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Public safety programs vary from city to city and provoke different responses concerning the success of these programs. A look at some of these cities—including three in North Carolina—sheds some light on the pros and cons of PSO programs.

Public Safety Programs: Consolidating Police and Fire Services

Ronald G. Lynch and Vivian Lord

CITIES NEED ADDITIONAL police and fire protection as they grow in size and population. In most communities the growth has brought increasing crime rates, and the larger, more complex buildings of modern cities complicate the problems of providing adequate police and fire protection. Police and fire chiefs request more personnel, greater pay and fringe benefits for their personnel, and improved equipment and support services to satisfy these demands and to provide service in a more professional manner.

At the same time, studies of police services have shown that more than 50 per cent of police calls are directed more toward providing services to individual citizens than toward crime control.[1] For example, police officers often are called to assist the sick or to handle family disputes. Studies of fire departments have shown that firefighters on a 24-hour shift in traditional fire departments spend less than 5 per cent of the time responding to fire calls.[2] They spend some time maintaining equipment and in training, but most of their time on the 24-hour shift has been found to be unproductive.[3]

Faced with these conditions and pressures, public officials are beginning to look at consolidation of police and fire services—a concept commonly called a public safety program—as a way of expanding and upgrading services without expanding costs.

Wherever public safety programs have been introduced, they have aroused controversy. Those who argue against the program contend that one man cannot be adequately trained to perform both police and fire functions and that firefighting suffers because personnel do not train and work as a team on a fire truck. On the other hand, advocates argue that productivity increases in public safety programs and that public safety officers (PSOs) have more challenging careers than those who work only as police officers or firefighters. Advocates also point out that in most communities with public safety programs, there has been a reduction in the magnitude of fires (although they admit that this is partly due to improved building codes, urban renewal, and better fire prevention) and in the time required to respond to individual calls, and that police crime-prevention programs have been more successful in involving citizens in protecting their homes, businesses, and neighborhoods.

Types of public safety programs

Public safety, the concept of consolidated police and fire services, can be implemented in many ways. Usually a recruit is trained as both a police officer and firefighter. He then is assigned to police patrol and undertakes all normal law enforcement duties until a fire alarm sounds. At that point, he responds to the fire call in his patrol vehicle, which is equipped with fire extinguishers, protective clothing, breathing apparatus, and other firefighting equipment. At the scene of the fire he meets the fire truck, which a firefighter or public safety officer has driven from the fire station. Together the PSOs from police patrol and personnel from the fire station extinguish the fire.

This description provides basic information about public safety programs, but masks the many differences among existing programs. Some public safety programs emphasize the police function. For example, fire personnel are assigned to serve as back-up for police—to help them at the scene of an accident or in crowd control at the scene of a major crime. Other public safety programs give primary emphasis to fire protection—police officers assist firefighters during a fire by performing support tasks that are assigned by the firefighters.

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1. Studies by the International Association of Chiefs of Police.

2. Management studies of fire departments in Durham and other cities.

3. *Ibid.*

Update on Public Safety Programs:
Winston-Salem, Durham, and Chapel Hill

AS THIS ISSUE of *Popular Government* was being set in type, new developments have occurred in the public safety programs of the cities reported on in this article. Winston-Salem's public safety program has recently undergone three studies—one by a police department major, the second by a fire captain, and the third by the city manager's office. The police and fire officers' studies concluded that Winston-Salem's public safety program is costly and inefficient. The police major also criticized a citizens group's cost analysis made a year earlier, which said that public safety is a cost-effective way of providing police and fire services to the city. Winston-Salem's police chief commented that the police major's study measured only the costs and not the benefits—e.g., faster response time to fire and police calls—of Winston-Salem's public safety program. The city manager's study this spring found the city's public safety program to be cost effective. The net result of all of these studies, at least to this point, is that Winston-Salem is going ahead with its public safety program. But the board of aldermen's public safety committee will conduct its own evaluation of the program this year, and the city has made some changes in response to recent criticisms of the public safety program and operating and personnel procedures of the police and fire departments. For example, a new "master officer" position has been created in the police and fire departments at a rank just below police sergeant with pay above that of entry-level public safety officers; this innovation will increase promotion opportunities for regular police officers and firefighters.

Durham's public safety program was studied (again) this spring. The new study was done by a public safety captain, who recommended that the city drop the program and return to separate police and fire departments. The city's public safety director strongly criticized the study. Referring to the study as "a narrative of opinion . . . ," he said that the only major problem with the public safety program in Durham has been opposition to it by some senior police and fire officials. Durham's chamber of commerce subsequently looked at the city's public safety program and on May 31 recommended that "the city council support the administration in seeing that all police and fire officials do their utmost to support the public safety program and consider problems of performance and morale." The 1979-80 budget, as approved by the Durham city council, provides for continuation of the program. Most vacancies in police and firefighting positions will continue to be filled by public safety officers, and the city will have a public safety training school this summer for new recruits.

In Chapel Hill, the two issues that have been raised this spring in regard to the city's public safety program are turnover and salaries. According to a June newspaper account, only five of the 16 public safety officers hired when the program began in January 1976 were still in the program. The town also had trouble filling vacant PSO positions. To overcome these problems, Chapel Hill increased the pay of public safety officers by 10 per cent effective July 1, 1979. The town's public safety officers had previously been paid the same as its police officers and firefighters. This pay raise created resentment among some of the regular police officers, and this—plus the division on the board of aldermen about the value of the public safety program—leaves doubt about the program's future in the town. Still, a majority of Chapel Hill board of aldermen support the program, the administration is strongly behind it, and the town has made changes to improve the operation of the public safety program. For example, Chapel Hill is starting its own recruit training program for public safety officers, and it has started to rotate public safety officers into firehouse duty periodically during the year.—*AJF*

There are five types of consolidation:[4]

(1) *Fully consolidated.* A single agency combines police and fire services. Officers are usually identified as public safety officers and perform both police and fire functions. A small number of PSOs remain in the fire station, and the rest perform normal police duties and fire-prevention activities.

(2) *Partial consolidation.* Police and fire departments continue as separate organizations, but a special group of officers (usually called public safety officers) perform both functions. These officers are under the police department's control when they are not engaged in firefighting, but they come under the command of fire supervisors when they respond to a fire call.

(3) *Selected-area consolidation.* Police and fire departments remain separate except for some specially trained PSOs who are assigned combined duties in limited geographical areas of the community, such as a newly annexed area.

(4) *Functional consolidation.* Separate police and fire departments are still retained, but some duties that are normally performed by one agency are assigned to the other. Firefighters who help with the administrative tasks in a police station or police officers who assist firemen by reading gauges or hooking up fire hoses at the scene of a fire are examples of this type.

(5) *Nominal consolidation.* Both police and fire departments retain their individual identity, but they operate under the administrative control of a public safety director.

4. Harry W. More, Jr., *The New Era of Public Safety* (Springfield, Ill.: Charles C. Thomas, 1970).

Public safety in North Carolina

Winston-Salem. The first North Carolina city to consolidate police and fire services in a public safety program was Winston-Salem, which started the program in 1957 when the city annexed an area containing 17,000 people. The board of aldermen felt that the city could not afford to give this new area police and fire protection by using traditional means. After a long and detailed study, the city manager submitted his plan for a fire-police cooperative program for a new Fire Company #8 to serve the annexed area[5] to the aldermen, who approved it.

