entered the field of nurse-midwifery to a limited extent. There are now two practicing, certified nurse-midwives at North Carolina Memorial Hospital,[44] and patient regard for them is high.[45]

In deciding how best to encourage the practice of nurse-midwifery and to discourage the practice of granny-midwifery, several alternatives must be considered.

The separate licensure of nurse-midwives in a fashion similar to that of physicians[46] and nurses[47] could be required. However, the implications of such a statute would be troublesome. The nurse-midwife would already be a licensed registered nurse, and further examination of her competence might be redundant or at least claimed to be so by some. Modern nursing practice includes obstetrical care; but how extensively? Further, how certain is the legal protection afforded by "custom and usage?" Legal protection of the nurse and of the public might better be accomplished by State Board of Health rules and regulations or by certification by a national or state accrediting body (similar to the way nurse-anesthetists are accredited by the American Association of Nurse Anesthetists). Of course, licensing would clearly assure legal protection (except for negligence), but as a practical matter, it is doubtful that the General Assembly would be very receptive to new licensing legislation. There are already seventeen separate licensing boards in North Carolina which license twenty health-related professions. The present concerted effort toward consolidation would indicate that legislation expanding licensing in the health field might have difficulty in passing the General Assembly.

Another alternative is to regard obstetrical care as being an appropriate function of modern nursing practice for qualified nurses and to let the permit-holding granny-midwife fade away naturally. No changes would be required in the laws[48] or rules and regulations; midwifery could become established within the definition of nursing by custom and usage. Expanded nurse training programs, use of existing certification procedures, and cooperation of the medical profession would foster this development.

The most feasible method of encouraging the growth of nurse-midwifery and discouraging the resurgence of the "granny" would seem to be to use the power of the State Board of Health to make rules and regulations governing midwife registration.[49] The Board could in effect outlaw granny-midwifery in North Carolina by adopting a rule to the effect that beginning in 197?, in order to be properly registered, **every** midwife must be (a) a graduate of a midwife school approved by the American College of Nurse-Midwifery; (b) certified as a practicing nurse-midwife by the College; and (c) a registered nurse properly licensed to practice in North Carolina.

If this action were deemed too drastic (politically unpopular? challengeable in court by a presently practicing midwife as depriving her of property without due process of law?), the Board could, by rules and regulations, require all **new** midwives to comply with the requirements delineated above. A "grandmother" clause could be attached either allowing all presently practicing midwives to continue to be registered under the old regulations and rely upon age for the attrition of the grannies or allowing those midwives presently practicing to continue to be registered under the old regulations until some fixed date at which time the new requirements would apply to **all** midwives.

New rules or regulations promulgated by the State Board of Health and local boards of health[50] would seem to be a practical, efficient and effective way to promote nurse-midwifery, prevent the growth of the granny, and give a new perspective and image to midwifery.

The experiences of North Carolina and other states with nurse-midwives have proved that the professional trained nurse-midwife is as far removed from the granny-midwife as the modern

42. "Return to the Midwife," p. 107.

43. Davis and Middleton, "Rebirth of the Midwife," p. 28.

44. **The News and Observer** (Raleigh, North Carolina), 23 February 1971, p. 10.

45. **Ibid.**

46. **N.C. Gen. Stat.** § 90-1 et seq.

47. Practical nurses, **N.C. Gen. Stat.** §§ 90-171.1 to 90-171.15; Registered nurses, **N.C. Gen. Stat.** §§ 90-158.1 to 90-158.41.

48. Midwifery is a recognized exception to the requirement for a license to practice medicine. **N.C. Gen. Stat.** § 90-17.

49. **N.C. Gen. Stat.** § 130-112.

50. **N.C. Gen. Stat.** § 130-187.

physician is from the barber of old. Extensive use of nurse-midwives could lower the high national and even higher North Carolina infant mortality rate. The State Board of Health and the local boards of health can, by the power to promulgate rules and regulations governing the registration of midwives,[51] assure that qualified, professional, certified nurse-midwives are allowed and indeed encouraged to become a part of North Carolina obstetrical teams. This should be done for the well-being of both mothers and babies. " . . . We cannot afford to let any of our children be less than well born."[52]

51. **N.C. Gen. Stat.** § 130-187.

52. Hellman, "Let's Use Midwives--To Save Babies," p. 8.