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This month

Model City Charter

Evaluation of North Carolina's
Tax Structure

Proposed State Constitutional
Amendments

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*... Remembrances of things
past, summer of '72. This month's
cover photo was taken at the
shrimp festival at Snead's Ferry on
July 12. Photo by Carson Graves.*



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a short model charter for North Carolina cities and towns

by David M. Lawrence

Each session the General Assembly enacts charters for several cities and towns. Since 1959 more than sixty such charters have been enacted: some forty were for existing cities and towns, the remainder for newly incorporated cities and towns. Many of these charters were quite simple, some quite complex; no two were exactly alike. Yet, in the manner of local acts, almost all were cast in one of two general formats. In practice, North Carolina cities and towns have, since 1959, used these two formats as "model" charters.

The more frequently chosen "model" might, somewhat arbitrarily, be called the "League of Municipalities" model, not because it is an official document of the League—it isn't—but because most charters drawn by the League's legal staff have followed this model. The second "model" might, with more assurance, be called the "Greensboro" model, because it made its first appearance as that city's 1959 revised charter.

The League model is organized into a series of articles, always five or six and often more. The more complex Greensboro model is organized into chapters, subchapters, and articles. If provisions are added to a League model charter, they usually go into a new article at-

tached at the end. In a Greensboro model charter, they usually are placed somewhere within the existing structure of chapters, although a new subchapter or article might be necessary.

This article's purpose is to present North Carolina cities and towns with a third model charter, a model that is much shorter than the existing two. This brevity results from drafting policy and was made feasible by several laws enacted by the 1971 General Assembly.

THE 1971 LAWS

The most important of these new laws is G.S. Chapter 160A. This chapter replaced much of G.S. Chapter 160, a chapter that was often confusing in its organization, occasionally duplicative in its provisions, and quite inadequate for a city in 1970. Chapter 160's inadequacies were a frequent cause of charter provisions enacted in recent years, but a cause that should be largely removed by enactment of Chapter 160A. During the process of drafting the new chapter, many recent charters were reviewed and commonly found provisions were incorporated into Chapter 160A. As a result any North Carolina city can now be

adequately governed within the structure of the general law.

A second important enactment of the 1971 General Assembly is the new Municipal Election Law, subchapter IX of G.S. Chapter 163. Chapter 160 was particularly inadequate in providing a framework for city elections, and as a result, city charters regularly provided machinery for registration of city voters and conduct of city elections. Not surprisingly, by 1971 there existed an enormous variety of city election procedures. The revised North Carolina Constitution, effective July 1, 1971, mandated the end of some of this variety: voter registration procedures had to be governed by *general* law. In meeting this mandate, the 1971 General Assembly did not stop with uniform registration procedures; it enacted a complete municipal election law, repealing all existing charter provisions regulating voter registration *and* the conduct of elections. Inclusion of election provisions in new charters would thus seem to be against state policy, and another cause of many charter provisions has been removed.

Two other enactments of the 1971 General Assembly should be mentioned: the Local Government Budget and Fiscal Control Act (G.S. Chapter 159, subchapter III)

The author is an Institute faculty member who specializes in the field of local government.

and the Machinery Act of 1971 (G.S. Chapter 105, subchapter II). Charters have occasionally contained sections that paralleled provisions of these two acts. Since both acts contain strong statements in favor of statewide uniformity, modification by charter of their provisions would also seem against state policy.

WHY A "SHORT" CHARTER?

The model presented in this article is short not only because several enactments of the 1971 General Assembly permit it to be short, but also because it embodies a number of assumptions about what ought—or more accurately, what ought not—to be in a city charter.

First, a charter need not and should not simply repeat the general law. Occasionally, some do. One reason is that the general law is sometimes too hard to find—a result of the confusion and duplication of old G.S. Chapter 160. A reason more often expressed is the desire to make the charter "complete," to include in it everything necessary to the government of the city. But no charter is ever fully complete; that is, no charter (that I have ever seen) includes *all* the laws that pertain to the city's government—there just are too many. Since completeness is probably impossible, why not rely on the general law itself? That's what it is for.

Repeating the general law in the charter can also cause, biennially, inconveniences and possibly greater difficulties. The inconvenience lies in having to amend the charter each two years to account for amendments to the general laws—necessary to maintain the identity between charter and general law. The greater difficulty lies in the possibility that the delegation to the General Assembly representing the town may not approve of all

the changes in the general law that session and may therefore refuse to bring the charter into conformity with the general law. This may result in the town's being without the benefit of the general law.

Second, a charter need not repeatedly incorporate by reference general law powers and procedures. Many charters authorize the city to annex territory "as provided by general law," or require that all moneys be deposited "as provided by the Municipal Fiscal Control Act," or permit the city to adopt subdivision regulations "pursuant to general law." The list could be easily expanded. Incorporation by reference of this sort is simply unnecessary—unless the draftsman is being paid by the word. Most charters have a section granting to the city all general law powers, in effect an incorporation by reference of the entire General Statutes. No more is needed.

Third, a charter should have few if any minor variations from the general law. For example, some charters include special assessment procedures that differ from the general law procedures only in small detail. Others alter slightly the general law procedures for calling special meetings of the governing board. Two dangers arise from such variations. First, if the variation is minor enough, it might not be noticed by someone dealing with the city, to that person's disadvantage. No good purpose is served by such a trap. Second, if a charter and the general law each apply, it is not always clear when the city may act in the alternative or when it must follow one law to the exclusion of the other. The consequences of a wrong decision may not be worth the variation. Unless such a minor variation results from a strong policy preference (and often it will not), it serves no useful purpose and ought to be omitted.

Fourth, a charter should not include material that might be handled by ordinance. Some charters detail some or all of the departmental structure of the city's government, or provide in extensive detail the structure and organization of particular boards and commissions. Such charter provisions could be left to ordinances; and, in fact, to include them in the charter simply reduces the flexibility available to the governing board and the administration. Sometimes such a reduction of flexibility is intended—but that ought to be the only excuse for including such provisions.

After all that has been said, it is fair to ask, what should remain in a charter? Basically, a charter should contain those provisions that are unique to each particular city—its corporate limits, the structure and manner of election of its governing board, and its method of administration. These few provisions, plus a basic statement of corporate existence and the incorporation by reference of general law powers, are the substance of this model charter.

Obviously, this bare minimum will not suffice for all cities. The general law is now adequate to govern any city in North Carolina, but occasionally a city will want to modify locally some general law or will want or need locally a new power or procedure not yet included in the general law. For that reason the model has been organized in a manner that should allow convenient expansion to include modifications or innovations. In this regard the model follows the Greensboro model and suggests a small number of chapters within which expansion can take place. A note at the end of the basic charter suggests a structure for an enlarged version of the charter, along with the sort of provisions that might be included in such an enlargement.

CHARTER OF THE TOWN OF BOROUGHVILLE

CHAPTER I

Incorporation and Corporate Powers

§ 1-1. *Incorporation and corporate powers.* The inhabitants of the Town of Boroughville are a body corporate and politic under the name of the "Town of Boroughville." Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

Comment

This chapter simply states the corporate existence of the city and gives it all the powers of cities under North Carolina law.

Most recent charters contain a recital of the common corporate powers that accrue to any "body corporate and politic," viz.: to sue and be sued, to acquire, hold, and dispose of property, to have a common seal, etc. This recital is contained in G.S. 160A-11, where it applies to all cities and towns, and thus it need not be included in the charter.

Many charters also provide that unless otherwise specified the city's powers are to be executed by or according to the direction of the governing board. This too is now covered by general law, G.S. 160A-12.

CHAPTER II

Corporate Boundaries

Article 1. Town Boundaries

§ 2-1. *Town boundaries.*

[Choose one of two]

[A] Until modified in accordance with law, the boundaries of the Town of Boroughville are as follows: [Describe boundaries.]

OR

[B] The boundaries of the Town of Boroughville are set out on a map entitled "Boundary Map of the Town of Boroughville, North Carolina." The map is maintained in the office of the town clerk, as required by G.S. 160A-22.

Comment

Two alternatives are set forth for the description of town boundaries. Alternative A sets out in the charter a written description of the town boundaries, which might go on for several pages. This is the usual method and is almost essential for a newly incorporated town.

However, it does have a particular disadvantage: Once an annexation takes place, the description becomes out of date. Alternative B, which has been used occasionally, is to simply make reference to a description found elsewhere. G.S. 160A-22 requires each city and town to "at all times" keep in the office of the clerk a map, written description, or some combination of these showing the current city or town boundaries. This requirement should make it more convenient to use the second alternative in future charters.

Article 2. Electoral District Boundaries

§ 2-5. *Electoral district boundaries.*

[Choose one of two]

[A] Until modified in accordance with law, the boundaries of the electoral districts of the Town of Boroughville are as follows: [Describe the district boundaries].

[B] The boundaries of the electoral districts of the Town of Boroughville are set out in a map entitled "Boundary Map of the Town of Boroughville, North Carolina." The map is maintained in the office of the town clerk, as required by G.S. 160A-22 and 160A-23.

Comment

If a town is divided into districts (or wards) for purposes of electing the governing board, this section would be the appropriate place in the charter to refer to the boundaries of those districts. The alternative sections parallel those presented under Article 1, above, for the town boundaries, and the considerations are the same. G.S. 160-23 requires that the boundaries of electoral districts be shown on the map or other delineation required by G.S. 160A-22.

CHAPTER III

Governing Body

§ 3-1. *Structure of governing body; number of members.*

[Choose one of two]

[A] The governing body of the Town of Boroughville is the Board of Aldermen, which has five members, and the Mayor.

OR

[B] The governing body of the Town of Boroughville is the Board of Aldermen, which has five members.

§ 3-2. *Manner of election of Board.*

[Choose one of four]

[A] The qualified voters of the entire Town [nominate and] elect the members of the Board.

OR

[B] The Town is divided into five electoral districts. The qualified voters of each district [nominate and] elect one member of the Board. To be eligible for [nomination and] election to the Board from a district and for service on the Board as member for a district, a person must reside in the district.

OR

[C] The Town is divided into five electoral districts. The qualified voters of each district nominate persons for one seat on the Board, and the qualified voters of the entire Town elect the members of the Board. To be eligible for nomination and election to the Board from a district and for service on the Board as member for a district, a person must reside in the district.

OR

[D] The Town is divided into five electoral districts, and each district is represented on the Board by one member. The qualified voters of the entire Town [nominate and] elect the members of the Board. To be eligible for [nomination and] election to the Board and for service on the Board as representative of a district, a person must reside in the district.

§ 3-3. *Term of office of members of the Board.*

[Choose one of two]

[A] Members of the Board are elected to two-year terms.

OR

[B] Members of the Board are elected to four-year terms. In [1973] and each four years thereafter, two members of the Board shall be elected. In [1975] and each four years thereafter, three members of the Board shall be elected.

§ 3-4. *Election of Mayor; term of office.*

[Choose one of two]

[A] The qualified voters of the entire Town elect the Mayor. He is elected to a two-year term of office.

OR

[B] At the organizational meeting of the Board following each election, the Board shall elect one of its members to serve as Mayor. The Mayor shall serve as such at the pleasure of the Board.

Comment

This chapter is very much shorter than the comparable chapter or article in recent charters. It includes no provisions concerning the mayor's duties, the appointment of a mayor pro tempore, the time and place of the governing board's organizational meeting, or the filling of governing board vacancies. Such provisions have been common in recent charters, but are now all provided for by Chapter 160A, particularly Article 5.

This chapter does provide for those details of governing board structure that will differ from city to city, and must therefore be provided for by charter. This chapter names the governing board, provides for its size, specifies the manner of election of its members and the length of their terms, and provides for the method of electing the mayor. Each of the sections will be discussed separately.

Section 3-1. This section establishes the basic structure of the governing body. The two alternatives differ in how the mayor is elected. If he is elected separately by the voters, he and the governing *board* constitute the governing *body*; this is alternative A. If he is elected by and from the governing board, he remains a member of that board, and the governing *board* is the governing *body*; this is alternative B.

Whichever alternative is selected, this section will specify the name of the governing board and the number of its members. The number, of course, could be anything, while the board might just as well be styled the "Board of Commissioners" or "Council" as the "Board of Aldermen."

Section 3-2. This section specifies whether board members are to be elected at large or whether there will be electoral districts. The four options embody the four basic possibilities:

- A: No districts, with all members elected at large.
- B: Districts, with all members elected from districts.
- C: Districts, with all members nominated by district voters but elected at large.
- D: Districts, with all members required to reside in districts but elected at large.

In the draft, options A, B, and D have language concerning nominations in brackets. Whether the bracketed language is included in a particular charter will depend on whether that city has primary elections.

These four basic options can be modified. A governing board might have some members elected at large and others from districts; or some of the districts might be represented by more than one member. Space does not permit setting out each possible modification.

Section 3-3. This section specifies the length of governing board terms and presents two alternatives. In alternative A, all members serve two-year terms; in alternative B, all members serve four-year terms and the terms are staggered. Naturally, nonstaggered terms need not be only two years, nor must staggered terms be only four years. However, the Municipal Election Law (G.S. Chapter 163, subchapter IX) provides for biennial city elections, which is a practical prohibition on terms of an odd number of years. In addition, this facet of the election law practically prohibits staggered *two-year* terms, since this scheme requires annual elections.

If a city uses electoral districts and the members of its governing board serve staggered terms, this section should specify which district seats are to be filled in which years.

If both are simple, sections 3-3 and 3-2 could easily be combined.

Section 3-4. This section details how the mayor is elected; the choice of alternative provisions should parallel that made for section 3-1. Alternative A provides for a mayor elected directly by the voters and should be used with alternative A of section 3-1; Alternative B provides for a mayor elected by and from the governing board and should be used with alternative B of section 3-1.

Within each alternative presented, the mayor's term of office can be varied. Many mayors elected directly by the voters are elected for four-year terms (the mayor's term need not be the same length as that of the governing board members). Some mayors elected by their governing boards serve established terms of one or two years.

* * *

If a city wishes to vary the general law provisions regarding governing board meetings, voting requirements, or ordinance procedures, this chapter would be the appropriate place in the charter. If such provisions are included in the charter, this chapter could be divided into articles. The provisions set out here could be grouped under an article entitled "Structure," while the additional provisions could be grouped under an article entitled "Procedures."

CHAPTER IV

Elections

§ 4-1. *Conduct of town elections.*

[Choose one of four]

[A] Town officers shall be nominated and elected on a partisan basis, as provided by G.S. 163-291.

OR

[B] Town officers shall be elected on a non-partisan basis and the results determined by plurality, as provided by G.S. 163-292.