Fire Company #8 was assigned 14 men—six firefighters, who worked 24-hour shifts, and eight public safety officers, who worked eight-hour shifts. All 14 men, including the public safety officers, operated under the command of the fire department. Four men were assigned to a shift—two firefighters on duty at the station ready to drive the pumper truck and two public safety officers who were assigned to patrol but available for dispatch to a fire. The eight public safety positions were filled by fire department volunteers. Candidates were carefully screened for their enthusiasm for the new program, and the eight firefighters selected were put through a rigorous training program that included 176 hours of law enforcement training, 176 hours of firefighting instruction, one month of on-the-job training in the police department, and another month of on-the-job training in the fire department. The fire captain who was in charge of the new company voluntarily attended the law enforcement training, and three volunteer police patrolmen attended the fire department training. These three would take the place of the public safety officers when the latter were on vacation or were sick.

The public safety officers were given police officer salaries (10 per cent more than firefighter salaries) and were equipped and legally empowered to discharge normal police duties. They worked only in the newly annexed area and were not dispatched for police matters to other areas of the city.

After another large annexation in 1964, which brought 18,500 people into the city, Fire Company #9 was activated with a public safety unit that was trained and operated the same way as Fire Company #8.[6] However, Fire Company #9's public safety unit was assigned a fire-police sergeant's position to coordinate the officers' activities and to serve as liaison with the police department. Still, the unit was attached to the fire department.

Several factors that combined in the late 1960s and early 1970s caused Winston-Salem to expand its public safety program again. First, an annexation occurred in 1968 that raised the city's population to 132,000. The city needed more police officers to combat an increasing crime problem and more fire officers to overcome excessive distances between stations and to compensate for a reduction in the firefighters' workweek from 66 to 56 hours. Adding these new personnel to the police and fire departments would create a financial strain for the city. The city administration realized that the new needs had to be met mainly by better use of existing personnel.

After reviewing alternative plans, one submitted by an assistant city manager and another by an assistant fire chief, Winston-Salem's aldermen adopted a public safety program for the entire city in 1972. Under this plan, the city was divided into districts, with three fire stations in each district and one public safety division that operated from one of the stations in each district. The Winston-Salem public safety program makes use of reduced-strength traditional fire stations that are backed up by public safety officers. Three public safety officers and their sergeant make up a shift for the PSO division in a fire district. The police and fire departments are separate, and the public safety divisions are under the direction of both departments. The public safety officer is accountable to the police watch commander or lieutenant during times of police duty and to the assistant fire chief or the ranking fire official on duty during emergency fire duty.

The PSO's duties are divided into emergency work, police patrol, and prescheduled nonemergency work. His police emergency and patrol duties are basically the same as those of a regular police officer. Because of the PSO's mobility, he can also patrol for fires. In emergency fire work the PSO meets other members of the firefighting team at the scene and then performs as a firefighter.[7] The public safety sergeant supervises the officers' nonemergency work, coordinates all operations of firefighting and police work, and is responsible for operational records. The sergeant also patrols, subject to the requirement that he be free to leave what he is doing and go to a fire.

In January 1978 Winston-Salem's mayor appointed a five-member committee as a result of a growing number of criticisms and concerns regarding the operation of the public safety program in Winston-Salem. The committee members were citizens of Winston-Salem with management backgrounds. On the basis of its own evaluation, the committee concluded that Winston-Salem's public safety program—as approved in February 1972 and with some modification—is the most cost-effective form of fire and police protection for the city, but noted that the current operation of the public safety program was not in accordance with the originally conceived program. The city manager, the fire chief, and police chief assured the committee that they would support and implement modifications as recommended by the committee. These modifications included a management system that would provide administrative control, formulate performance objectives, and assure adequate auditing and reporting of all operations.

Durham. In 1970 Durham's city council faced the need for more police officers because of a growing crime rate. At the same time the city's firefighters were asking that their workweek be reduced from 72 to 56 hours; if granted, this change would have cost $400,000 more a year for additional personnel without improving fire protection. The city council noted that firefighters spent only 2 per cent of

5. Allan Joines, *History and Report of Fire-Police Cooperation in Winston-Salem, N.C. 1957 - 1972* (Winston-Salem: City Report, 1972), p. 1.

6. James Walter, *History and Report of Fire-Police Cooperation in Winston-Salem, N.C.* (Winston-Salem: City Report, 1972).

7. Public Safety Committee, *Public Safety Officer Program Plan* (Winston-Salem: City Report, Feb. 2, 1972), p. 5-6.

their time fighting fires. Even including other fire-related work—such as building inspection, fire hydrant testing, and maintenance of stations and equipment—the council felt that the firefighters were not being used efficiently and that the best solution to its problems was to create a public safety program.[8] The plan that the city council chose in November 1970, after much study and consultation, was one of several that city officials had looked at during that year. It was implemented in two stages.

In stage 1 two PSO companies were trained and put into operation. The first company was activated on May 1, 1971, and the second in September 1971. The public safety officers included new recruits and volunteers

8. Office of the City Manager, *Public Safety Officer Program Plan* (Durham: City Report, 1970), p. 1.

TODAY more than a hundred municipalities throughout the United States have some type of public safety program. Municipalities under 5,000 in population usually have volunteer fire departments, so only communities larger than this, with paid full-time fire departments, begin to consider police-fire consolidation. According to one recent study, cities with public safety programs were of the following sizes: over 250,000, two; 100,000-250,000, four; 50,000-100,000, five; 25,000-50,000, twelve; 10,000-25,000, thirty; and under 10,000, seventy-six.*

No two cities implement the PSO program in exactly the same way. How they do it depends on the conditions and specific factors unique to each community. The cities also have had varying degrees of success with the program, as the following discussion will show.**

Sunnyvale, California (population: 106,000; land area: 22 sq. mi.) is one of the largest cities in the country with a public safety program. Sunnyvale created a completely consolidated Public Safety Department in 1953 when its population was less than 10,000. Public officials decided to consolidate police and fire services when they realized that the volunteer fire department was not meeting the city's needs and the sixteen-man police department unquestionably would grow. The public safety department has three divisions—patrol, fire, and staff services. All personnel within the department are PSOs, including commanders and investigators, and in emergencies they can be transferred to other divisions as needed. Officers are rotated as a matter of course among the divisions every one to three years. Officers in the fire division work 24-hour shifts; other officers work eight-hour shifts.

This Sunnyvale program is successful by most standards. It has met the goals established for the program by the community's leaders, and the department is considered one of the better police-fire agencies in California. Since Sunnyvale implemented the public safety program, it has maintained a low per capita cost for police and fire services and improved the city's fire rating.

Clifton, New Jersey (population: 90,000; land area: 11.7 sq. mi.) operates a public safety program from the fire department. Two-man teams—part of the four-man fire engine company—patrol within their assigned district, thereby keeping the firefighting team intact. The team's function in a police capacity is to back up the regular police officer on calls that require more than one officer. Clifton is an example of a community that elected to use part of its firefighting personnel in public safety patrol to help increase the productivity of the police department.

Flagstaff, Arizona (population: 26,000; land area: 63 sq. mi.) cross-trains volunteers from the police department and the fire department so that they can perform the first-line functions of both departments. All of these police-fire officers are under the supervision of the police department. Two PSOs per car are assigned to each shift. Their primary function is to carry out normal police patrol activities, but when a fire call comes in, they can go immediately to the fire.

El Dorado, Kansas (population: 13,000; land area: approx. 3 sq. mi.) started its public safety program in 1964 by appointing a public safety director as the immediate commander of the police and fire chiefs. All police and fire personnel were called "public safety officers," but the two departments remained separate and the PSOs were actually either police or fire officers. Crossover training then began: Personnel assigned to the police department began helping firefighters combat and prevent fires and firefighters began assisting police in administrative and support functions like supervising prisoners in the jail. In 1975 the department was reorganized

*Harry W. More, Jr., *The New Era of Public Safety* (Springfield, Ill.: Charles C. Thomas, 1970), p. 38.

**Marie Havman, "Public Safety Departments: Combining the Police and Fire Functions," *Management Information Service Report*, 8, no. 7 (Washington: International City Management Association, July 1976).

from the police and fire departments. All received 16 weeks of training without regard to previous experience or training. Police and fire training were alternated daily and weekly to develop a cohesive PSO training program.[9]

9. *Ibid.*, p. 6.

Each public safety company was based at a fire station and had four units—one per shift. A unit consisted of a public safety supervisor and four public safety officers. One of the four PSOs was assigned as the driver-operator of the fire pumper truck and had to stay with the truck at all times. This duty of pump driver was rotated among the four officers. The supervisor and the other three officers police-patroled, continued in-service training, and conducted fire prevention and fire hydrant inspections.

The police and fire departments were reorganized to accommodate the

into police and fire personnel teams under the supervision of a commander. These teams are assigned to a specific geographical area and are responsible for providing all public safety services—both police and fire—to this area.

Glencoe, Illinois (population: 10,000; land area: approx. 4 sq. mi.) is primarily a residential community. It has a partially consolidated public safety department that was initiated at the request of both the police and fire chiefs—the police chief became the public safety director and the fire chief was retitled the assistant public safety director. Department personnel were then crosstrained, and eventually all became PSOs. While on patrol these officers carry firefighting equipment and handle approximately 90 per cent of all police and fire emergency calls. Other public safety officers assigned to back-up services at the different stations maintain the fire equipment in readiness, perform administrative duties, handle communications, and provide other technical services necessary for total support of the public safety program.

Not all communities that have examined the public safety concept throughout the United States have accepted it. North Bayonne, New Jersey, and San Diego, California, conducted feasibility studies on the basis of which both decided *not* to undertake public safety programs.

Other cities have attempted public safety programs and later abandoned them. The experiences of three such cities are summarized here.

Peoria, Illinois (population: 127,000; land area: over 15 sq. mi.) started a public safety program in 1961. Selected police officers were trained to assist firefighters at the scene of a fire, and the number of firefighters was proportionately reduced—creating strong opposition from the remaining fire department personnel. In 1970 the city evaluated the program. It found that, although the program produced large dollar savings in salaries, other operating costs had increased and fire losses had risen at an unacceptable rate. Partly as a result of increasing community dissatisfaction with the public safety program, the mayor and seven of ten council members were defeated at the next election and the city manager resigned. Shortly after that, Peoria's public safety program was phased out and more firefighters were hired.

Lincoln, Nebraska (population: 128,000; land area: 25 sq. mi.) attempted a public safety program in 1957. Firefighters were ordered to ride with police officers and assist them in normal patrol functions. There was no cross-training and there was a significant difference in pay between the firefighters and police officers. The firefighters, who received less pay than the police officers, had agreed to the plan, but they were reluctant to accept the added duties without a pay increase. Lincoln decided to abandon its public safety program only seven months after it began.

St. Petersburg, Florida (population: 216,000; land area: 54 sq. mi.) created a full public safety department in 1971. Public safety officers were stationed at various firehouses and were assigned both police and fire responsibilities. The city decentralized authority and operating control in the department and adopted a team approach to policing or public safety. These changes met with mixed success over the next several years. However, in 1974 the public safety director left and the public safety program was phased out—chiefly because of the lack of control in decentralized operations. (Also, Florida passed a law requiring any municipal employee involved in firefighting to devote 100 per cent of his time to that function, making the public safety program illegal.)

These examples, of both successful and unsuccessful PSO programs, show that the method of implementation, support for the programs, and public safety conditions varied greatly among the cities that tried the programs, and the reasons for either continuing the public safety programs or returning to separate police and fire operations are as varied as the cities themselves. —RGL and VL

public safety companies. At the top, a new position of public safety director was created; this official was put in charge of all police, fire, and public safety functions in the city. The police and fire departments remained separate, but they were organized into uniform service districts. The districts were divided between the central core area of the city and outlying city neighborhoods. The public safety companies were assigned to the outlying districts, and they reported to the police lieutenant in charge of the squads for these districts. During normal street patrol, the public safety officers were under the direct supervision of a police watch commander. However, when dispatched to a fire they came under the supervision of a fire watch commander.

The police department's inside squad units' duties were completely law enforcement oriented—police officers patrolled the central business district and adjacent high-crime areas. Likewise, the fire stations serving these "inside" areas were made up exclusively of firefighters.

In stage II of Durham's PSO program, three new public safety companies were trained and assigned to three different fire stations in the outlying areas of the city. At the same time, firefighters' hours were reduced from 66 to 56 hours per week. (In stage I their hours had been cut from 72 to 66 hours per week.) By May 1973, the second stage was implemented and the public safety companies covered 75 per cent of the city's geographic area.[10]

After 1973 Durham continued to expand its public safety program by filling all vacancies in police patrol and firefighter positions with public safety officers. By 1977 it had eight public safety companies that contained 168 PSOs who patrolled 94 per cent of Durham's geographic area. In the same year the city council established a special public safety review committee to examine police and fire services in Durham and to decide whether to continue the policy of filling vacancies in these services with public safety officers.

The committee's long-range plan for strengthening the public safety program was submitted to the city council[11] in June 1977. Significantly, the plan recommended that the PSO program be studied in depth and that a three-year moratorium be declared while the study was going on. During this time there was to be no further conversion of fire companies to public safety companies and no hiring of new firefighters. However, at the time of this publication, Durham's City Council has decided to hire only public safety officers to fill all police, fire, and public safety vacancies.

Chapel Hill. In the budget process in June 1975, Chapel Hill's board of aldermen faced requests for additional personnel from the fire and police departments. After a summary report by the town manager concerning police-fire consolidation, the board asked for more information about public safety services. In response, the manager proposed a partially consolidated public safety program. His plan was adopted, and it was implemented by January 1, 1976.[12]

Under Chapel Hill's public safety program, 15 new officers were employed. The town has separate police and fire departments, whose personnel exercise either fire-prevention and firefighting duties or law enforcement duties, but not both. The 15 new public safety officers have both police and fire functions.

Chapel Hill's public safety officers received 160 hours of training in policework, 160 hours in firefighting and prevention, and 80 hours in emergency medical techniques. Their time is divided among police patrol, in-service training in both fire and police skills, and station and equipment maintenance. At all times the PSO is available to respond to a fire as an essential member of a fire unit. He patrols under the supervision of a police lieutenant, but when dispatched to a fire, he is under the supervision of the fire department commander on duty.