OR

[C] Town officers shall be elected on a non-partisan basis and the results determined by a majority of votes cast, with a run-off election if necessary, as provided by G.S. 163-293.

OR

[D] Town officers shall be nominated and elected on a nonpartisan basis, as provided by G.S. 163-294.

Comment

Since there is now a uniform Municipal Election Law, a charter need only specify the city's choice among the four optional methods of conducting city elections. The four options presented each embody one of the methods, and each contains the appropriate citations.

A number of North Carolina cities and towns have charter provisions permitting initiative, referendum, and recall. These provisions could be placed in this chapter, in a second article.

CHAPTER V

Administration

§ 5-1.

[Choose one of two]

Town to operate under council-manager plan. The Town of Boroughville operates under the council-manager plan as provided in G.S. Chapter 160A, Article 7, Part 2.

OR

Town to operate under mayor-council plan. The Town of Boroughville operates under the mayor-council plan as provided in G.S. Chapter 160A, Article 7, Part 3.

Comment

The sections presented represent a town's decision on whether to have a manager. Whatever the decision, the section will state the decision and then simply refer to the general law, which contains the necessary legal framework.

A number of recent charters have required the town to retain or employ an attorney and have set out the attorney's duties. The general law (G.S. 160A-173) requires each governing board to appoint an attorney, and it is probably preferable that the attorney's duties be established by agreement between him and the board rather than be set by law.

Many recent charters have also required the town to appoint a clerk, a tax collector, and an accountant, and have allowed the combination of these functions. All this is also covered by general law.

A few North Carolina cities have civil service systems. If it is desired to establish such a system by charter, this would be an appropriate chapter in which to do so.

OTHER CHAPTERS

The charter sections set out above are adequate, with the general law, for the government of a North Carolina city or town. As noted, however, there may be occasions for a charter to include material that would not easily fit into the above structure. Examples of such material would include:

- Modification of the special assessment laws, particularly as to petition requirements
- A separate eminent domain procedure
- Authorizations for innovative exercise of the police power
- Requirements concerning particular boards and commissions
- Modifications of the purchasing laws.

If needed to absorb such material, these additional chapters are suggested, to complete the basic structure of this model:

- Chapter VI: Boards and Commissions
- Chapter VII: Planning and Regulatory Powers
- Chapter VIII: Services and Facilities
- Chapter IX: Miscellaneous.

The author, who holds a Ph.D. in Economics from Washington University, joined the Institute faculty last year.

The state and local governments of North Carolina finance their activities with a complex system of taxes, charges, fees, and interest from investments. Just how complex this financing system is can be seen in Table 1, which shows most of the different ways that revenues are obtained. A summary of the major taxes levied in North Carolina appears on page 20. Revenues collected in the form of charges and fees are different from taxes in that they are collected in return for specific government-rendered services. For example, local governments collect revenue for water according to the amount of water used, and the clerk of a court charges fees for services rendered to individuals or firms. Taxes may be vaguely related to services received, but generally the amount of taxes collected is not directly related to the benefits received from their use. Most government services are such that individuals cannot be assessed directly for the benefits they receive, and therefore taxes must be collected according to other criteria.¹ The purpose of this article is to describe and evaluate major features of North Carolina's taxation structure, according to several generally accepted criteria of desirability. Although charges and fees are

1. The motor fuel tax is earmarked solely for street and highway construction and maintenance on the principle that persons who benefit from street and highway use should pay for them. The motor fuel tax does not fall solely on street and highway users, however, for it tends to reduce incomes of persons engaged in production of goods and services whose consumption is decreased as a result of greater expenditures on motor fuel. Thus, there is no justification based on the benefits principle for reserving motor fuel tax revenues solely for streets and highways. For further explanation of this point, see Earl R. Rolph and George F. Break, *Public Finance* (New York: The Ronald Press Company, 1961), pp. 302-10.

important in the revenue structures of North Carolina governments (amounting to \$104 million in 1969-70²), this article will not consider them because they are assessed according to benefits received and therefore require a different type of evaluation.

By necessity the scope of this article is limited to evaluating North Carolina's tax structure, but we must recognize that the state tax structure is only one part of the complete national fiscal structure. Ideally, the whole system should be examined. Here we are evaluating the structure of taxes without examining the structure of expenditures. This approach has a number of implications, one of

2. Bureau of the Census, *Governmental Finances in 1969-70*, Table 17.

which is that the proportionately heavier impact of some taxes on poor families may be offset by the effects of government programs that benefit poor families proportionately more than higher income families; also, state taxation is being isolated from federal taxation even though the two are closely interrelated. For example, because state income taxes are deductible in computing federal income taxes, a rise in state income tax rates will be borne by the federal government, as well as by the state's citizens. Another implication to remember in viewing the state tax structure alone is that any tendency of the state's sales tax to fall disproportionately on poor families might be offset not only by state income taxes and expenditures but also by the

TAXATION in North Carolina

by Charles D. Liner

Table I
Taxes, User Charges, and Fees Used by
State and Local Governments of North Carolina^a

	<i>Taxes</i>	<i>User Charges</i>	<i>Fees</i>
State:	individual income general sales and use selected sales: alcoholic beverages motor fuel soft drinks cigarettes inheritance gift corporate income franchise insurance premium bank excise building and loan business license	parcs and recreation tuition other education charges hospitalization charges	court fees motor vehicle licenses motor vehicle inspection motor vehicle operator license gasoline and oil inspection
Local:	real property personal property intangible property (collected by state) sales and use dog business license ^b realty conveyances motor vehicle marriage license auto license	sewer water garbage electricity water, sewer, and street extension assessments park and recreation charges school lunches recording of documents medical services parking	building, electrical, plumbing, heating, and air conditioning permit zoning permit house moving permit alterations and repair permit advertising sign permit wrecking permit occupancy permit

- a. The listing is not necessarily complete.
b. Too numerous to list individually.

federal income tax and federal programs that benefit the poor.

With these limitations in mind, we can begin evaluating the state tax structure. The tax structure has many different aspects and there are many criteria against which it could be judged. In this analysis we will use the following criteria:

● **Adequacy and responsiveness to growth.** Is the tax structure capable of providing adequate revenues for financing the desired level of public services without unreasonably high tax rates? Is its response to economic growth such that revenues will increase sufficiently without rate increases to meet the increased demands that accompany economic and population growth and urbanization? Since demand for public services tends to increase more than income, do revenues

increase even faster than income with constant tax rates?

● **Equity.** Are people taxed equally according to their ability to pay? That is, do people in similar circumstances pay the same amount of taxes, and are differences in amounts of taxes paid by people in different circumstances determined equitably according to those differences? For example, according to this criterion large families should not be taxed the same as small families of equal income and similar circumstances. Nor should poor families pay the same taxes as wealthier families of the same size and circumstances.

● **Neutrality.** According to this criterion, taxation should interfere as little as possible in the private economy unless there are specific reasons why the government wants

to interfere. Taxation should not interfere with citizens' decisions about which goods and services to purchase unless a good or service is taxed specifically for the purpose of affecting its consumption. Similarly, taxes should not interfere in the decisions of private firms except when the purpose is to affect private decisions, as, for example, when a tax is imposed to curb water and air pollution by firms.

● **Efficiency.** Administrative costs of collecting taxes should be small, and the taxpayer's burden of record-keeping and reporting should not be excessive.

The North Carolina Tax Structure

(See the summary of North
Carolina taxes on pages 20-23)

Before examining the North Carolina tax structure according to these criteria, let us examine its composition and compare it with that of other states. Figure 1 shows the composition of tax revenues for the fiscal years 1949-50, 1959-60, and 1969-70 by type of tax. As this discussion later notes, changes in the composition of revenues over this period were due to a combination of tax rate changes, enactment of new taxes, and the automatic growth of revenues that accompanied economic growth. In the fiscal year 1969-70 over 70 per cent of tax revenues came from four taxes—individual income, sales and use,³ motor fuel, and general property. The general property tax, the mainstay of local finance, was the largest single revenue source, representing 24.7 per cent of total tax revenue. Tangible personal property accounted for about a third of general property tax revenue and real property accounted for the rest. The second largest tax was the individual income tax, which at 17.2 per cent had more

3. The use tax, which complements the sales tax, is levied when goods and services are purchased in other states and brought to North Carolina for use. Hereafter both taxes are referred to together as the general sales tax or simply the sales tax.

Figure 1
COMPOSITION OF TAX AND FEE REVENUES
OF STATE AND LOCAL GOVERNMENTS IN NORTH CAROLINA,
FISCAL YEARS 1949-50, 1959-60, 1969-70

	FISCAL YEAR 1949-50			FISCAL YEAR 1959-60			FISCAL YEAR 1969-70		
INDIVIDUAL INCOME TAX	8.6%	8.6%	INDIVIDUAL INCOME	12.2%	12.2%	INDIVIDUAL INCOME	17.2%	17.2%	INDIVIDUAL INCOME
BUSINESS TAXES	18.9%	10.3%	CORPORATE INCOME	18.3%	8.2%	CORPORATE INCOME	15.4%	6.9%	CORPORATE INCOME
		4.4%	FRANCHISE		4.7%	FRANCHISE		4.3%	FRANCHISE
		2.4%	STATE & LOCAL LICENSE		1.7%	STATE & LOCAL LICENSE		0.9%	STATE & LOCAL LICENSE
		1.8%	MISCELLANEOUS ¹		3.7%	MISCELLANEOUS ¹		3.3%	MISCELLANEOUS ¹
CONSUMER TAXES	44.0%	14.5%	SALES & USE	40.2%	14.8%	SALES & USE	41.0%	17.4%	SALES & USE
		18.3%	MOTOR FUEL		16.7%	MOTOR FUEL		13.5%	MOTOR FUEL
		3.0%	BEVERAGE		2.8%	BEVERAGE		3.5%	BEVERAGE, SOFT DRINK & CIGARETTE
		8.2%	MISCELLANEOUS ²		5.9%	MISCELLANEOUS ²		6.6%	MISCELLANEOUS ²
		1.2%	INTANGIBLE		1.7%	INTANGIBLE		1.4%	INTANGIBLE
PROPERTY TAXES	28.0%	26.8%	GENERAL PROPERTY	28.7%	27.0%	GENERAL PROPERTY	26.1%	24.7%	GENERAL PROPERTY

1. Insurance taxes; bank, building and loan taxes (after 1957-58); miscellaneous business taxes; miscellaneous highway taxes and fees, and estimated truck motor vehicle license fees.

2. Miscellaneous local taxes, inheritance and gift taxes, highway fund taxes and fees, and estimated automobile motor vehicle license fees.

NOTES

Individual income tax includes penalties and interest. Due to adoption of the income tax withholding system effective January 1, 1960, collections in fiscal year 1959-60 included \$20,445,367 more than would have been collected in the absence of the withholding system. To avoid distortion in the comparisons, this amount is not included in the figure above.

Corporate income tax includes collections from domestic and foreign corporations.

For 1959-60 and 1969-70 the sales and use taxes shown above are gross collections less refunds to carriers in interstate commerce, nonprofit churches and hospitals, cities and counties, and the United States Government. Net collections for 1949-50 are not available, but returns that year were apparently very small since refunds as a percentage of gross collections were 0.2 per cent in 1959-60. Sales and use taxes for 1969-70 include local-option 1 per cent collections.

Motor fuel taxes paid by business firms are included in the amount shown. The motor fuel tax rate was increased from 7 cents to 9 cents per gallon on July 1, 1969.

Cigarette and soft drink taxes became effective October 1, 1969.

General property taxes include levies of county, municipal, and local governments.

Percentages may not add up to 100 per cent because of rounding.

than doubled its share of total tax revenue since 1949-50. The sales tax, yielding 17.4 per cent of the total (up from 14.5 per cent in 1949-50), was the third largest tax. The largest of the so-called business taxes was the corporate income tax, with 6.9 per cent of total revenues (down from 10.3 per cent in 1949-50). The entire group of business taxes, including franchise, license, insurance, bank, building and loan, and miscellaneous other taxes, accounted for 15.4 per cent

of the total. The bank excise tax and the building and loan association taxes, which are collected in lieu of other state and local taxes, accounted for only \$5.2 million or only 0.3 per cent of the total. Other taxes combined accounted for less than 10 per cent of the total.

How does this structure compare with the tax structures of other states? In recent years those of other states have changed significantly. New taxes have been enacted, and tax rates have been in-

creased to meet the greatly increased demands for government services that have accompanied economic and population growth and urbanization. As Table II shows, many states enacted income and sales taxes during the 1930s to relieve local governments suffering from the depression. A few states enacted income and sales taxes during the 1940s and 1950s, but between 1960 and 1972 twenty-eight states enacted either the income tax or the general sales tax.

Table II does not indicate the full force of the states' drive for increased revenues, but as Table III shows, nearly all states increased rates on existing or new taxes, and many states raised tax rates several times on single taxes during the period 1959-1970.

North Carolina was largely spared this scramble for revenues because its tax structure had included all major types of taxes since 1933, when the general sales tax was added to the individual and corporate income taxes and the motor fuel tax, all of which had been enacted in 1921. As we will see, having both the income tax and the general sales tax made tax revenues very responsive to economic growth and the increased demand for public services that has accompanied this economic growth and the post-war growth and urbanization of population. In the 1960s North Carolina began to change its tax structure significantly for the first time since 1933. Relatively minor cigarette and soft-drink taxes were enacted, local governments were permitted to add a local-option 1 per cent sales tax, and the state sales tax was extended to include food and some other items. Except for these relatively minor changes, however, the tax structure today is essentially the same as in the 1930s.

North Carolina's tax structure now differs from that of most other states not so much in the types of taxes it comprises as in the proportions of total revenues from the various taxes. Table IV compares the revenue distribution of state governments of North Carolina and several southern and industrial states in fiscal year 1970-71. Although forty-three states now have the individual income tax, the amount of revenue from this tax is relatively minor in some states, where other taxes account for a larger share of total revenue. For example, of the states shown in Table IV, Florida and Ohio did not have the individual income tax, and Connecticut, New Jersey, Ohio, and Tennessee collected less

Table II
Number of States Enacting Income, General Sales, and Gasoline Taxes by Year, 1900-1971

Tax	Time Period								Number of States Using Tax, 1971
	Before 1900	1900-1910	1911-1920	1921-1930	1931-1940	1941-1950	1951-1960	1961-1971	
Individual Income	0	1	9	6	16	1	0	10	43
Corporate Income	0	1	8	8	15	2	2	8	44
General Sales	0	0	0	0	24	5	6	10	45
Gasoline	0	0	5	43	1	1	0	0	50

Note: Dates of enactment for North Carolina: income taxes, 1921; sales, 1933; gasoline, 1921.