An important element of Chapel Hill's PSO program is that the public safety officers, police officers, and firefighters all have the same pay scale. All protective service officers, including firefighters, are assigned to a rotating eight-hour shift—a feature that former firemen did not receive well.

Since the program started in Chapel Hill, the operation has remained basically the same, although more public safety officers have been added. The program began with 15 PSOs, which allowed three PSOs per shift. The remaining officers served as substitutes when a PSO was sick or in training. Five more public safety officers were added in 1977, which allowed for two more officers per shift; the three substitutes joined permanent shifts. The 1978-79 budget gave the program four more officers, or six per shift.

In 1977 and 1978 fire department personnel proposed that they be returned to a 24-hour shift. In October 1978, after study and extended deliberation, the board of aldermen decided that the eight-hour shift should remain and that all new recruits to the police and fire departments will be public safety officers.[13]

Common issues: the pros and cons

Clearly, PSO programs have both advantages and disadvantages. The experiences of Winston-Salem, Durham, and Chapel Hill give some insight into the relative merits of these programs.

Disadvantages. Operating under dual supervision has been one of the major problems with which the three North Carolina cities have had to struggle. Jon Kindice, Durham's chief-of-police from 1973 to the summer of 1977, summarized this problem in an interview with a Durham newspaper,

> . . . [H]aving three department heads instead of one has created an administrative nightmare. . . . There are so many grey areas . . . of

10. Office of the City Manager, *A Review of Durham's Public Safety Officers Program After the First Three Years* (Durham: City Report, 1973), p. 6.

11. Office of the City Manager, *A Long Range Plan for Strengthening Durham's Public Safety Officer Program* (Durham: City Report, June 1977), p. 3.

12. Office of the Town Manager, *Manager's Report–Implementation of Modified Public Safety Services* (Chapel Hill: Town Report, July 14, 1975), p. 4.

13. William S. Stewart, *Report of the Mayor's Committee on Public Safety* (Chapel Hill: Town Report, May 1978), p. 2.

authority, of chain of command, and responsibility. . . .

. . .[T]his divided and ambiguous authority is creating inefficiency in decision making and causing internal conflicts. It requires management by personality . . . rather than management by organizational imperatives.

Where does the buck stop? . . . I don't know. It stops in different areas in different places, depending on what the situation is.[14]

Chapel Hill has complete dual supervision—the immediate supervision of the PSO is either a police lieutenant or an assistant fire chief. Winston-Salem and Durham both have immediate public safety supervisors but have dual supervisors at the middle management level. Therefore, the public safety officer in these two cities is accountable to one individual, the same supervisor at a police or fire call, but the public safety supervisor is responsible to divided authority. Therefore, in these two cities the difficulties of establishing clear lines of authority, as Kindice described them, are felt not by the PSO but rather by the PSO supervisor.

Chapel Hill's public safety proposal, submitted to the board of aldermen in July 1975, contained a statement about dual supervision that tended to minimize the inherent problems: "[The public safety officer] wears two hats and is responsible to two authorities—*but only one at any given time.* This would present no problems."[15] It should be noted that his statement was made before the program was implemented.

Opinions about the flexibility of the public safety program in all three cities are mixed. Some administrators consider the public safety program flexible. Kindice, however, saw inflexibility as one of the Durham program's weak points, because every station must always maintain a minimum number of officers. He felt that this limits the ability to pool officers at certain times on special projects like heavy patrolling of high-crime areas.

Another controversial issue of public safety programs is cost effectiveness. Although these three North Carolina cities started their public safety programs to save money in salaries, buildings, and equipment, several critics have said that public safety programs may cost more than having separate fire and police departments. Those who support the cost advantages of having two separate departments point out that regular drivers of fire trucks and firefighters are often paid less than PSOs who perform the same tasks. Moreover, training PSO officers takes much longer and is more expensive than the training of either police officers or firefighters. When the training is wasted because of high turnover among PSO officers or because PSO officers are assigned to regular police or fire duties, this criticism seems valid. (Winston-Salem's PSO program has been criticized for this reason).

Another disadvantage of public safety programs in the opinion of several fire and public safety officers in North Carolina cities with PSO programs is that PSO officers strongly prefer police duty over fire duty. "Some [PSOs] don't care about the fire end of it [their job]. One reason for this apathy is that most promotions come from the police end. The result often is that officers are better firefighters the day they graduate from training school than three years later, after their interest in firefighting has waned."[16] According to a Winston-Salem study in May 1978, several respondents felt that PSOs found police work to be more important than fire work. Nobody preferred fire work.[17]

Some Chapel Hill PSOs said that they had fewer opportunities for promotion than the regular police and fire officers. Since Chapel Hill has no public safety supervisors, a PSO can seek promotion only in the police or fire ranks, where he would no longer be serving in a public safety capacity.

Another problem also occurred in Chapel Hill. In the implementation of Chapel Hill's PSO program, the firefighters were put on eight-hour shifts and their workweek was changed from 2½ to 5½ days. This change diminished their opportunity for secondary employment, changed their lifestyles, and eventually upset the firefighters to the point that they threatened to stop all work except putting out fires.

Advantages. Since the governmental bodies of all three of these North Carolina PSO cities have voted to continue their public safety programs, they must feel that the problems encountered are not insurmountable or that the gains make up for the problems.

Administrators in all three cities disagree with critics within their cities' PSO programs and think that both police and fire protection have improved with the public safety programs. Police patrol has been increased in all three cities without a corresponding increase in costs, and response time to fires has been improved; a PSO usually reaches the fire ahead of the fire truck. The public safety programs have also established good records in reducing the dollar value of property lost by fires and by saving lives through answering emergency medical calls. Durham had 24 fire fatalities and $3,200,000 in fire loss in the three years before that city's program began but only 12 fire fatalities and $1,584,000 in fire loss in the first three years of the PSO program.[18] Chapel Hill's average yearly fire loss was $307,153 for the three years before the PSO program was established and $194,898 for the two full years since the program began.[19]

The managers in both Winston-Salem and Durham cite good public relations as another benefit. The public safety officers on patrol have more contact with the public. The public quickly becomes aware of the more intensive patrol, and in all three cities no complaint has been officially recorded against a public safety officer that would not have been recorded if the officer had been a policeman.

Several administrators believe that public safety duties offer more personally enriching career opportunities than strictly police or fire work. They say that the PSO's dual fire and police role gives him a wider variety of duties, more opportunities for promotions, and better pay. In Durham and Winston-Salem, the PSO has three av-

14. "Kindice Sees Confusion in Present Safety Setup," *The Durham Sun,* May 12, 1977, p. B1.

15. Office of the Chapel Hill Town Manager, *Manager's Report–Implementation of Modified Public Safety Services,* p. 4.

16. From an unidentified fire captain.

17. Winston-Salem Study Commission, *An Evaluation of the Public Safety Officer Concept in Winston-Salem, North Carolina 1972-1977* (Winston-Salem: City Report, 1978), p. 62.

18. *Review of Durham's Public Safety Officer Program,* pp. 36-37. 19. Stewart, *op. cit.,* 5.

enues of promotion: to public safety supervisor or advancement in either the fire or police departments. Moreover, in both cities, the starting salary of the PSO is 10 per cent more than a police officer's or firefighter's starting pay. In Chapel Hill, PSOs are paid the same as police officers and firefighters, but the PSOs have opportunities to advance in rank only through either the police or fire departments.

Contrary to Chief Kindice's opinion that public safety programs are inflexible, the Winston-Salem city manager considers flexibility to be an advantage of the program.[20] The PSO unit not only provides police patrol and answers fire calls but also works at fire prevention on a 24-hour basis—for example, identifying fire hazards, etc.

A member of Chapel Hill's Committee on Public Safety feels that the large pool of qualified PSOs offers flexibility in firefighting assignments.[21] For example, PSOs can be assigned to duty at a fire station to accommodate firefighters' absences because of sickness, vacations, or outside training programs. Durham's manager feels that the public safety program also provides a flexible means to implement a team concept in police work.

Despite some claims that public safety programs contribute to a drop in police and fire effectiveness and to increased costs, statistics for these three North Carolina cities demonstrate the performance and cost advantages of police-fire consolidation.

An analysis of the Chapel Hill program indicates that placing Chapel Hill's firefighters on eight-hour shifts increased their productive time from 18 2/3 hours to 42 hours of active fire protection per week. In return for a 5 per cent pay raise, Chapel Hill received an increase of over 100 per cent in productivity, plus the use of former fire department sleeping quarters for other purposes.[22]

Winston-Salem has saved a significant amount through police-fire consolidation. In 1965, the first two public safety companies were yielding an estimated annual saving of over $700,000.[23] In 1971 when the workweek for the city's fire department was reduced from 66 to 56 hours, 23 new positions were needed at an annual cost of $275,800. Instead, the city hired seven PSOs at a cost of $84,050, saving $191,350.[24] In 1978 the city's public safety evaluation committee estimated that, if the public safety officer program were abolished, the city's cost for additional police and fire salaries and support expenses would approximate $170,000.[25]

Durham's city manager calculated the city's savings as a result of its public safety program to be $413,679 in 1977.[26] This calculation was based on a 42-hour PSO and police workweek versus a 56-hour fire workweek. If a 40-hour PSO week were compared with a 42-hour fire week, the savings would be $849,772. The fire salaries were based on the present fire salary, which is 5 per cent less than police pay and 10 per cent less than public safety pay in Durham. If firemen were paid the same as police or public safety officers, which is a nationwide trend, the savings to be realized from Durham's PSO program would increase even further—to $1,101,730 annually. (See Table 1 for a comparative cost analysis.)

These three North Carolina cities and other cities cite another benefit from PSO programs. Duplication in administrative support for the police and fire departments can be reduced, especially in radio communications, records, office staffs, and training.

Table 1

Comparative Costs for Equivalent Services Provided by Public Safety Officers, Policemen, and Firemen During One Year

Officers Required to Staff Public Safety Companies (42-hour week)		Cost	
32	PS Supervisors	at $15,825 = $ 506,400	
136	PS Officers	at $14,370 = 1,954,320	
Total 168		$2,460,720	Total
Policemen (42-hour week) and Firemen (56-hour week) Required to Provide Equivalent Service		**Cost**	
120	Patrolmen	at $13,051 = $1,566,120	
30	Fire Captains	at $13,617 = 408,510	
30	Fire Drivers	at $11,787 = 353,610	
51	Firefighters	at $10,709 = 546,159	
Total 231		$2,874,399	Total[1]
Policemen and Firemen (both 42-hour week) Required to Provide Equivalent Services		**Cost**	
120	Patrolmen	at $13,051 = $1,566,120	
40	Fire Captains	at $13,617 = 544,680	
40	Fire Drivers	at $11,787 = 471,480	
68	Firefighters	at $10,709 = 728,212	
Total 268		$3,310,492	Total[2]

1. This cost is $413,679 above the cost of staffing equivalent PSO companies.
2. This cost is $849,772 above the cost of staffing equivalent PSO companies.

Source: Statistics used in preparing this table were from Durham.

Implementing a PSO program

Converting to a public safety program will arouse concern among the public as well as among the police and fire department personnel. The public will want to know whether the public

(continued on p. 33)

20. From Winston-Salem City Manager Orville Powell.
21. Stewart, *op. cit.*
22. *Ibid.*
23. Walter, *op. cit.*, p. 12.
24. Walter, *op. cit.*, p. 12.
25. Jones, *op. cit.*, p. 20.
26. Office of the Durham City Manager, *A Long Range Plan for Strengthening Durham's PSO Program.*

A Police Chief and a Fire Chief Look at Police-Fire Consolidation

The Police Chief

Editor's Note: Institute faculty member Ronald G. Lynch interviewed **Tom A. Surratt,** *the Chief of Police in Winston-Salem, North Carolina. Chief Surratt has been with the police department 33 years and has been head of the department for the past six years.*

Lynch: Chief, I'd like to spend a few moments talking with you about police-fire consolidation and public safety programs from the standpoint of the police chief. First, how do you see police services in the full picture of government services?

Surratt: The police role should be exercised in a cooperative spirit with the city's manager and governing body—law enforcement is part of the government umbrella. If top public officials decide to undertake a public safety program that will benefit the citizens by providing the same services—or better services—at a lower cost, then the police department should adapt its organization and methods to accommodate the new program and make it a success.

Lynch: How is the individual police officer affected by public safety programs?

Surratt: I can best answer that by noting that the police officer in most localities is becoming more of a generalist. He has the skills and is equipped and trained to deliver a service to the citizens at any given moment whatever the need. The police officer's job has been enlarged in his own field, without the additional aspects of public safety—such as firefighting. I might add that the average citizen does not care whether his emergency call is answered by a detective, a fireman, or a police officer. When he makes the call he needs protection for himself, his business, or his residence, and he is satisfied when the service is delivered.

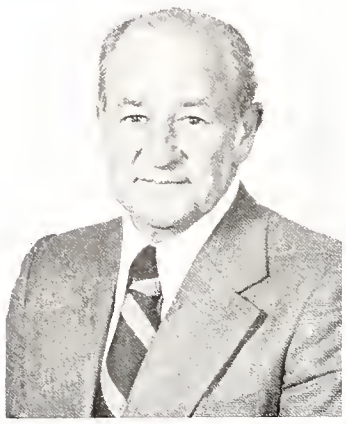
Lynch: Do you think more North Carolina cities should start public safety programs?

Surratt: Every community has to answer that for itself—it has to assess its own public safety needs and decide how to meet them, regardless of what other communities are doing. Let me give you an example from Winston-Salem. Recently a newspaper article stated that the city has only one heating inspector. That deficiency could be handled in several ways. The city's building inspection department could hire additional heating inspectors to check furnaces and other heating devices that are potential fire hazards. On the other hand the police and fire departments could mount a joint heating-inspection program—perhaps with existing fire and crime prevention personnel. A public safety program can pool valuable resources that will provide crime and fire prevention services to the city's neighborhoods.

Lynch: If a community wants to undertake a public safety program, what role should the governing body have in developing and implementing the program?