Sources: Table 2, Advisory Commission on Intergovernmental Relations, *State and Local Finances; Significant Features 1967 to 1970* (Washington, D.C.: U.S. Government Printing Office, 1969); Tables 3 and 4, Bureau of the Census, *State Tax Collections in 1971* (Washington, D.C.: U.S. Department of Commerce, 1971).

than 2 per cent of state revenues from this tax. These states relied much more than other states on general and selective sales taxes, while some of the states relied heavily on corporate income and license taxes. Table IV also shows the percentage of state and local tax revenues received from the local property tax. North Caro-

lina's figure of 23.8 per cent is lower than that of most of the southern and other industrial states shown. The lower percentage from the property tax reflects state financing of such services as public education and highway construction and maintenance, services funded by local governments to a greater extent in other states.

Table III
Number of States Increasing Tax Rates and Enacting New State Taxes, Selected Taxes, January 1, 1959, through January 1, 1970

Types of Change	Tax					
	Pers. Income	Corp. Income	Gen. Sales	Gas. Sales	Cig.	Alco. Bev.
New Taxes	10	7	12	0	5 ^a	1
Increased Rates (number of rate increases):						
One	14	15	16 ^b	24 ^c	8	16
Two	8	13	7	15	17	20 ^d
Three	3	2	8	1	10	5
Four	2	0	0	0	9	0
Five	0	0	0	0	1	0
Number of states making one or more rate changes	27	30	31	40	45	41

Notes on North Carolina changes:

- New North Carolina cigarette tax of 2 cents per pack enacted 1969.
- Coverage of the North Carolina sales tax extended in 1961 to include food sold for home consumption, laundry and dry cleaning services, and other items.
- North Carolina motor fuel tax increased from 7 cents to 9 cents per gallon in 1969.
- North Carolina beverage taxes increased 5 cents per bottle in 1965 to finance alcoholic rehabilitation centers. In 1969 the surtax on beer increased from 1 cent to 2½ cents per 12-ounce container and surtax on liquor of 5 cents per five ounces was imposed (in 1970 this surtax was increased to 5 cents per 3½ ounces).

Source: Table 3, Advisory Commission on Intergovernmental Relations, *State and Local Finances; Significant Features, 1967 to 1970* (Washington, D.C.: U.S. Government Printing Office, 1969).

Adequacy and Responsiveness to Growth

To evaluate the adequacy of the tax structure in meeting increased demands for state services, we can examine the growth in expenditures authorized by the North Carolina General Assembly and determine whether these increases were financed with the existing tax structure, with changes in tax rates or tax bases, or by adding new taxes. Table V, which presents operating expenditures by major category for fiscal years 1951-52 and 1961-62 and estimated operating expenditures for fiscal year 1971-72, shows that total operating expenditures have grown steadily and dramatically over the past two decades, increasing over fivefold. In fiscal year 1951-52, 70.8 per cent of operating expenditures were for

public schools and highways. Since then other types of state functions have expanded so that in fiscal year 1971-72 these two functions accounted for only 52.9 per cent of operating expenditures. Expenditures on corrections, social services, higher education, "other education," and health and hospitals have increased significantly. A new community college system has been created, the system of state universities has been greatly expanded, and the state has assumed complete financing of the judiciary system. During the last decade every expenditure category at least doubled in size, and most categories increased by three or four times. In addition to these operating expenditures, state tax revenues supported \$378 million in capital improvement authorizations between 1951 and 1971 (all but 10 per cent authorized after 1960).

Table IV

Distribution of State Tax Revenues by Type of Tax in Fiscal Year 1970-71 and Proportion of State and Local Revenue from Property Taxes, 1969-70; Selected Southern and Industrial States (Percentage of total)

State	Distribution of State Tax Revenue						Local Prop. Taxes as a Proportion of State and Local Tax Rev., 1968-70
	Indiv. Income	General Sales or Gross Receipts	Select. Sales	Corp. Income	Lic.	Other	
All states	19.7%	30.1%	27.4%	6.6%	9.8%	6.4%	38.0%
North Carolina	23.3	22.1	32.8	9.0	9.5	3.3	23.8
<i>Selected Southern states</i>							
Florida	n.a.	45.1	34.6	n.a.	13.3	7.0	32.6
Georgia	18.7	36.5	30.5	8.1	5.4	0.8	30.3
Kentucky	17.5	38.2	27.3	5.3	6.5	5.2	20.2
South Carolina	18.1	35.8	31.7	7.3	5.6	1.5	27.2
Tennessee	1.7	35.8	34.1	8.1	16.8	3.5	27.5
Virginia	30.1	22.1	29.9	6.3	8.2	3.4	27.5
<i>Selected industrial states</i>							
Connecticut	1.3	33.4	36.2	15.9	7.4	5.8	49.2
Illinois	24.7	32.6	26.4	5.0	9.6	1.7	41.2
Massachusetts	38.1	12.8	26.0	13.6	5.6	3.9	50.3
Michigan	18.7	34.6	22.4	6.5	13.0	4.8	38.3
New Jersey	1.3	34.8	32.6	7.5	15.6	8.2	52.5
New York	40.5	18.9	19.9	9.2	5.4	6.1	36.3
Ohio	n.a.	38.1	39.8	n.a.	17.8	4.3	45.6
Pennsylvania	4.4	32.7	28.5	14.0	14.8	5.6	28.9

Source: Bureau of the Census, *State Tax Collections in 1961*, Tables 3 and 4; Bureau of the Census, *Governmental Finances in 1969-70*, Table 17.

The remarkable aspect of these increases is that they have been financed with a tax structure basically unchanged since 1933. The soft-drink and cigarette taxes, enacted in 1969, are relatively minor in terms of total revenues collected and, like the 1969 increase in the motor fuel tax rate from 7 to 9 cents, were effective only after most of the increases shown in Table IV had occurred. The addition of food sales to the sales tax base in 1961 was the only major change affecting total revenues before 1969. The state sales tax rate has remained at 3 per cent, the rate at enactment. Income tax rates have remained constant since the late 1930s, but the effective rates on the individual income tax declined when the allowance for dependents' exemptions increased from \$300 to \$600 in 1968.⁴

Figure 2 shows the estimated contribution to total state tax revenues of legislative changes made since 1961 and compares total tax and nontax revenues with operating expenditures. Except for fiscal years 1961-62 and 1969-70, when the General Assembly changed bases and rates significantly and correspondingly increased operating appropriations, the increased tax revenues attributable to the changes were not required to cover operating expenditures. Although the 1969 tax changes produced 6.9 per cent of 1969-70 tax revenues (over half accounted for by the increased motor fuel tax), without them total tax revenues would have increased about 8.8 per cent. The balance of tax and nontax revenues not used for operating expenditures in the years shown became available to be appropriated for capital improvements in subsequent years.

4. Some other minor changes have occurred. During the 1950s an excise tax was placed on fortified wines and a surtax on alcoholic beverages added. During the 1960s the sales tax rate on new car sales increased from 1 per cent to 1½ per cent, and a new tax of 5 cents per bottle of alcoholic beverages was added in 1965 to finance alcoholic rehabilitation centers. In 1969 the General Assembly, in addition to enacting the soft-drink and cigarette taxes, raised the tax rate on sales of boats, airplanes, and locomotives, increased the surtax on alcoholic beverages, and increased the motor fuel tax from 7 to 9 cents. The rates on the bank excise tax and the building and loan associations excise tax were also increased.

Table V
 Operating Expenditures from the General, Highway, and Agriculture Funds,
 1951-52, 1961-62 and 1971-72, by Function

	Expenditures (\$000)			As Percentage of Total			Percentage Change		
	1951-52	1961-62	1971-72 ^a	1951-52	1961-62	1971-72	1951-52 to 1961-62	1961-62 to 1971-72	1951-52 to 1971-72
Judicial	\$ 746	\$ 1,371	\$25,657	0.3%	0.3%	1.8%	83.7%	1771.4%	3537.0%
General Government	3,681	9,304	31,947	1.4	1.8	2.2	152.8	243.4	767.9
Public Safety and Regulation	6,948	13,678	43,593	2.7	2.6	3.1	96.9	218.7	527.4
Corrections	1,131	8,460	38,901	0.4	1.6	2.7	648.0	359.8	3339.4
Social Services	6,363	12,771	57,793	2.4	2.4	4.0	100.7	352.5	808.3
Education—total	121,338	253,641	668,836	46.4	48.5	46.8	109.0	163.7	451.2
Public schools	109,756	222,562	478,945	42.0	42.6	33.5	102.8	115.2	336.4
Community colleges	0	739	51,167	—	0.1	3.6	—	6826.8	—
Higher education	10,056	26,492	126,512	3.8	5.1	8.9	163.4	377.5	1158.0
Other education	1,526	3,848	12,212	0.6	0.7	0.9	152.2	217.4	700.5
Highways	75,307 ^b	133,524 ^b	276,566 ^b	28.8	25.5	19.4	77.3	107.1	267.2
Health and Hospitals	13,838	31,604	100,184	5.3	6.0	7.0	128.4	217.0	724.0
Resource Development and Preservation	1,592	4,447	13,658	0.6	0.9	1.0	179.4	207.1	757.9
Agriculture	3,300	6,713	18,633	1.3	1.3	1.3	103.4	177.6	564.6
Debt Service	15,575	22,221	46,178	6.0	4.2	3.2	42.7	107.8	196.5
Reserves	1,570	(25)	2,554	0.6	—	0.2	—	—	62.7
Retirement and Social Security Contribution	9,926	25,185	103,390	3.8	4.8	7.2	153.7	310.5	941.6
Total Operating Expenditures	\$261,315	\$522,896	\$1,427,888	100.0%	100.0%	100.0%	100.1%	171.1%	446.4%

^aEstimated

^bIncludes Highway Patrol Education Expenditures

Source: State Budget Division

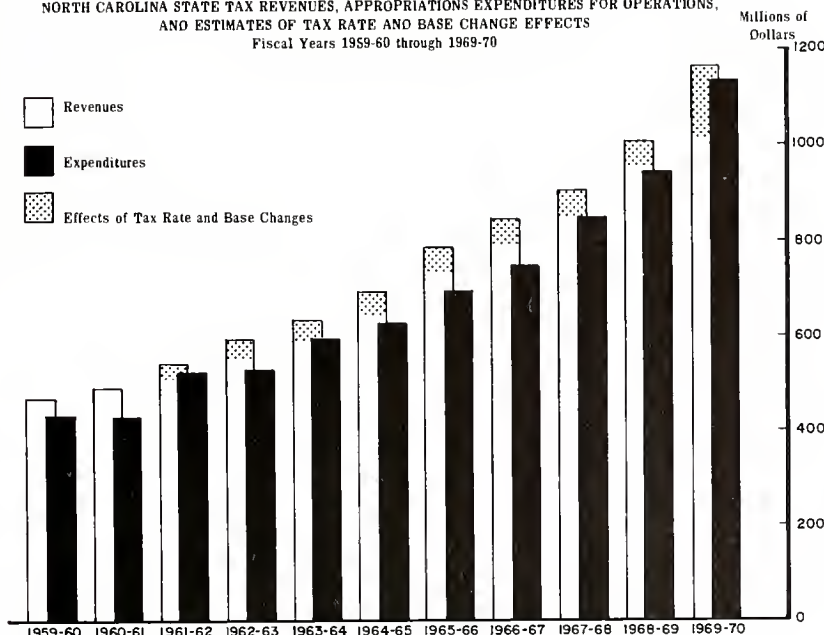
This analysis suggests that the state tax structure has been adequate to permit the state to expand the scope and size of its activities over the past two decades without the large and frequent increases in tax rates that have occurred in

many states. Yet we can also judge the adequacy of the tax structure by comparing the actual tax revenues with the amount of revenue estimates made by the General Assembly. Since the final estimates made by the General Assembly in-

clude revenues from rate changes as well as from existing rates, and since the estimates are used to determine the level of appropriations, we can assume that the estimates represent the General Assembly's decision on the optimum level of total appropriations after weighing all budget requests against the tax increases that additional appropriations would require. Strong evidence of the adequacy of the tax structures to finance the state's needs as assessed by the General Assembly is that except for fiscal years 1953-54 and 1954-55, in which actual General Fund⁵ revenues fell below estimated revenues by \$2 million and \$3.5 million, actual General Fund revenues have exceeded estimated revenues every fiscal year since 1938-39.⁶

We have seen that North Carolina tax revenues have been more

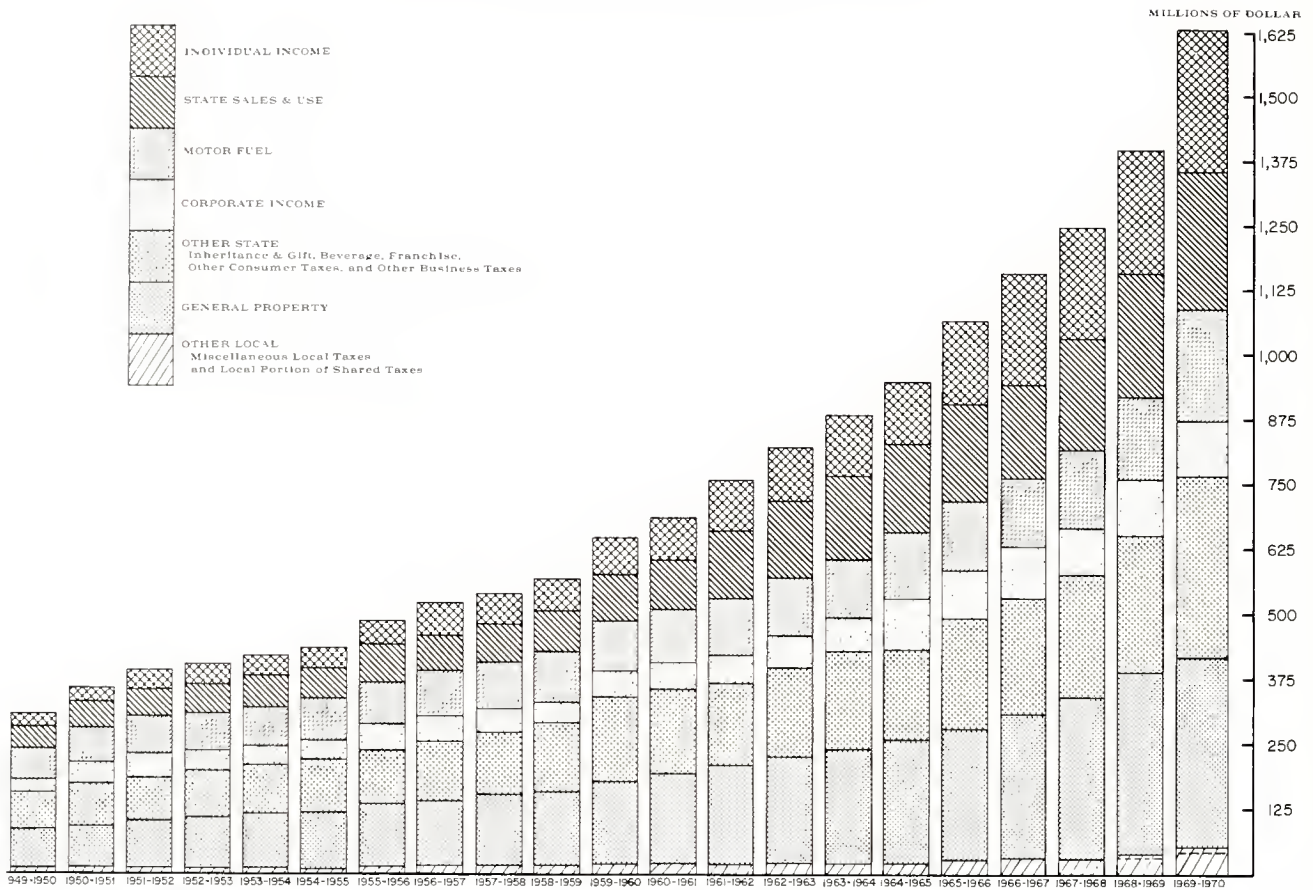
Figure 2
 NORTH CAROLINA STATE TAX REVENUES, APPROPRIATIONS EXPENDITURES FOR OPERATIONS,
 AND ESTIMATES OF TAX RATE AND BASE CHANGE EFFECTS
 Fiscal Years 1959-60 through 1969-70



5. The General Fund includes all state taxes except the motor fuel tax and other highway-related taxes and fees.

6. As a result of both these continuing underestimates and the normal lag of expenditures behind appropriations, the credit balance of the General Fund has remained substantially high; the combined credit balance of the General and Highway Funds reached \$342 million on June 30, 1971—a sum equal to about 25 per cent of appropriations expenditures that year.

Figure 3
NORTH CAROLINA STATE AND LOCAL TAX REVENUE
FISCAL YEARS 1949-50 THROUGH 1969-70



than sufficient to cover the level of appropriations for operations considered desirable by the General Assembly and that the growth in revenues has been due only slightly to legislative changes. To what, then, can we ascribe the large growth in revenues?

Figure 3 demonstrates how large the growth in revenues has been and shows how the various tax revenues have grown over the past two decades. Revenues of all North Carolina state and local governments increased over fivefold between 1950-51 and 1969-70. During the 1950s the growth rate of total revenue averaged 7.2 per cent. Beginning in fiscal year 1959-60 the rate of growth increased, averaging 10 per cent in the ensuing ten years, and the rate was more than 10 per cent in four of the ten years. The rate of growth in fiscal year 1969-70 was 16.2 per

cent, but over half of the increase was due to tax rate increases and new taxes effective that year. In fiscal year 1970-71, which is not shown in Figure 3, the rate of growth was only 6.1 per cent due to the recession that began in 1969.

Figure 1 shows how the composition of total tax revenues has changed over this period. The greatest change has been in individual income tax revenues, which doubled as a proportion of the total between fiscal years 1949-50 and 1969-70 from 8.6 per cent to 17.2 per cent. Sales tax revenues also increased from 14.5 to 17.4 per cent of the total. But all other major taxes decreased relatively: the property tax fell slightly as a proportion of the total; the motor fuel tax fell from 18.3 to 13.5 per cent, and corporate income tax, fell from 10.3 to 6.9 per cent. Revenues from the latter taxes have

of course not fallen absolutely; instead, revenues from the income and sales taxes have grown so much that these other taxes represent a smaller proportion of the total.

Figure 2 shows that tax rate and tax base changes made in the 1960s have accounted for a relatively small percentage of increased total state tax revenues. Figure 4 demonstrates the effects of economic growth. All the variables shown are expressed relative to their values in 1960. Per capita real personal income increased by 55.2 per cent and total real personal income increased by 70.8 per cent by 1969, but both variables declined in 1970. Total retail sales increased by 127 per cent by 1970. Compare these growth rates with growth rates in tax revenues. Property tax revenues increased by 143 per cent, but some of this increase was due to tax rate increases and perhaps

to better appraisals.⁷ The state sales tax increased greatly in 1962, when food sales were added to the base, but its growth has since been proportional to growth in retail sales. Individual income tax revenues increased by 274 per cent, or almost four times the increase in total real personal income. Personal income in current dollars increased 100 per cent during this period.

Figure 4 demonstrates the importance of having both the individual income tax and the general sales tax in the state tax structure. As economic growth occurs, revenues from the sales tax increase proportionately, and revenues from the income tax increase more than proportionately. Thus, as economic growth occurs and as citizens demand more public services, revenues expand automatically to meet the greater demand without the need to increase tax rates. As families' incomes and spending increase, their taxes increase.

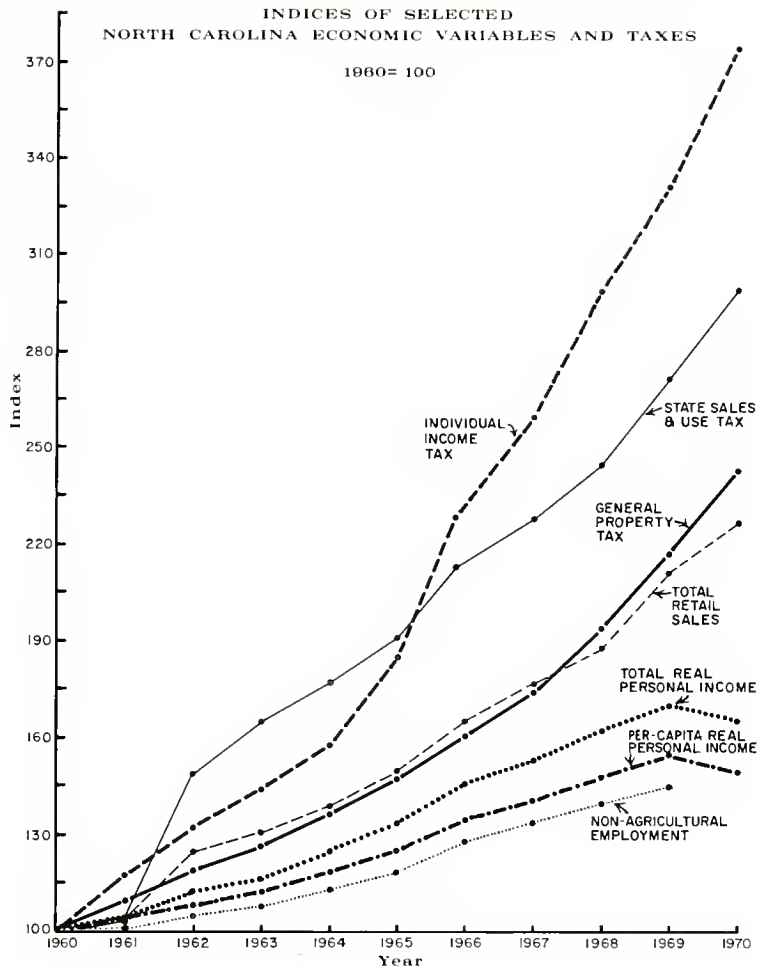
Tax revenues are responsive to inflation because as prices and incomes increase, tax liabilities also increase. At the same time, however, inflation increases the dollar costs of government. The revenue increases shown in Figure 4 were therefore due partly to inflation, and their expenditure did not bring about an increase in services equal to the revenue increase. But since costs of state and local government purchases rose only about 50 per cent during the 1960s,⁸ we can conclude that the higher spending levels largely represented real rather than inflationary increases.

7. A comparison of effective rates in 1964 and 1969 in 51 counties that had adopted an official assessment ratio by 1964 yielded the following distribution of percentage changes:

Percentage Changes in Projected Tax Rates	No. of Counties	% of Total
Negative	9	17.7
Zero	2	3.9
Less than 5%	9	17.7
5% or greater but less than 10%	7	13.7
10% or greater but less than 20%	10	19.6
20% or greater but less than 30%	10	19.6
30% or greater	4	7.8
Total	51	100.0

8. Based on the implicit price deflator for state and local services in the gross national product.

Figure 4
INDICES OF SELECTED
NORTH CAROLINA ECONOMIC VARIABLES AND TAXES
1960=100



Equity

The North Carolina Constitution stipulates that "the power of taxation shall be exercised in a just and equitable manner." Two aspects of equity in taxation are important. First, by nature a tax may be either equitable or inequitable. Second, the manner in which a tax is imposed or in which it is administered may make it inequitable. For example, the property tax is by nature inequitable in that its burden is relatively greater on poor families than on wealthy families. It is also inequitable because assessed valuations are not always uniform, but since this article is concerned with the tax structure, not how taxes are administered, it will deal primarily with the first type of inequity, that associated with the essential nature of each type of tax.

Equity in taxation is a criterion that is subjective and hard to define. Generally the concept used is that persons should be taxed equally according to ability to pay. Although ability to pay is also difficult to define or measure, personal income has come to be regarded as its best indicator. However, personal income is not by itself a satisfactory indicator of ability to pay, for families with equal incomes may vary in size or economic circumstances. Equity in taxation requires that those in identical economic circumstances be taxed equally but those in different circumstances be taxed according to how their circumstances affect ability to pay. Let us examine each of the major taxes used in North Carolina according to this principle.

The Individual Income Tax

Of the taxes used in North Carolina, only the individual income tax sufficiently permits adjustment of tax liability for differences in economic circumstances. Through a system of exemptions, exclusions, deductions, and credits, the individual income tax distinguishes between families not only by income but also by size, age of family members, disability, medical needs, casualty losses, contributions to charity, etc. For example, a small family may have to pay taxes whereas a large family of the same income may not have to pay. Gross income is thus adjusted to account for ability to pay. The individual income tax permits vertical equity in taxation through use of a progressive rate structure. After net taxable income is determined by taking into account exemptions, exclusions, and deductions, the tax rate increases with the amount of net taxable income. In North Carolina the tax rates start at 3 per cent on the first \$2,000 of income and go to 7 per cent as follows:

Net taxable income	Tax Rate
Not over \$2,000	3%
Over \$2,000 but not over \$4,000	4%
Over \$4,000 but not over \$6,000	5%
Over \$6,000 but not over \$10,000	6%
Over \$10,000	7%

This rate structure and the system of exemptions, exclusions, and deductions make the effective rate of taxation much lower than the nominal tax rate, and most families with very low incomes do not pay income taxes. Table VI shows effective rates of personal income taxes calculated according to certain assumptions explained in notes to the table. It shows that the effective rate of the North Carolina tax for a couple with two dependents increases from zero in lower income classes to 4.4 per cent for a similar family with \$25,000 adjusted gross income. By comparison, the effective rate of the federal tax becomes greater than zero at a lower income level and in-

creases to 16.0 per cent for families with \$25,000 income.⁹

In summary, the North Carolina individual income tax appears to meet the ability to pay principle of equity because its burden increases with income and it has a system of exemptions, exclusions, and deductions that permits taxation according to different economic and social characteristics.

The Corporate Income Tax

A flat charge of 6 per cent is levied on net income of corporations. Our principle of equity applies to persons or families, not to corporations, which are persons only in a legal sense. Ultimately the tax burden is borne by persons, but *which* persons bear this burden is hard to establish. It may fall on stockholders, in the form of reduced dividends or stockholders' equity; on employers, in the form of lower earnings or through loss of employment if the tax causes

firms to lower production or to locate in other states; or on consumers, who may have to pay higher prices if corporations are able to increase prices of their products in order to offset the tax. Although the tax probably falls on each of these parties to some extent, the tax apparently falls significantly on stockholders. Since stockholders tend to be wealthier than others, the tax is related to some extent to ability to pay.

The General Sales Tax

The general sales tax rate is 3 per cent on most retail transactions in all North Carolina counties, and another 1 per cent tax is levied in the 75 counties that have so far elected to use it. Whether the tax is regarded as equitable depends somewhat upon the assumptions one makes about who bears its burden. But, whatever these assumptions, the sales tax is probably not so inequitable as is commonly believed, and the inequities that it may produce are ameliorated by

9. Table VI also indicates that combined federal and state income taxes were lower in 1968 than in 1963, and federal income tax rates have fallen even further since 1968.

	\$2,500	\$3,500	\$5,000	\$7,500	\$10,000	\$17,500	\$25,000
North Carolina							
1963	—	—	1.1	2.1	2.9	*	4.6
1968	—	—	.8	1.8	2.6	3.4	4.4
Federal income tax							
1963	—	*	7.2	10.4	12.8	*	19.6
1968 ²	—	2.0	5.2	8.0	10.4	13.2	16.0
*not computed							

Notes: In computing income taxes it was assumed that all income was from wages and salaries earned by one spouse. For the state computations the optional standard deduction was used except for the \$17,500 and \$25,000 income classes for which it was assumed that deductions were itemized. For federal tax computations (other than the \$17,500 and \$25,000 adjusted gross income classes), the following percentages of adjusted gross income were used for estimated deductions: 16% through the \$7,500 adjusted gross income class and 14% for the \$10,000 class. In computing the state tax at the \$17,500 income level, itemized deductions were assumed to be \$2,575. "Effective rates" were computed as the ratio of tax liability to adjusted gross income (i.e., income after business deductions but before personal exemptions and other allowable deductions).

1. Based upon tax liability on income earned during the calendar year 1968 as reflected in State legislation enacted through July 31, 1968.

2. Federal effective rates do not reflect the 10 per cent surcharge effective April 1, 1968.

Source: Table 39, Advisory Commission on Intergovernmental Relations, *State and Local Finances, Significant Features, 1967 to 1970* (Washington, D.C.: U.S. Government Printing Office, 1969).

offsetting features of federal and state income taxes and by the effects of government programs. In addition, certain changes could be made that would eliminate whatever inequities result from the tax.

Since merchants usually quote a price as a basic price plus the sales tax, the sales tax is often thought of as being fully paid by the consumer. This is probably not so. We are not able to determine directly whether the sales tax is passed on to the consumer in the form of higher prices, but economic theory permits the conclusion that the burden would not be passed directly to the consumer in that way. Rather, a general sales tax, applicable to purchases of all goods and services, is similar to a proportional income tax, because its effect is to reduce incomes of all persons who own the resources, including labor, used in producing goods and services.¹⁰

But for the present discussion, let us accept the more common assumption that the entire tax is paid by the consumers in the form of higher prices and evaluate its equity in that light. Even under that assumption the sales tax must be judged rather favorably as a state and local revenue source according to the equity criterion, because (1) its inequitable features are not so important as often believed and (2) they are balanced by other aspects of the national and state fiscal structure.