Surratt: The governing body, with help from the manager and his staff, should gather as much information as possible about police and fire operations in its city and also about public safety programs already in existence in other cities of comparable size. With this information, these top officials should develop a clear idea about the type of public safety program they want. For example, some cities choose to have a completely consolidated public safety department; other cities put public safety units only in newly annexed areas, and others have public safety units serve the outlying parts of the city but have separate police and fire units serve the central business district and surrounding high-crime areas.

The governing body should also know how the public safety program will change as time goes on—what it will look like five or ten years down the



road. They should establish long-term as well as immediate objectives for the program.

To begin a PSO program, the governing body should adopt a resolution that sets the objectives and organization of the program and also spells out in very specific terms what the manager, police and fire chiefs and their staffs, and other departments associated with it will do to implement it. Once the governing body has decided to undertake the program and steps are under way to implement it, there should be no doubt or hesitation among top officials about carrying through. Finally, each time the governing body receives a request for a new fire station or additional personnel for the police and fire departments, its actions on these requests should be taken in light of meeting the objectives of the public safety program.

Lynch: Once a city implements a public safety program, what should the chief of police do to insure that police services do not suffer?

Surratt: He should have available accurate data on current police activities, and the fire chief should have similar data on fire services. In Winston-Salem 3 per cent of our public safety officers' time is spent responding to fires. Although this is a small portion of their work time, it is a crucial portion, and we carefully monitor it to make sure we are getting men and resources to a fire in the shortest possible time. In regard to law enforcement, we have to make sure that there are enough public safety officers patrolling the streets at all times. With a PSO program that uses people productively nearly all of the time, we have to keep public safety units at full authorized position strength. When a PSO vacancy occurs, it has to be filled right away with a properly trained officer. To do this we have to forecast personnel needs and vacancy or turnover rates among the public safety positions carefully—and remember that 12 to 18 months of training are necessary to prepare a new recruit to handle public safety duties. Lead time becomes important.

Lynch: Could you comment on the economic aspects of public safety? Some people argue that public safety programs save money by providing a higher level of service at the same cost or continuing the same level of service at a lower cost. Critics of public safety programs say that they wind up costing the taxpayers more.

Surratt: I don't think that a public safety program will save a community money immediately. At first, public safety may require an increase in personnel. But you have to look at costs over the long run. We have been involved in public safety since the mid-1950s. We started on a small scale by putting public safety officers in fire stations in newly annexed areas. In 1972-73 and 1977-78 we expanded the public safety program throughout the city. If we look at our police and fire costs in the 1950s and then present-day cost—considering the growth of the city, increases in protective needs and services, inflation, and so forth—separate police and fire functions would be far higher, in my opinion, than are our costs for the public safety program and other aspects of law enforcement and fire services today. Our costs for public safety—police and fire—activities in Winston-Salem have not declined over these years—indeed, they have increased—but these costs are much less then they would be if we had not gone to public safety.

Lynch: Has public safety enabled you to put more patrol officers on the street for police services in Winston-Salem?

Surratt: In the beginning, yes. Through 1973 the public safety program permitted us to put more patrol officers on the street and gave us the flexibility to use what would otherwise have been strictly firefighting positions for police patrol purposes. But since 1973 we have actually lost law enforcement positions—both public safety and regular police positions. Nevertheless, through better planning of assignments and a job-enlargement program, our people are now handling greater responsibilities. We are actually providing greater services today than in 1973, despite the cutback in positions.

Lynch: Have police services suffered at all in Winston-Salem as a result of the city's public safety program?

Surratt: I don't think so. In fact police services have been enhanced in many ways. Of course, law enforcement has not been without its problems in Winston-Salem as in other cities. These have been due to the growth of the city, increasing crime in the '60s and early '70s, the economic recession, and the city manager's freeze on hiring new city employees that has been in effect since 1974. The public safety concept has not been a law enforcement problem in our city—it has been an opportunity to continue to improve services and to hold down the growth in costs. Of

course, there have been problems along the way in coping with changes and new organizational arrangements, but these have not been major, and the benefits from the program have far outweighed these implementation problems. Once we can resolve the contradictions of allocation for crime and state of readiness for fire, we feel much can be accomplished.

Lynch: One final question, Chief. Do you think a public safety program must have a public safety director in order to be successful?

Surratt: Many cities with public safety programs have had a public safety director from the beginning. Whether that official can be effective depends on the type of public safety program, the commitment and leadership that top local officials give to the program, and the cooperation that the public safety director gets from the police and fire departments. This last point is important. Placing a public safety director over the police and fire departments is a big change. The police and fire departments in most cities have great service identities. Each has its own turf, and you can move no faster in implementing public safety than your police and fire people are able to move. They have to understand the changes a PSO program brings, and they must work *with* rather than *against* those changes. We have had public safety directors in Winston-Salem. In time, through organizational and operational changes the position was vacated. We now have a public safety coordinator who reports along with the police and fire chiefs to the city manager. He is responsible for the training and supply for public safety officers and the communication network for all police, fire, and public safety activities. However, as attrition in firefighter and police ranks continues to permit us to fill more of these positions with public safety officers and as operations develop toward the total program, a director might be required again.

The Fire Chief

Ron Lynch also interviewed **Jack Lee,** *the Fire Chief in Charlotte, North Carolina. Chief Lee has been a chief for thirteen years and with the fire department for eight years.*

Lynch: Chief, I'd like to talk about public safety programs, their advantages and disadvantages, and some of the things that local government officials should look at before entering into such a program.

Lee: Well, first, how do you define "public safety"? I see a public safety officer as one who provides both police and fire protection to a community. While providing one of these services—either police or fire—the officer may be called upon to go somewhere else to exercise the other function or service. We do not have a public safety program in Charlotte, and my experience with public safety is limited to what I have read and some of my own research on the matter. I suppose I do have some preconceived ideas about public safety.

Lynch: Let's discuss some of them.

Lee: First, I think a governing body has to decide what level of fire and police services it wants to provide to a community. This decision, of course, should be based on data about the community's fire and police problems. Such data would include what there is to burn, how often, and how fast it burns; what the community can afford to have burned; where and how serious the crime problems are; where the traffic problems are; what the police officers and fire personnel are currently doing with their time; and so forth. After taking these things into consideration, the governing body has to decide how much police and fire services they will provide and calculate the cost of these services. This decision, of course, has to be made in light of the community's tax resources and how much money the governing body wants to spend on other government services.

I guess I'm biased to a degree. First-rate fire service in my view is extremely important. Adequate fire protection saves lives, protects people, and preserves a community's physical resources. Replacing these resources is becoming more and more expensive, and sometimes you can't replace no matter what you spend. A community can lose jobs when business and industry are burned out. Business enterprises that have seriously considered relocation frequently stay in a community only because of their existing facilities or plant—therefore it's not unusual for an industry to relocate after a major fire.

So there's more to consider than just operating a police or fire department or consolidating police and fire operations in a public safety program. A public safety program may or may not save money, but can it provide the level of fire and police protection needed in a community?

Lynch: Many people believe that a public safety program tends to operate at lower costs than separate police and fire services. Do you agree with that?