Table VII, which shows the results of a 1959 study made in twenty-one large cities using the assumption that the sales tax is passed on to the consumer in higher prices, illustrates a widely held conclusion about the equity of the sales tax. It shows that the

10. The explanation of this effect is involved and technical, but in simplest form it is that, under competitive conditions, the tax, by reducing the net price received by firms, causes them to reduce output (in order to equate marginal cost and net price). The resulting unemployment will cause wages and rates of return on capital to fall. For a full discussion of this complex topic, see Rolph and Break, *Public Finance*, chap. 15. Although the North Carolina sales tax is not a completely general sales tax, its coverage is broad, and the widespread use of the tax in this country (forty-five states now use it) makes it applicable to most goods sold at retail.

Table VII
Estimated Retail Sales Tax as a Percentage of Net Income in Twenty-One Large Cities^a

Income Class	Tax as a Percentage of Net Income After Income Tax	
	Food Taxable ^b (tax rate 2%)	Food Exempt ^c (tax rate 3%)
Under \$1,000	2.19%	2.73%
\$1,000-2,000	1.48	1.45
2,000-3,000	1.44	1.26
3,000-4,000	1.41	1.27
4,000-5,000	1.40	1.31
5,000-6,000	1.37	1.35
6,000-7,000	1.26	1.37
7,500-10,000	1.16	1.21
Over 10,000	0.85	1.13

a. Expenditure data are from Wharton School of Finance and Commerce, *Study of Consumer Expenditures, Incomes, and Savings*, 18 vols. (Philadelphia: University of Pennsylvania, 1956).

b. Ten cities.

c. Eleven cities.

Source: David G. Davies, "An Empirical Test of Sales-Tax Regressivity," *The Journal of Political Economy*, February, 1959; presented in Tax Foundation, Inc., *Retail Sales and Individual Income Taxes in State Tax Structures* (New York: Tax Foundation, 1962), Table 13, p. 31.

sales tax represents a larger proportion of the incomes of low income families than of high income families.¹¹ This occurs because low income families spend a greater proportion of their income. But along with these results it is important to note that only families in the lowest income class—those with incomes below \$1,000—had a significantly larger tax burden than other families, and families with incomes between \$2,000 and \$10,000 varied little in the percentage of income paid in sales taxes. In North Carolina in 1969, 57.5 per cent of all families had incomes between \$2,000 and \$10,000; 79.7 per cent had incomes between \$2,000 and \$15,000; only 8.8 per cent had incomes below \$2,000.

11. The study showed, however, that if "corrected disposable receipts"—meaning the sum available for expenditures—is used as the indicator of ability to pay instead of net income, the assumed sales tax burden increases with income when food sales are exempted and increases with income through the \$5,000-6,000 income class when food is not exempted.

Thus, most North Carolina families are in the income range in which the assumed burden of the sales tax is proportional to income.

The inequity associated with the relatively greater assumed burden on low income families and the relatively small assumed burden on high income families is offset in two major ways. First, national and state welfare and employment programs benefit low income families more than higher income families. Second, as Table VI shows, federal and state income taxes are not paid by families in the lowest income brackets, and as income increases, income taxes increase as a percentage of income. Thus, even under the assumption that the sales tax is shifted fully to consumers, the sales tax usually appears to be roughly proportional to family income. The unequal burden on families in the lower and higher income classes is probably more than offset by spending programs and income taxes, and it could be offset directly by enacting a credit to the income tax that would reimburse poor families for their assumed tax payments on food.

The Motor Fuel Tax and Other Selective Sales Taxes

In North Carolina motor fuel sales are taxed at a rate of 9 cents per gallon (1 cent of which goes to local governments for street construction and maintenance), cigarette sales are taxed at 2 cents per pack, and alcoholic beverages and soft-drink sales are taxed according to a rather complicated rate schedule. A characteristic of these commodities, except probably soft drinks, is that if their price increases, people who purchase them do not substantially reduce the amount they buy. When a selective sales tax is imposed on this type of commodity, its price tends to rise. Since people usually continue to buy nearly the same quantity of the taxed commodity, expenditures on the taxed commodity will increase and expenditures on other commodities will decrease. The re-

sult is that users of the taxed commodity suffer a decline in their consumption of all goods and services, and those who own the capital or provide the labor to make or deliver goods and services will suffer a reduction in income. Thus, the effect of a selective sales tax on a commodity whose sales are not significantly reduced by higher prices is somewhat similar to the effects of an income tax: the consumers of these commodities bear an especially heavy burden, which tends to be proportionately heavier for poor people than for rich people, but incomes of many other persons are also reduced. The primary inequity of selective sales taxes arises from the fact that they discriminate against persons who happen to choose to purchase the taxed items, while persons with different preferences suffer much less.

Property Taxes

Property taxes may be inequitable for at least three major reasons: (1) Effective rates are much greater than for other major taxes even though the commodity on which most of the tax falls, housing, is considered essential to family welfare. (2) To some extent real property taxes fall disproportionately on the poor. (3) Due to inherent difficulties in assessing property value, the burden of the real property tax is not uniform among families.

The real property tax, which accounts for about 70 per cent of property tax revenues, is levied on assessed valuation, which is an officially set fraction of market value. To varying degrees, businesses including landlords can shift the burden of the property tax to customers in the form of higher prices, but owners of residential property must bear the burden of the property tax. The result of a property tax is that the cost of owning a home is increased, the return to the owner's investment in his home is reduced, and in the long run fewer and smaller houses will

be built as individuals shift their purchases to other commodities that are taxed less heavily. The latter effect is somewhat offset for owner-occupants by provisions of the federal and state income taxes, but for renters there is no offsetting effect.¹² The effect of the tax on them will be indirect and take place over a longer period of time. The portion of the tax that falls on land cannot be shifted to the renter. The portion of the tax that falls on buildings and improvements likewise cannot be passed on to the renter immediately since the "going rate" will not be increased by the property tax. But since the landlord's return on his investment will have been lowered by the tax, there is a disincentive for him to maintain the property. As a consequence the renter will bear the burden of the tax in the form of lower quality housing. Facing a lower rate of return on rental property, investors will build fewer houses and apartments; and with the supply of housing thus reduced, rents will be bid higher (since owners and investors cannot reduce the supply of land, this process will not occur for that portion of the tax on the land). This process may occur only slowly in stable communities with an adequate stock of housing, but in growing communities the process of shifting property taxes to renters may be relatively short.

It is easy to underestimate how large property taxes can be if only official rather than effective rates of different taxes are compared. The sales tax rate will be either 3 or 4 per cent of the retail price, and as we have seen, the effective rate of the individual income tax will be less than the actual rate due to exemptions, deductions, and the graduated structure of rates. But although the nominal property tax rate may be even less than the sales tax rate, it is assessed on the capital value of property and is, therefore, large relative to the annual costs of

12. See George F. Break, *Agenda for Local Tax Reform* (Berkeley: Institute of Government Studies, 1970), Table 4.

home ownership.¹³ One economist estimated that well over 90 per cent of all property taxes on housing are borne by housing occupants; and on the basis of national income data, he further estimated that property taxes averaged about 19 per cent of the rental value on non-farm housing in the United States in 1965.¹⁴ The burden is much lower in the South than in the North, but in southern metropolitan areas in 1962 property taxes were found to be about 10 per cent of the owner-occupants' annual expenses.¹⁵

The proportion of income devoted to housing is usually larger for low income families than for high income families.¹⁶ Low income families spend proportionately more on housing because it is a necessity that must be met before most other goods are purchased. But another reason is that there is usually an effective floor to the cost of housing that results from minimum housing standards imposed by local housing codes; so that, even the poorest dwellings may be expensive relative to incomes of poor families. Table VIII, which gives estimates of residential property taxes as a percentage of income for renters in different income classes in the United States in 1959-60, shows that the percentage was highest—8.5 per cent—for the poorest families and lowest—1.4 per cent, for the wealthiest families. But, as with the sales tax, the assumed inequity is great only for the lowest income families, and the higher burden on low income families is offset by features of income taxes and government programs. Further remedies are also available in the form of reimbursements or assess-

13. Consider the example of an investor who purchases a rental property for \$10,000 and receives a return before taxes of \$1,000 during the first year. Assuming the property is appraised at \$10,000, if the assessment ratio were 70 per cent and the tax rate one and one-half per cent (\$1.50 per \$100 assessed valuation), the property tax would amount to 10.5 per cent of the return before taxes.

14. Dick Netzer, *Impact of the Property Tax*, Research Report Number 1 (Washington, D.C.: The National Commission on Urban Problems, 1968), p. 22.

15. *Ibid.*, Table 9, p. 23.

16. In many large cities the poor are concentrated in areas with highest property tax rates.

Table VIII

Estimates of Housing Property Taxes as a Percentage of Income by Income Class, All Renters in the United States, 1959-60

Income Class	Housing Property Taxes as a Percentage of Income
Less than \$2,000	8.5%
\$2,000-3,000	3.9
3,000-4,000	3.0
4,000-5,000	2.5
5,000-7,000	2.1
7,000-10,000	1.8
10,000-15,000	1.6
Over \$15,000	1.4

Source: Netzer, *Impact of the Property Tax*, Table 3-8.

ment exemptions to poor or old persons.

The property tax may have an unequal impact also because people in similar economic circumstances may be taxed differently because of the difficulty of appraising property accurately and uniformly. Real property is reappraised only every eight years in North Carolina, which may result in different appraisals for similar property. Data from the 1967 Census of Governments provide some evidence on how uniformly property is being taxed according to market value in North Carolina and whether the tax bill as a proportion of market value is equal within a taxing jurisdiction and among jurisdictions. In 1966 a sample was taken from local property tax rolls of single-family, nonfarm houses sold during July-December 1966 in selected North Carolina counties and in three cities—Charlotte, Greensboro, and Winston-Salem. The assessment value and the actual sales value of each property were then expressed as a ratio, and a coefficient of dispersion from the median assessment ratio was computed. This coefficient expresses the percentage by which the various individual ratios differ, on the average, from the median assessment ratio. In only five of the counties was the average dispersion less than 10 per cent of the median ratio, and in thirteen counties the average dispersion was more than 15 per cent. A similar analysis of

differences among selected North Carolina counties shows that in 1966 the average deviation of the median assessment ratios was 21 per cent of the median assessment ratios of all selected counties. Although this measure of uniformity in assessment was improved over 1961, in 1966 twenty-nine states had greater or equal uniformity.¹⁷

Although a case can be built against the property tax on grounds of inequity, the tax has several advantages that may offset its disadvantages. The property tax is the only major tax that can be effectively administered by local communities. It thus provides a means by which a community can directly choose and finance the level of public services it considers desirable, and it permits an individual to have a relatively direct influence on taxing and spending decisions. Furthermore, the tax has the unique feature that small changes can be made in the tax rate to meet small changes in required revenues. Finally, North Carolina property tax rates are low compared with those in other parts of the country, partly because the state government finances a major part of school, highway, and judiciary costs.

The main issue surrounding the property tax is not whether it should be abolished because of its inequities but whether the tax should continue to bear the major part of the burden of financing the continuously increasing needs of local governments. Future additional fiscal burdens should be relieved by using the more equitable income and sales taxes, preferably through some sharing or collecting arrangement with the state government; but, in the meantime, efforts

17. In Charlotte, as an example of one of three cities in the sample, 25 per cent of the sample houses were appraised at less than 42.6 per cent of their actual sales value, and 25 per cent were appraised at more than 53.0 per cent of their sales value. As a result, effective tax rates varied: 25 per cent of the sampled houses were taxed below 1.3 per cent of actual sales value, and 25 per cent were taxed above the rate of 1.7 per cent of actual sales value. An owner of a house with a market value of \$30,000 would have a 25 per cent chance of being taxed less than \$399 and a 25 per cent chance of being taxed more than \$501.

to improve administration of the tax should continue.

Neutrality

In the United States the basic decision about which goods will be produced and sold, how they will be produced, and who will consume them are made by the millions of consumers and producers working through a market system based on the principles of consumer sovereignty and free competition among producers. Ideally this system would work very efficiently in providing most types of goods and services as long as free competition was enforced and aggregate demand maintained through appropriate monetary and fiscal policies at the federal level. For many goods and services, however, this system does not produce an acceptable solution, and these goods must therefore be provided by governments. For example, the private economy will not produce the optimum amount of national defense, police services, or city streets, because the demands of consumers for these goods and services will not be registered effectively through the market system. Governments are able to command the resources to produce these goods and services through their powers of taxation. Through taxation they reduce the amount of the nation's resources commanded by private consumers and divert these resources to producing public goods and services.

In exercising their power to tax, governments should interfere as little as necessary in the workings of the market system, for interference will possibly either reduce the efficiency of the market system or affect the purchasing decisions of consumers in violation of the principle of consumer sovereignty—although governments sometimes intentionally interfere in the market system and in the choices of consumers, as in taxing firms that cause water pollution in order to reduce the pollution or to pay for cleaning the water, and governments usually

require a minimum amount of education for children, regardless of parental desires.

How well does North Carolina's tax structure meet the criterion of neutrality? Compared with other states, it meets this criterion very well in that a relatively large percentage of total revenues comes from the broad-based income and general sales taxes, which tend to be neutral, and a relatively small percentage comes from the property tax. As we have seen, the property tax and other taxes on single goods and services affect consumer decisions, thus violating the principle of neutrality.¹⁸ Although such provisions of the income tax as deductibility of home-mortgage interest¹⁹ and charitable contributions may affect consumer decisions, generally the income tax is neutral in this respect. Since the sales tax does not cover all sales, it is not completely neutral; but its coverage is broad enough that consumer decisions are probably not greatly affected.

The changes that have been made to the North Carolina tax structure since the 1930s have tended to lessen rather than enhance the neutrality of the tax structure. Rather than increasing the tax rates on the two broad-based, relatively neutral taxes, the individual income tax and the general sales tax, the General Assembly has chosen to increase tax rates on selected sales taxes such as the alcoholic beverage and motor fuel taxes and to add new sales taxes on wine, cigarettes, and soft drinks. In addition, property tax rates have increased in many communities. At the same time, the effective rate of the in-

18. In 1966-67, 16.7 per cent of North Carolina tax revenues came from the individual income tax, compared with the national average of only 9.6 per cent for all state and local governments, and 17.9 per cent came from the general sales tax compared with 16.6 per cent for all state and local governments. Only 26.4 per cent of North Carolina tax revenue in 1966-67 came from the property tax compared with 42.7 per cent for all state and local governments. The percentage from selective sales taxes, 8.6 per cent, was slightly below the national average of 9.0 per cent, but this was before the soft-drink and cigarette taxes were enacted.

19. The deductibility of home-mortgage interest somewhat offsets the tendency of the property tax to reduce housing consumption.

dividual income tax has been lowered. The 1 per cent local-option sales tax was, however, an exception to this tendency.

Administrative Efficiency

There are two aspects to the criterion of administrative efficiency: (1) Costs of collection should be small in relation to revenues collected. (2) Costs to individuals and firms for record-keeping and filing of reports and returns should be low.

North Carolina's tax structure tests out well according to the first aspect of this criterion. The state government collects the major portion of its total revenue from a few major taxes with administrative costs that are small relative to collections—income, sales, and motor fuel taxes. The major exception to this judgment is that the real property tax requires administrative machinery in each taxing jurisdiction, and most jurisdictions are not big enough to realize economies associated with large-scale operations. But the fact that each community is able to administer the property tax is a strong point in its favor. Furthermore, as Figure 1 shows, as time progresses the proportion of total revenues from the individual income and general sales taxes is becoming relatively larger and the proportion from the property tax relatively smaller. In this sense the tax structure is becoming more efficient.

Except for the individual income tax, the time and effort involved in paying taxes are relatively low. Sales taxes are included in the retail price, and property taxes are often paid with monthly mortgage payments. The individual income tax often requires careful record-keeping and, for most people, a time-consuming annual chore of filing a return. Since essentially the same process must be undertaken to file the federal income tax return, however, the state income tax may not represent a large extra burden on the individual. The corporate in-

come tax requires little effort by firms, and the effort by firms in remitting the general sales and excise taxes is probably not excessive.

Summary and Conclusion

In this article we have examined how well the North Carolina tax structure meets four criteria of desirability—adequacy and responsiveness to growth, equity, neutrality in the operation of the economy, and administrative efficiency. Since the article has necessarily been limited in its scope and could discuss only the major features of the tax structure, the failure to examine all taxes or all features of the major taxes does not imply that the state's tax structure meets these criteria in every respect. Over-all, however, and in its basic features, it appears to measure up very well according to the criteria.

This conclusion rests largely on the basis of a state income tax whose provisions and rate structure provide equity among families, great responsiveness to the state's economic growth and increased needs for government services, a relatively neutral impact on the economy, and efficient collection of revenues. To a great extent it accounts for the large increases in total revenues that have occurred continuously since the early 1930s with only relatively minor tax rate increases. That its burden increases as income increases helps to offset the tendency of other taxes to burden the poor more than the rich.

The sales tax—having a relatively broad base, low rates, and the feature by which local governments can collect sales tax revenue using the state's administrative machinery—further contributes to the favorable judgment.²⁰ Even if we assume that the sales tax is fully passed on to consumers in the form of higher taxes, the effect is to burden most taxpayers in rough pro-

20. The sales tax rates very high according to a criterion not discussed in this article, stability of revenues. Since the level of consumption spending is relatively stable, revenues from the tax tend to be more stable. The sales tax rates higher than the income tax according to this criterion.

portion to their incomes. The remaining inequities can be offset by such other features of the national fiscal system as federal and state income taxes and programs that benefit the poor. These inequities can be further offset by adoption of an income tax credit for required minimum food costs.

Although we have developed a case against the property tax on the basis of its inequities among families and its effects on consumers' decisions, the entire North Carolina tax structure must be judged favorably against tax structures in most other states because of the relatively small reliance on this tax and because school financing is not so closely tied to the property tax as in other states. Also, the property tax, since it can be controlled and administered by local governments, ties local expenditure decisions closely to the people who must pay the tax, and it provides flexibility to local government budgeting.

The main disadvantage associated with the property tax is that under North Carolina's fiscal structure a large part of the burden of increased demands for government services falls on local governments, which must meet these demands largely from increased property tax rates. Although the local-option sales tax enacted in 1969 permits local governments to relieve the burden on the property tax and realize greater annual growth in revenues, the national and state governments have the taxes that are most responsive to economic growth, the income and sales taxes, and use of most other possible sources of revenue by local governments is precluded by their use by national and state governments, by the meagerness of possible revenues relative to needs for revenues, or by their inherent disadvantages.

If demands on local governments continue to increase relative to demands on the state and national

governments, it would be preferable to adopt one or more of three alternative policies rather than continue to increase the burden on the property tax. First, the national and state governments could assume some present responsibilities of local governments. There are strong arguments, for example, for having the national government take over all welfare responsibilities and for the state government to take over a greater share of school financing. Second, the state government could assist local governments in collecting an optional income tax similar to the local-option sales tax. Third, the federal and state governments could share their revenues with local governments. Congress has just passed enabling legislation toward federal revenue sharing. The same logic that calls for sharing national revenues makes this third alternative a logical one for states like North Carolina that also have highly responsive tax structures. Revenue-sharing is opposed both by some persons on the ground that it divorces decisions on spending revenues from those who pay and by those who distrust the competence of state and local governments to make sound and honest use of the revenues. On the other hand, it can be argued just as logically that if it is local services that must be financed or local problems that must be solved, local officials are better able to make decisions than are state or national officials. Furthermore, unlike the present policy of using federal grants to finance particular local services, shared revenues with few or no strings attached become substitutes for local revenues; if local officials waste shared revenues, they must explain their actions to local citizens who will have to pay higher property or other taxes to make up for the wasted revenues.

Ideally a state's revenue structure should be so responsive to growth that tax rates should have to be increased only when major

new spending programs are adopted. We have seen that the automatic increases in state tax revenues that accompanied North Carolina's economic growth have been large enough not only to finance large growth in existing programs but also to finance new programs even without the relatively minor rate increases that have occurred. Indeed, the tax structure would have permitted even more new programs—an expanded kindergarten program, for example—if the state had taken greater advantage of its excellent credit ratings by issuing bonds rather than using current revenues to pay for capital improvements. New programs usually require new buildings and equipment immediately, but these usually last for many years. Rather than paying for new buildings from tax revenues collected when the program begins, they can be paid for over the life of the buildings by people who are using them. The current revenues thus freed can then be used to finance expanded programs to meet current rather than future needs. Instead of making full use of its tax revenues to finance current programs, the North Carolina General Assembly chose to use over \$378 million dollars in current tax receipts between the 1959-61 and 1969-71 biennia for capital improvements other than highways. Only \$189 million in bond issues was approved during this period. As a result of this policy, debt service payments will have fallen from 4.2 per cent to 3.2 per cent of operating expenditures between fiscal year 1961-62 and the end of fiscal year 1971-72. Thus, when the capital financing policy followed in North Carolina is taken into account, we must conclude that even greater demands for current services could have been met had the General Assembly chosen a different policy. Any consideration of future changes in the tax structure should include as an alternative a change in capital financing policy.

Summary of Taxes Levied by the State of North Carolina

Prepared by the Tax Research Division, Department of Revenue, State of North Carolina

Income Tax

● *Individual*—A tax is levied on net income of individuals at rates ranging from 3 per cent on the first \$2,000 of taxable income to 7 per cent on taxable income over \$10,000. Net income is found by subtracting personal exemptions and deductions from gross income. A married man and a head of household are entitled to personal exemptions of \$2,000. Heads of households include single persons, widows, widowers, divorced persons, etc. who have no dependents but maintain a household. Other persons are entitled to \$1,000. Personal exemption for each dependent is \$600. Persons aged 65 or over are entitled to an additional \$1,000 exemption, and taxpayers with children in college or technical or vocational schools are granted an additional exemption of \$600 for each such child. Individuals may either take a standard deduction or itemize their deductions. A standard deduction is 10 per cent of adjusted gross income or \$500, whichever is less. Deductions that can be itemized include contributions to charitable organizations, churches, etc.; medical and dental expenses; local property taxes; and expenses incurred in earning income. Employers in North Carolina are required to withhold the income tax from wages and salaries of their employees. A unique feature of the North Carolina income tax law is that a \$1,000 exemption is granted a married woman with a separate income, thereby giving a married couple a combined exemption of \$3,000 if both receive income. Joint returns are not permitted, and wives must file a separate return to claim the \$1,000 exemption.

However, the wife may claim the \$2,000 exemption if her husband agrees and if he files a return claiming only \$1,000 exemption.

● *Corporation*—Corporations pay an income tax on net income at the rate of 6 per cent. To determine the net income taxable, the corporation deducts from its gross income its operating expenses, depreciation on its plant and equipment, contributions to charitable organizations, etc. Corporations that do business in North Carolina and in other states do not pay tax on all of their net income since not all of their income is derived from business done in the state. They use a specified formula to obtain a percentage that is applied to total net income in computing the net income subject to North Carolina income tax.

Sales Tax

North Carolina levies a retail sales tax at the rate of 3 per cent. This tax applies to most purchases of tangible goods by individuals but does not apply to prescription medicines, false teeth, eye glasses, and utility services. Some items are taxable at a rate of 1 per cent. These include (but are not limited to) fuel sold to manufacturing plants, fuel sold to farmers for farm purposes, farm machinery, mill machinery, and machinery used by laundries and dry cleaners. The 3 per cent sales tax applies to rental of hotel rooms and to laundry and dry cleaning services. Sales of motor vehicles, airplanes, boats, locomotives, and railway cars are taxable at a rate of 2 per cent to a maximum of \$120.

The General Assembly of 1971 authorized counties to levy sales and use taxes at the rate of 1 per

cent on transactions subject to the state 3 per cent rate. More than 70 of the state's 100 counties have levied the tax.

Gasoline Tax

North Carolina levies a gasoline tax at the rate of 9 cents per gallon. One cent per gallon of this tax is distributed to municipal governments to aid in street work.

Cigarette Tax

North Carolina levies a cigarette tax at the rate of 2 cents per package of 20.

Soft-Drink Tax

North Carolina levies a soft-drink tax at the rate of 1 cent per bottle, with equivalent rates on syrups used in making fountain drinks and on powders used for making soft drinks.

Franchise Tax

"Business" corporations and public utility corporations pay a franchise tax to the state every year for the privilege of doing business as a corporation in the state. The rate applicable to "business" corporations is \$1.50 per \$1,000 of value of the largest one of the following:

1. Capital stock, surplus, and undivided profits.
2. Assessed value of property in North Carolina.
3. Book value of real and tangible personal property in North Carolina.

As with the corporation income tax, "business" corporations also doing business in other states use a specified formula to find out what amount of the value of capital stock, surplus, and undivided profits is subject to this tax.

Public utility corporations must pay the franchise tax, but different tax bases are used depending upon the type of utility involved. The two most important bases used are gross receipts and property. Electric light and power companies, gas companies, telephone companies, and telegraph companies pay a tax of 6 per cent of their gross receipts. Railroads pay at the rate of $\frac{3}{4}$ of 1 per cent of the assessed value of all tangible and intangible property located in North Carolina. Half of the 6 per cent gross receipts tax on electric, gas, and telephone companies derived from business within municipalities is distributed to municipal governments.

Motor Vehicle License Taxes

Owners of motor vehicles in North Carolina must pay an annual registration license fee on each automobile they own. The fee is \$13, plus \$1 per vehicle for driver education. The fees payable for trucks are higher and depend upon number of axles, load capacity, etc., with different schedules of rates for common carriers, contract haulers, private haulers, and farm trucks.

Beverage Taxes

Beverage taxes are levied on beer, wine, and liquor. Beer and wine taxes are based on volume of container, and wine taxes also depend on alcoholic content. A 12-ounce can or bottle of beer is taxed at 5 cents; other sizes of containers are taxed at equivalent rates. Unfortified wine is taxed at 60 cents per gallon, fortified wine at 70 cents per gallon. There are three separate taxes on liquor: a 12 per cent tax on the retail selling price, a 5 cent tax on each $3\frac{1}{3}$ ounces in each bottle, and a 5-cent tax on each bottle. Approximately one-fourth of the tax on beer and half of the tax on unfortified wine are distributed to county and municipal governments.

Insurance Taxes

Insurance companies pay a tax on gross premiums every year at rates ranging from $\frac{1}{3}$ of 1 per cent

up to 4 per cent. The tax rate varies depending upon the type of insurance and the type of company involved. Domestic insurance companies (companies organized under North Carolina law and located in this state) pay lower rates than foreign insurance companies (companies organized under laws of other states and located in other states but doing business in North Carolina).

The gross premiums tax on insurance companies is levied in lieu of the state income tax and the tax on intangible personal property. (This type of property includes such things as stock, bonds, and money.) Domestic life insurance companies pay at a rate of $2\frac{1}{2}$ per cent. Other domestic companies pay 1 per cent except on premiums for workman's compensation insurance, which are taxed at 1.6 per cent. Foreign companies pay $2\frac{1}{2}$ per cent except on premiums for workman's compensation insurance, which are taxed at 4 per cent. All companies pay an additional 1 per cent on premiums from fire and lightning insurance.

Bank Excise Tax

Banks and banking associations pay an annual bank excise tax for the privilege of doing business in North Carolina. The tax is levied on net income at the rate of 6 per cent. This tax is in lieu of the intangible personal property tax, franchise tax, state income tax, and local (city and county) taxes on tangible personal property (furniture, fixtures, office equipment, etc.). The bank excise tax applies to both state and national banks.

Building and Loan Association Taxes

Building and loan associations and savings and loan associations pay annually an excise tax and a share tax. The excise tax is levied on net income at the rate of $7\frac{1}{2}$ per cent. The share tax is $7\frac{1}{2}$ cents per \$100 of shares outstanding. These two taxes are levied in lieu of all other state and local

taxes except local property taxes, the sales tax, and the intangible property tax on (1) bank deposits, (2) cash, (3) beneficial interest in foreign trusts, and (4) funds on deposit with insurance companies.

Inheritance and Gift Taxes

An inheritance tax is applicable to transfers of property of persons who are residents of North Carolina when they die. Exemptions are granted for heirs depending on their relationship to the deceased person. For example, widows are entitled to \$10,000; minor children \$5,000. The rates of the inheritance tax range from 1 per cent up to 17 per cent. The lowest rate applies to the first taxable \$10,000 left to the spouse, children, or grandchildren of the decedent, and the highest rate, 17 per cent, applies to taxable shares of an estate in excess of \$2,500,000 left to a person not related to the deceased or only very distantly. Property left to certain institutions, such as churches and public libraries, is not subject to the inheritance tax.

The gift tax has a rate schedule similar to that of the inheritance tax, but gifts of \$3,000 per year or less to any person are not taxable. A person has an additional lifetime exemption of \$25,000 for gifts made to his spouse or to his children or grandchildren.