Lee: Ron, I don't know that I can answer that. It depends on the kind of public safety program a community has. If the program merely takes existing police and fire personnel and reassigns them to help each other without reducing the total number of personnel, then I'd say there's little economy in public safety. Moreover, I'm not sure the reassignment of personnel between police and fire functions will do much to improve police and fire protection. From the little I know about law enforcement and crime statistics, increasing the number of police officers by assigning firefighters to police duties does not necessarily decrease crime. And having additional people assigned to a fire truck or available at the scene of a fire doesn't necessarily enhance the ability to extinguish a particular fire.

Lynch: Chief, do you think that a public safety program can produce long-term savings or economic gains for a community?

Lee: Most cities with public safety programs pay the public safety officers more than they pay regular police officers or firefighters. It's therefore possible that all first-line personnel in both the police and fire departments will eventually become public safety officers. And so I do not think that public safety is cost effective in the long run.

Lynch: Chief, could you comment on the public safety programs in North Carolina and tell us what you think are some of their advantages and disadvantages?

Lee: This is also a difficult question to answer because I don't have firsthand knowledge about these programs and know very little about how they operate. I'm aware that several cities in North Carolina have public safety programs and that they vary considerably in organization and methods. For example, I'm told that one of these cities has committed most of its police and fire personnel to law enforcement duties and that the fire stations are left with only a limited operating capability. In this city, each fire station has only one or two firefighters who are responsible for driving fire apparatus and equipment to the scene of a fire when an alarm occurs. The other public safety officers are performing other functions throughout the city, and they go to the fire to assist the men who are bringing the equipment. I'm sure this will work satisfactorily for small fires. Only experience will tell how it works with major fires or those with great loss potential; this is a risk that has to be identified and calculated. One problem with this method of operation is that many emergency vehicles converge on the scene from different directions, and this means a greater risk of accident. I understand that another North Carolina city with a public safety program has a much larger portion of its PSOs assigned to duty at the fire stations—a better situation for firefighting purposes.

Lynch: Chief, how should we evaluate the effectiveness of existing public safety programs?

Lee: I think this can be done only from the standpoint of the individual community that has such a program. When a city moves from separate police and fire services to a consolidated public safety program, no one can say with certainty what the effect will be on police and fire protection. Once the program is functioning, we can make before-and-after comparisons using yearly statistics. But important questions need to be answered on the basis of statistics and the community's unique circumstances—such as: Were we effective in reducing harm to life and property? Did our tardiness in arriving at the scene of a fire affect the extinguishment process? We can't disregard the fact that none of this country's major cities have public safety programs. I'm sure they haven't ignored the public safety approach: They've looked at it, seen some of the attendant problems, and decided that the public safety concept was too risky.

Lynch: Could you be more specific about the problems associated with having a public safety program in a large city?

Lee: Well, the problems I have in mind concern fire protection. The potential fire problems in downtown areas concern the safety of people and property in high-rise buildings, large complexes, and hazardous processing plants. Even if such buildings are not occupied, they represent a major investment in the community. To fight and extinguish fires in buildings like these, you must have enough firefighters to get several jobs done at the same time. And I question whether, in most public safety programs, enough officers can be pulled off patrol in time to be effective in controlling a very large fire. If they are pulled off patrol to the fire, what happens to law enforcement in the city? And it is not just a matter of massing a group of people to fight the fire—these personnel must have trained and worked together so that they know what to expect from each other while doing the job. You don't introduce the eleven members of a football team just before the game and expect them to perform well. Teamwork is as important in firefighting as in football, particularly when the fire risk is very large. This

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The city manager of a small North Carolina city relates the preliminary steps and studies that were done before his city established a consolidated police and fire program. He explains the rationale for adopting the program and tells how the program is working three years later.

A Small City Adopts the Public Safety Concept:
Morganton, North Carolina—A Case Study

Douglas O. Bean

ON AUGUST 2, 1976, hoping for a higher level of public safety services at a lower cost, the Morganton city council approved a plan for partially consolidating the police and fire functions. This program created twelve public safety officer positions. None of these positions were new: Six positions came from the fire department and six from the police department. The plan called for public safety officers to be cross-trained in both police and fire activities—to patrol as regular policemen and respond to a fire as firefighters when an alarm is sounded.

This case study will explain the rationale for consolidated services in a small city. Morganton's experience in adopting and implementing a public safety officer program also may provide information to others who may be considering alternate methods of delivering public safety services.

The genesis of Morganton's consolidation

The Morganton city council's finance and personnel committee first discussed cross-trained public safety officers in September 1975, when it received a request for educational incentive pay for fire officers who completed courses in fire science at the local community college. This committee felt that these men also should be encouraged to train in areas other than fire science. Police training and first-aid training would enable them to act as support personnel to the police department. As this idea was discussed during the weeks following the finance committee meeting, it became evident that the issue involved was not just educational incentive pay. In the discussion leading up to the city council's authorization of a public safety study in October, the real issues that emerged were costs and services—with the emphasis on costs.

In 1975 Morganton was still feeling the effects of a general downtrend in the economy along with constant pressures to upgrade city services. Public demands had caused dramatic increases in the city's budget over the past seven years. From fiscal 1970 to 1976, the city's general fund budget increased 83 per cent, while the police and fire departments' total budgets grew by 89 per cent and 209 per cent respectively. As expenditures increased, the number of personnel also expanded. The police department had a 30 per cent personnel increase, while the fire department increased by 121 per cent during 1970-76. The impact of personnel expenditures on local government budgets is substantial. Since fiscal year 1970-71, the Morganton police department has spent 83 per cent of its total budget on salaries, and the Morganton fire department has spent 77 per cent of its total budget on salaries.

The dramatic increases in the fire department's budget reflect the transitional period when the department changed from a heavy dependence on volunteers to being a salaried professional fire department. Because of the dramatic budget increases and the fact that more growth was anticipated, it was necessary to look at the fire department critically in an attempt to save money.

Lost productivity was another cost consideration. Fire departments traditionally work 24-hour shifts. On an average, only eight hours are considered productive—the rest of the time is usually spent waiting for fires to occur. National averages show that less than 2 per cent of a fireman's time is spent in fire-suppression activities.[1] Morganton's fire department personnel work a 24-hour shift, and statistics for the city showed that only 1.4 per cent of a fireman's time was spent answering fire calls (Table 1). Lost productivity in fire service costs could be avoided if one

The author is now Morganton city manager; he was the administrative assistant to the Morganton city manager when the PSO study began.

1. Information from other cities having consolidated programs.

Table 1

Allotment of Time: Morganton Firemen (FY 1974)[1]

Activity	% of Time Spent
Station Duty	30.9%
Sleep Time	29.7
Fire Service Training	7.9
Special Assignment	7.6
House Cleaning	6.8
Vacations	6.3
Equipment Cleaning	4.5
Equipment Maintenance	2.0
Fire Calls	1.4
Inspections	1.3
Fire Alarm Time	1.0
Special Meetings	.6

1 Based on the 1974 statistics for 24-hour shifts.

man could perform both police and fire functions.