License Taxes

Various business license taxes are levied on persons, firms, or corporations engaging in certain businesses or professions. For example, attorneys, physicians, and dentists pay a \$25 license fee per year. Automobile dealers, service stations, barber shops, beauty parlors, restaurants, laundries, undertakers, and many others pay annual licenses that may range from less than \$10 a year to more than \$500 a year. Many license taxes vary according to the population of the town where the business is located.

Intangible Personal Property Taxes

Shares of stock, bonds, notes, accounts receivable and certain other classes of intangible property

are taxed by the state, but most of the revenue from the tax is distributed to the local governments. The counties, municipalities, and special districts are prohibited from taxing this type of property. The state retains from the collections an amount sufficient to cover its cost of administering the tax plus an amount equal to the bank deposit tax credits allowed to corporate taxpayers against the corporation franchise tax. The tax rates are different for the various types of intangible property. Bank deposits are taxed at 10 cents per \$100. The excess of accounts receivable over accounts payable notes, bonds, and other evidences of debt, shares of stock, and money on hand are taxed at 25 cents per \$100. The portion of the market value of shares of stock attributable to business in North Carolina is excluded from the tax base. The

tax on bank deposits is deducted from depositors' accounts by the banks and remitted to the states. If the tax that is payable in all types of intangible property other than money on deposit does not exceed \$5, an intangible property tax return need not be filed.

Excise Stamp Tax

Conveyances of real property are subject to an excise stamp tax of \$.50 on each \$500 or fractional part thereof of the consideration or value of the interest on property conveyed. The tax is paid by the transferor to the county in which the property is situated. Proceeds of the tax go to the county general fund. The stamps are furnished to the counties by the Commissioner of Revenue for a reasonable charge to cover the cost of printing and handling. (Some conveyances are excluded from this tax, e.g., transfers by will and gifts).

Property Tax

The principal source of revenue for county and municipal governments is the tax on real and tangible personal property. These two classes of property are assessed by county assessors who, on the average, assess such property at about 45 per cent of its current value. The average tax rate levied on a county-wide basis is \$1.36 per \$100 of assessed value. The average combined rate (county, district and city) on property located within municipalities is \$2.99.

Licenses

Counties and municipalities levy privilege license taxes on many occupations and businesses. In general, the tax rates are low, but there is a wide variety of bases as well as subjects of license taxation. These are too numerous for listing and too varied for generalization.

the 1972 General Election

CONSTITUTIONAL PROPOSITIONS AND VOTING PROCEDURES

by H. Rutherford Turnbull, III

The 1972 general election to be held Tuesday, November 7, hardly needs to be called to the voters' attention. On the federal level, it brings the presidential election. On the state level, it involves balloting for United States senator and representatives, Governor, members of the Council of State, and members of the General Assembly. On the local level, it will settle for two years the important but frequently overlooked issue of membership on county boards of commissioners. On the state level it also offers voters no less than five propositions for amending the North Carolina Constitution. A brief statement of the proposed amendments and an abbreviated description of the voting process follow.

PROPOSED CONSTITUTIONAL AMENDMENTS

The five proposed constitutional amendments (not necessarily in the order in which they will appear on the ballot) are:

1. Constitutional amendment (Art. VI) to allow 18-year-olds to vote but restrict elective officeholding to persons 21 years old or older.

2. Constitutional amendment (Art. IV) to require the General Assembly to prescribe maximum age limits for service as justices and judges.

3. Constitutional amendment (Art. IV) to empower the General Assembly to prescribe procedures for the censure and removal of justices and judges.

4. Constitutional amendment (Art. VII) to limit the authority of the General Assembly with regard to the incorporation of cities and towns within close proximity of existing municipalities.

5. Constitutional amendment (Art. XIV) to add a statement of policy regarding the conservation and protection of natural resources.

OFFICEHOLDING AND 18-YEAR-OLDS

On November 3, 1970, the Constitution of North Carolina was amended to become effective July 1, 1971.

One amendment made technical or stylistic changes in the language of Article VI dealing with elections. As amended, it provided that voters must be 21 years of age (Art. VI, § 1) and that, generally, every qualified voter shall be eligible for election by the people to office (Art. VI, § 6). The effect of these provisions is to require voters and officeholders to be 21 years old, subject to the exceptions explained below. However, a recent amendment to the Constitution of the United States has affected these provisions.

On July 5, 1971, the United States Administrator of General Services certified that the Twenty-Sixth Amendment to the United States Constitution had been ratified by the legislatures of at least three-fourths of the states and had become effective. This amendment lowered the minimum voting age in all elections to 18 and made ineffective the portion of the North Carolina Constitution that fixes the voting age at 21.

The State Constitution provides, in general, that any qualified voter is entitled to hold any elective office. The offices of Governor, Lieutenant Governor, and state senator are exceptions to this principle. To be Governor or Lieutenant Governor, one must be 30 years old; to be a state senator, 25. Thus, except as noted, ratifi-

cation of the Twenty-Sixth Amendment opened to registered voters between the ages of 18 and 21 the right to hold office in North Carolina.

On the opening day of the 1971 legislative session, a bill [Ch. 201 (H 2), as amended by Ch. 1141 (H 1495)] was introduced that proposed a referendum to decide whether the North Carolina Constitution should be amended to lower the voting age to 18 but restrict elective officeholding to persons 21 years old or older. Since the eligibility of 18-year-olds to vote was determined by the Twenty-Sixth Amendment, the live issue of the 1972 referendum will be whether to take the right to *hold office* from registered voters between the ages of 18 and 21.

The language in which this ballot states the issue was adopted before the Twenty-Sixth Amendment was ratified. It is therefore somewhat confusing:

- FOR State constitutional amendment reducing the voting age to 18 years and providing that only persons 21 years of age or older shall be eligible for elective office.
- AGAINST State constitutional amendment reducing the voting age to 18 years and providing that only persons 21 years of age or older shall be eligible for elective office.

Adoption of the "For" proposition would deny 18-year-old voters their present eligibility to hold most state and all local offices. Adoption of the "Against" proposition would mean that an 18-year-old would continue to be eligible to hold most state and all local offices. Therefore, if a voter wants to restrict officeholding to those at least 21 years old, he should mark the ballot "For." But if he wants to keep the age of officeholding at 18, he should mark the ballot "Against."

[The next two sections—on the proposed amendments prescribing maximum age limit for service as a justice or judge, and establishing censure and removal procedures for judges and justices—were written by C. E. Hinsdale of the Institute of Government. He served as staff to the Courts Commission, where the proposed amendments originated.]

MANDATORY RETIREMENT OF JUDGES

Ch. 451 (S 63), as amended by Ch. 707 (S 805)

North Carolina has no mandatory retirement age for justices of the State Supreme Court, judges of the Court of Appeals, or district court judges. The law in regard to superior court judges provides that, depending on the dates of their birth and last election to office, some judges must retire at age 70 while others may serve beyond their seventy-seventh birthday. A proposed amendment to the State Constitution that will appear on the November ballot would require the General Assembly to prescribe maximum age limits for service as a justice or judge.

Subject to the amendment's adoption, the General Assembly has provided, effective January 1, 1973, man-

datory retirement ages of 72 for all appellate judges and 70 for all superior and district court judges. The handful of judges over these age limits who might be in office on January 1, 1973, would be allowed to complete their terms. No judge now in office would be forced to retire until he had qualified for retirement compensation.

About two-thirds of the states have age ceilings on service as a full-time judge. Most of these states require that a judge retire from full-time service not later than age 70. A few others reach the same result by curtailing retirement benefits for judges who do not voluntarily retire at age 70. These laws merely recognize for the judiciary what has long been accepted in the business world and in public employment generally. Mandatory retirement at age 65—sometimes earlier—is the prevailing rule in industry, and the North Carolina Teachers' and State Employees' Retirement Act requires retirement at the end of the year in which an employee reaches age 65, except only for those few whom the employer, on a year-to-year basis, specifically requests be retained.

The principle of compulsory retirement at a predetermined age has demonstrated its desirability, and it should be extended to the judicial branch of state government. The proposed age limits of 70 and 72 make it reasonably certain that the state will not be deprived of a judge's peak years of productivity, but also guarantee that no person will occupy the important office of judge indefinitely beyond those years.

The work of an appellate judge is physically less demanding than that of a trial judge, which justifies an additional two years of service by an appellate judge before mandatory retirement.

Under present law, judges who remain physically and mentally able may be recalled from time to time for short periods of service as emergency judges. This desirable practice is used occasionally by the appellate courts and more frequently on the superior court level. It gives the state the advantage, on a part-time basis, of the talents of those over-age judges who can still serve usefully. This practice would continue unchanged under the proposed amendment.

REMOVAL OF JUDGES FROM OFFICE

[Ch. 560 (H 86), as amended by Ch. 707 (S 805)]

In North Carolina, Supreme Court justices, Court of Appeals judges, and superior court judges may be removed from office by impeachment by the General Assembly, or if the cause be mental or physical incapacity, by joint resolution of two-thirds of all the members of each house of the General Assembly. District court judges may be removed for misconduct or mental or physical incapacity, after a due process hearing, by a superior court judge. Short of removal, there is no formal means for disciplining any judge, and

the only way to remove a Supreme Court justice, Court of Appeals judge, or superior court judge for misconduct is through impeachment.

Legislative procedures to remove a judge are not effective. Impeachment is cumbersome, expensive, inappropriate for all but the most severe misconduct and is frequently tainted with political partisanship. It has been attempted only a few times in this state—never successfully. The joint resolution procedure has apparently never been used.

While North Carolina has enjoyed a singularly scandal-free judiciary, the potential need for an effective means of disciplining judges or for removing or retiring them for misconduct or disability has increased enormously in recent years. The number of full-time, state-paid judges has increased fourfold since 1955, and news of major scandals involving judges in other states—Florida, Illinois, Louisiana, Massachusetts, Missouri, Michigan, New York, Oklahoma, and Pennsylvania, to name a few—appears all too frequently in the press.

An amendment to the North Carolina Constitution has been proposed that would require the General Assembly to prescribe a procedure, in addition to the ineffective impeachment and joint resolution procedures now on the books, for removing a judge for *mental or physical disability of a permanent nature* and for censuring or removing a judge for *misconduct in office, willful failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute*.

Modern, effective machinery to censure, remove, or retire the unfit or disabled judge has been established in over thirty states in recent years. Most of these states have done so by means of a body generally called a judicial qualifications (standards) commission. This group of judges, lawyers, and laymen investigates complaints against a judge. If the complaints are well founded, they recommend censure, removal, or retirement of the judge to the Supreme Court, which takes final action.

The North Carolina General Assembly has established a Judicial Standards Commission for this state, effective January 1, 1973, subject to approval of the proposed constitutional amendment. The commission would be composed of three judges appointed by the Chief Justice of the State Supreme Court, two practicing attorneys elected by the State Bar Council, and two laymen appointed by the Governor. This commission would receive complaints based on disability or misconduct of the types listed in the proposed constitutional amendment (see above). If preliminary investigation indicated that a complaint had merit, the commission would communicate with the judge. When the allegations, if proved, would merit discipline or removal, the commission would offer the judge a due process hearing. To protect the judge if the charges prove

unfounded, the hearing would be confidential—unless the judge requested otherwise. If the commission recommended censure or removal, the recommendation and record in the Supreme Court would be made public. At any time before Supreme Court action, the judge could resign or, if eligible, request retirement.

The commission would not hear complaints about a judge's rulings in a particular case, since the state's appellate courts have sole authority to correct erroneous decisions or rulings of lower court judges. Experience from other states indicates that meritorious complaints about judges usually involve physical or mental incapacity; intemperate use of alcohol; excessive tardiness or absenteeism; abuse of litigants, counsel, or witnesses; prolonged delays in rendering decisions; substantial or repeated violations of the accepted standards of judicial conduct; or, rarely, commission of a serious crime. While few of these matters, standing alone, would merit impeachment, all are worthy of consideration by a public body authorized to hold the judge accountable.

A number of states with commission plans of the type proposed for North Carolina report that the system has resulted in removal of a few judges and in censure of a few others. A larger number of judges, moreover, have resigned or retired while under investigation. Perhaps most significant of all is the commission's deterrent effect. For the first time in history, these states have provided a practical method for holding judges responsible for the efficient discharge of a public trust.

The Judicial Standards Commission would in no way interfere with the traditional independence of the judge. Case-by-case judgments would not be within the purview of the commission. Any charges concerning professional conduct would be investigated confidentially by a group of three fellow judges; unfavorable action, if any, would be taken only by the Supreme Court. Nor does the commission make the judge a second-class citizen; administrative procedures to consider removal of other public officials from office have been common for decades. And, finally, the commissioner does not "convict" a judge without a jury trial, since the commission procedure is a due process civil proceeding to which the right of trial by jury is not applicable. In short, the commission procedure is nothing more than an inquiry into whether the judge is fit to continue to hold a public trust.

LIMITATIONS ON CREATING NEW CITIES

The fourth proposition—to limit the incorporation of cities and towns [Ch. 857 (H 1181)]—grows out of a variety of concerns about what happens when new cities and towns are incorporated near existing cities and towns. Not only is the normal growth of existing towns stifled, but also local governments proliferate in unnecessary and unhealthful numbers in essentially the same geographic and economic areas. The proposed

amendment prohibits the incorporation of any new city or town within fixed distances of existing towns.

The distances are: within one mile of a city of 5,000 to 9,999 population; three miles of a city of 10,000 to 24,999; four miles of a city of 25,000 to 49,999; and five miles of a city of 50,000 or more. Within the territory defined by these distances, a city may be incorporated *only* upon the vote of three-fifths of the entire membership of each house of the General Assembly.

ENVIRONMENTAL BILL OF RIGHTS

The fifth proposition—to provide for the protection of natural resources [Ch. 630 (S 96)]—is popularly known as the “environmental bill of rights.” The amendment was described in the following terms by John L. Sanders of the Institute of Government in the September 1971 issue of *Popular Government*:

In its final form, the amendment declares a public policy of conserving and protecting the

natural resources of the state, controlling air and water pollution, and preserving as part of the common heritage of the state “its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.” This declaration may serve as a constitutional basis for future state and local action on these subjects. The amendment also creates the “State Nature and Historic Preserve,” which will consist of property acquired by the state and local governments and dedicated to conservation and recreation purposes. The admission of property to the Preserve will require a resolution of acceptance enacted by a vote of three-fifths of the members of both houses of the General Assembly; application of Preserve property to other uses than those for which dedicated or its disposal will require legislative authorization adopted by a three-fifths vote of both houses.

WHO MAY VOTE / THE VOTING PROCESS

WHO MAY VOTE

The eligibility of the vast majority of persons to vote at the General Election will be determined by their age and residence.

If a person is not yet 18 years old by November 7, he may *not* vote on any offices or constitutional issues. Only persons who have become eighteen and have registered by at least twenty-one days (excluding Saturdays and Sundays)—before the election—i.e., by October 9—may vote, with minor exceptions.

The one-year durational residency requirement of the North Carolina Constitution and statutes is no longer applied to persons seeking to register to vote in any North Carolina election if those persons are bona fide residents of the state.

For the November 7 election, any registered voter who has resided in the state for at least 30 days is eligible to vote on all of the constitutional propositions and referenda and for candidates of all federal, state, and local offices.

If a registered voter moves from one precinct in the state to another precinct in the same county or in another county in the state within 30 days of the general election (after October 9, 1972), he may vote in the precinct where he was registered before he moved.

CHALLENGES ON NOVEMBER 7, 1972

Who may be challenged, and why:

On general election day, a voter may be challenged as to his right to vote on account of reasons of

- a. age
- b. residence

- c. criminal record (conviction of felony)
 - d. mental incapacity (insanity, lunacy)
 - e. citizenship
- But he may *not* be challenged on account of
- a. party affiliation
 - b. literacy
 - c. race
 - d. physical incapacity

Who may file a challenge:

- a. any registered voter (“elector”) of the same county as the person being challenged, if the challenge is filed before October 30.
- b. any registered voter (“elector”) of the same precinct as the person being challenged, if the challenge is filed on general election day.

Who receives challenge:

- a. before October 30, the secretary or executive secretary of the county board of elections (a filing with the chairman or the third member of the board probably will be valid).
- b. on general election day, the precinct registrar.

From time to time, persons eligible to file challenges have abused the right by simultaneously filing challenges to many voters. This practice of multiple challenges resulted in the State Elections Board’s adoption of a rule intended to prevent abuse of the right while nevertheless preserving it. Under this rule, “a legal challenge may be made only by an elector (voter of the same precinct) in an individual capacity, and on an individual basis.” This rule has not been interpreted by the State Supreme Court or Attorney General.

The Attorney General, however, has ruled previously that as long as a person exercises the right of challenge in good faith without the intent to impede the election

process, he has the unqualified right to exercise any number of challenges. But it is possible for a person to abuse this right by challenging a great number of persons without cause and with the intent to interfere in the election processes.

Election officials have been advised to follow the rule of the State Board of Elections except in the rare occasion when challenges might be filed against only a limited number of persons, the reasons for the challenges are stated so that the good faith of the challenges can be determined, or when the challenges do not have the effect of impeding the election process.

On general election day, the precinct registrar and judges must hold the challenge hearing before the polls close. If the challenge is overruled, they must let the challenged voter cast his ballot before the polls close. They also must notify the challenged person and may not have the hearing unless he is present. They must administer an oath to the challenged person in which he swears to his qualifications to vote and his identity. They must sustain the challenge if the challenged person does not prove, by the sworn testimony of at least one registered voter of the precinct, his identity and continued residence in the precinct since he was registered. And they must sustain the challenge when facts exist to prove the challenge valid, despite the sworn testimony of a registered voter of the precinct. They must enter the word "challenged" in the registration records beside the name of any voter who has been challenged, enter the word "sworn" if the challenge is overruled and the challenged person votes, and have the voter sign the ballots if he is allowed to vote.

On general election day, a person eligible to make a challenge may file it orally, and he may enter the voting enclosure to do so. If he wants to challenge the ballot of an *absentee voter* or a *new resident voter* casting ballots for the offices of President or Vice President, however, he must file a *written* challenge.

THE VOTING PROCESS

The polls open at all voting places in the state at 6:30 a.m. and close at 7:30 p.m. In precincts where voting machines are used, however, the polls may be kept open until 8:30 p.m. by order to the county board of elections.

One requirement for closing the polls may well cause voter disappointment: At closing time, only those voters waiting *inside the voting enclosure* are permitted to vote. Any voters waiting *outside the voting enclosure*, even though they are at the voting *place*, are *not* permitted to vote.

The voting enclosure is the area (with boundaries not more than 20 nor less than 10 feet from any voting booth or voting machine) where the precinct officials, precinct registration records, ballots, ballot boxes, vot-

ing booths, and voting machines, are located. This voting enclosure is always contained within the voting place (which has boundaries not more than 100 feet from any voting booth or voting machine).

Voters should therefore be at the voting place well before closing time so that they will be inside the voting enclosure at closing time.

The voting process is simple and orderly.

1. The voter enters the voting enclosure and gives his name and address to one of the judges of elections.

2. The judge of elections announces the voter's name and address in a distinct tone of voice.

3. The registrar looks to see whether a voter's name is on the registration records and announces whether he is registered. No registrant is qualified to vote in the general election unless he has applied for registration at least twenty-one days (excluding Saturdays and Sundays) before the election, i.e., by October 9, 1972.

4. If the voter is registered and he is not challenged, a judge of elections gives him one official ballot of each kind.

5. After a voter receives a ballot, he may not leave the voting enclosure until he has finished voting. If he does leave before voting, he is not to be allowed to re-enter to vote.

6. The voter must take the ballots into a voting booth,¹ where he marks them according to the following rules (a voter may not mark his ballots outside a voting booth):

a. The voter designates his choices by marking a cross (X), check, or some other clear indicator in the appropriate square or circle.

b. He should not mark more names for any office than there are positions to be filled by election.

c. He should not affix a sticker to a ballot, mark it with a rubber stamp, attach anything to it, or wrap or fold anything in it. In short, he should do nothing to a ballot other than mark it properly with pen or pencil.

d. The voter should follow the instructions printed on the ballot.

e. "Single-shot" voting now is allowed in all elections in all counties. Single-shot voting occurs when a voter singles out and votes for one, or less than all, of the candidates running for a single office to which several persons will be elected (e.g., several positions on a board of county commissioners).

f. If the voter wishes to vote for all candidates of one political party (a straight ticket), he must either make a cross (X) in the circle printed below the party name at the top of the ballot or make a cross (X) in the voting square at the left of the name of every candidate of that party printed on the ballot. If he makes a cross (X) in one of the party circles at the top of the

1. In precincts with voting machines, the voter enters the curtained voting-machine booth, pulls the curtains together, and pulls down the levers beside the names of the candidates or constitutional propositions of his choice.

ballot and also marks beside the candidates of any party on the ballot, his ballot will still be counted as a straight ticket for all candidates of the party he marked.

g. If the voter wishes to vote for candidates of more than one party (a split ticket), he must not mark in any party circle. Instead, he should simply mark the square opposite the name of each candidate he wishes to vote for.

h. Write-in votes are provided for in the following language: "If a voter desires to vote for a person whose name is not printed on the ballot, he shall write the name of the person for whom he wishes to vote in the space immediately beneath the name of a candidate printed in the section of the ballot assigned to the particular office." The voter need not strike out names printed on the ballot, nor is it necessary that he mark the name he has written in. Write-ins made by someone other than the voter are invalid, except when made by a person authorized to assist a voter.

7. No voter may occupy a booth already occupied by another voter in the act of voting, nor may he occupy a booth more than five minutes if all booths are occupied and voters are waiting to vote. (The five-minute rule seems to apply only where paper ballots, but not voting machines, are used. However, a test of "reasonable" time would probably apply with voting machines also in the absence of a rule or regulation by the State Board of Elections.)

8. After marking his ballot, the voter may either deposit it in the proper box himself or hand it to the registrar or a judge to deposit it for him. Then he should leave the voting enclosure. If a voter decides not to vote a particular ballot, he should hand it back to a precinct official on his way out.

9. Occasionally a person comes to vote and finds that his name does not appear in the registration records. In such a situation, he must satisfy the precinct officials that his name has been left off by mistake or that he has become qualified to vote since the registration records were closed.

10. Although it is unlawful willfully to deface or tear an official ballot, sometimes a voter marks his ballots incorrectly or mutilates or defaces them unintentionally. Such a ballot may not be counted. The voter is entitled to a replacement upon request and surrender of the defaced ballot. But not more than three replacement ballots may be given to a voter.

ASSISTANCE TO VOTERS

Under certain conditions, voters are entitled to receive assistance in reaching the voting booths, or marking ballots, and voting outside the voting enclosure. When he arrives at the voting place, anyone who wants help should ask the registrar for assistance, and say why. Assistance cannot be given unless the voter asks for it.

In general elections, a person allowed to give help to a voter must adhere to these rules laid down in G.S. 163-152(c):

(1) He shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way.

(2) Except when going or in returning from a voting booth with a voter as authorized by [law], he shall remain within the voting place but shall not come within ten feet of the voting enclosure.

(3) Immediately after rendering assistance, he shall vacate the voting booth and withdraw to his place in the voting place outside the voting enclosure.

(4) He shall not accompany the voter from the voting booth to the ballot box unless the voter requires and requests assistance on account of physical disability: if assistance is rendered in this way, he shall not converse with the voter prior to the time he deposits his ballots in the ballot boxes.

(5) He shall not make or keep any memorandum of anything which occurs within the voting booth.

(6) He shall not, directly or indirectly, reveal to any person how, in any particular, the assisted voter marked his ballots, unless he or they are called to testify in a judicial proceeding for a violation of the election laws.

Any voter (blind, disabled, or not) is allowed, upon request to the registrar, to have a "near" relative of his choice go into the voting booth with him and to get whatever help he wants from the relative.² The statute defines a "near" relative as a husband, wife, brother, sister, parent, child, grandparent, or grandchild.

A *physically disabled voter* who obviously cannot go to the booth or mark his ballot, or an aged or disabled person entitled to vote outside the voting enclosure (see paragraph D, below), or an illiterate voter³ may be given help after telling the registrar that he is incapacitated. The help he asks for *must* be requested in the following order of priority:

1. A near relative of the voter's choice.

2. If a near relative is not available, any voter of the precinct who has not aided anyone else at the same general election.

3. If neither of the others is available, the registrar or a judge of election. The Attorney General has ruled that precinct assistants may render assistance under the same circumstances as registrars and judges.

If a *blind voter* has recorded with the precinct registrar or special registration commissioner (where used) a certificate stating that he is entitled to assistance as a blind voter, he may obtain assistance of his own choice from any person (whether or not that person is a resident of the voting precinct). The certificate must be issued by the State Commission for the Blind, an optometrist, or a physician. When he receives the certificate, the registrar or commissioner is required to enter the words "blind voter" on the voter's registration

2. "A voter using a voting machine is entitled to request the same assistance in the actual voting on the machine as the law allows him to have in making a paper ballot." State Board of Elections Voting Machine Rule VII.

3. Although illiterate persons are not eligible to register and vote under the Constitution and statutes of North Carolina, the provision for allowing voter assistance on account of illiteracy has been retained. The reason is that the state literacy test has been suspended in all counties until 1975 under the terms of federal legislation.

record. This entry also entitles the voter to vote in subsequent elections without presenting a certificate. The registrar or commissioner then is required to send the certificate to the chairman of the county board of elections, who must file it as a permanent part of the voter's duplicate registration record.

An *aged or disabled voter* is furnished a different kind of assistance. This law applies to a person who can travel to the voting place but, because of *age or physical disability and physical barriers encountered at the voting place*, is *unable, without physical assistance*, to enter the voting place or enclosure. Note the strict and narrowly drawn restrictions on who qualifies for assistance: (1) The person must be able to travel to the voting place; (2) he must be disabled either because of age or because of *both* his own physical disability *and* physical barriers encountered at the voting place; (3) his age and the physical barriers must make him *unable* to enter either the voting place or the voting enclosure.

He must also (1) tell the registrar that he is disabled, and (2) give an affidavit that he is disabled and qualified for assistance.

If *each* of these conditions is satisfied, the person may vote with assistance *only* at certain times (between 9:00 a.m. and 5:00 p.m.), and *only* in certain places—either in the vehicle that brought him to the voting place or “in the immediate proximity” (an undefined term) of the voting place.

The precinct assistant must deliver the ballots to the voter, who marks the ballots and hands them to the assistant. While marking the ballots, the voter is entitled to the same assistance permitted to persons of his same physical condition inside the voting enclosure.

The precinct registrar and judges are not permitted to leave the voting place to perform the duties assigned by this section. They must be performed by a duly appointed assistant to the registrar.

The affidavit forms must be prepared by the county board of elections and made available to the registrars. Executed affidavits must be retained for six months by the county board.

Marked ballots are turned over to an assistant and must be delivered to a judge; the voter's executed affidavit must be delivered to a different judge.

The law does not state who may perform the assistant's duties if no assistants have been appointed.

If voting machines are used in the precinct, the county board of elections still must furnish paper ballots for people entitled to the assistance just discussed.

MAINTAINING ORDER

• *Activity Prohibited at or near the Voting Place.* On election day no political banner, poster, or placard is permitted in or upon the voting place itself.

The provisions of G.S. 163-147 prohibit loitering and electioneering near the voting place. First, the statute states what may not be done: While the polls

are open, no person or groups of persons may “loiter, congregate, distribute campaign materials or do any electioneering.” The statute also states where the prohibition applies: “within the voting place, or within 50 feet in any direction of the entrance or entrances to the building in which the voting place is located.” If the voting place is located in a large building, however, the registrar and judges may designate what constitutes the entrance to the voting place within the building; fifty feet is measured from this designated entrance. Finally, the statute makes an exception to the general prohibition against electioneering; it allows a candidate to visit the voting *place* in person, but he may not enter the voting *enclosure* except to vote.

• *Access to the Voting Enclosure.* While the polls are open, no one is allowed inside the voting enclosure except:

a. Officers of election, including the precinct registrar, judges, properly appointed assistants to the precinct officials, members of the county board of elections, and members of the State Board of Elections.

b. Voters in the act of voting.

c. A registered voter of the precinct who is making and explaining a challenge on election day.

d. Municipal policemen assigned by city or town authorities to keep the peace at a voting place located within the municipality, but only when requested by the registrar and judges to enter the voting enclosure to prevent disorder. Whenever the registrar and judges request them to withdraw, they must do so and remain at least ten feet from the entrance to the voting enclosure. Other law enforcement officials called upon by precinct officials to keep order also may enter the voting enclosure for that purpose.

e. Official watchers.

f. Persons authorized to assist voters, but only while giving requested aid.

* * *

Other details concerning the act of voting and the conduct of the general election have not been set out here, but they are adequately covered by election laws and can be properly administered by election officials. The point of this discussion has been to inform voters concerning the forthcoming constitutional propositions and the manner of voting — including the important aspects relating to challenges, assistance in voting, and marking ballots.

The author of this article is an Institute faculty member. He also wrote the Institute's publication entitled Primary and General Election Law and Procedure—1972.



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