At the time that the Morganton public safety study was authorized (1975), local governments were faced with the 1974 amendments to the Fair Labor Standards Act (FLSA), which extended minimum-wage and over-time provisions to state and local government employees. Provisions of the act that were applicable to public safety called for a gradual reduction in the work week. Although the regulations only specified a reduction to a 54-hour week, many local governments feared that eventually a 40-hour-week limit would be imposed and that all time over 40 hours would have to be compensated through either time-and-a-half pay or compensatory time. Fire and police workweeks in Morganton had been gradually decreasing to the point that the police department worked a 42-hour week and the fire department a 56-hour week in 1975. To meet the anticipated requirements of the FLSA, however, the city would have to pay substantial sums in overtime or hire more employees—both very costly. Faced with this situation, the city council looked for alternatives to the traditional methods of delivering police and fire services.

While Morganton was studying the public safety programs, the United States Supreme Court[2] struck down the extension of the FLSA to municipalities. Nevertheless the Morganton city council decided to continue the public safety study because it felt that service advantages could accrue through consolidating police and fire services.

Another factor served as a catalyst for the consolidation study: the characteristics of police and fire department employees. On the average, members of both departments were very young (Table 2), not just patrolmen and firefighters but also officers. The patrolmen and firefighters thus faced a frustrating lack of opportunity for advancement in the foreseeable future. Members of the fire and police departments were not only young but also well-educated—especially the police department (Table 3). The city provided educational incentive pay, and 89 per cent of the police department employees either had worked on or were working on a college degree. These men may have been motivated by the prospect of higher pay, but the result of the incentive plan for the department was that it had developed highly educated and motivated policemen who were eager for new challenges and advancement. During the past few years competition for promotion to officer ranks has been fierce.

Thus the Morganton city council authorized the city staff to conduct a consolidation study in the hope of reducing the costs of public safety services and delivering more effective services. The council also believed that because Morganton's work force was young, well-educated, and highly motivated, employees would not have already developed biases to one service and could be cross-trained in both police and fire work. The study was to determine the feasibility and possible development of a public safety plan and to analyze costs, effectiveness, and optimum use of available personnel for police and fire protection in such a plan.

Table 2

Average Ages of Morganton Policemen and Firemen (1976)

Police Position	No.	Avg. Age
Officers	12	34.33
Patrolman II	10	29.70
Patrolman I	9	26.33
Detectives	2	30.00
Dispatchers	4	35.75
	Total 37	Avg. 31.08*

Fire Position	No.	Avg. Age
Officers	9	34.66
Firefighter II	10	30.01
Firefighter I	9	26.55
	Total 28	Avg. 30.43

People involved

In developing a study and recommending the reorganization of long-established fire-police services, the people involved in the study and their subsequent decisions play an extremely important role. People influence the direction that a study takes and, of course, the implementation of any proposals. Personalities were as important in the Morganton public safety study and its aftermath as were the tangible issues of costs and effectiveness.

The city council traditionally has been willing to try new approaches for delivering governmental services. The council's structure and its method of selection probably contribute to its progressive nature. Elections are nonpartisan, so that party labels are eliminated. Nominations are from districts, but councilmen are voted on at large. All councilmen, therefore, represent a district but are accountable to all the citizens. The mayor, of course, is elected at large. The citizens of Morganton are proud of their city, and the city council reflects this civic pride in its progressive attitude.

Because of its past willingness to adopt new programs, it was reasonable to assume that the council would be interested in alternative ways of delivering public safety services to save money and improve services.

The city manager, who had managed a small eastern North Carolina town before coming to Morganton, had been in his position for only two years before the study was authorized in October 1975. He had developed an excellent working relationship with the Morganton city council, which was a definite advantage when it came to working on new programs. Because the city manager wanted to see something done

2. National League of Cities v. Usery, 426 U.S. 833 (1976).

with the fire department and because of his career-motivated outlook, he was willing to undertake a study that could have serious political and practical risks.

To conduct a comprehensive public safety study within the city's own organization, the city manager designated an administrative assistant (the author) who had been working for the city only three months to be responsible for conducting and coordinating the study and recommending possible alternatives for delivering police and fire services.

The police chief's favorable attitude toward a public safety study and support of the resulting proposal were critical factors. The chief was a native of Burke County who had been with the Morganton police department for twelve years; he worked his way through the ranks until he accepted a position as an instructor at the local community college in 1967. After a ten-month stay at the college, he became Morganton's chief of police. During his eight years as chief he had built a professional department that had well-trained, educated personnel and modern equipment, and he had developed many programs by aggressive pursuit of federal grants. The chief viewed public safety as a program that could work if only the most qualified individuals were recruited and if the level of police services was not reduced. He was not overly enthusiastic about public safety but did see some possible advantages—especially in salary adjustments for public safety officers—and he was willing to work on the proposal and its subsequent implementation. His support for any possible policy recommendations on public safety was essential.

The fire chief's point of view was different. He had been a firefighter for fifteen years, having worked his way through the ranks in a neighboring fire department. Leaving that department, he became a fire service area consultant for the North Carolina community college system and in 1970 was appointed as Morganton's fire chief. When the public safety study was proposed, the fire chief did not see how a public safety plan could work and wanted the existing separated services to be maintained. Still, he admitted that consolidation had some advantages and agreed to participate in the study and to do all he could to make any new program work. It was to the fire chief's credit that, although he personally opposed the concept, he at no time tried to undermine the study, and once the plan was adopted he was one of its more enthusiastic supporters.

Table 3

Educational Levels of the Police Department (1976)

	Officers (n=12)	Patrolmen (n=21)	No. 1 Dispatch (n=4)	Total (n=37)
High School	1	1	2	4
Working on Associate of Applied Science	2	11	0	13
Associate of Applied Science	8	9	1	18
Bachelor of Science	1	0	1	2

Throughout the entire public safety study, rumors of what was happening and what possible proposals would be adopted floated through the police and fire departments. Surprisingly, the most interest came from the fire department, where a group of young firefighters was intrigued by the possibility of becoming public safety officers. The greatest amount of skepticism arose among policemen. The attitude of some was that they wanted to be policemen and had no desire to fight fires unless there was enough money involved.

The characteristics and interactions of all those who were involved were, without a doubt, integral aspects that shaped the course of the public safety study. Throughout the study and implementation period, these people, while they had diverse orientations, generally worked toward developing a consolidation proposal without making any significant attempts to undermine the process.

Study findings and proposals

After reviewing the available literature on police-fire consolidation, studying other cities' programs, and consulting experts in the field, we made a crucial finding: Consolidation *could* work—a public safety officer could be proficient in both police and fire duties. Most of the "what ifs" expressed by opponents of consolidation never happened. In the study of other cities we found that rarely, if ever, do a major crime and a major fire occur at the same time. Departments are also able to find adequate training time. Our conclusion was that the basic concept of a public safety officer was sound: Cities that had adopted a public safety program did not abandon it because of a flaw in the concept. The lesson to be learned from these cities was that opposition could be expected—especially from the fire department, since consolidation was such a radical departure from the traditional structure. Always when a consolidation proposal was defeated or a program abandoned in a municipality, the rejection resulted from pressure by organized employee groups and by politicians who were influenced by these groups to voice their opposition. Morganton learned three things from this portion of the study: (1) While consolidation could provide very good police and fire services, the implementation plan for consolidation was extremely important; (2) employee support would be necessary, and every effort should be made to avoid causing organized opposition; and (3) the final proposal must be made attractive to employees by using tangible incentives and by assuring them that none would be forced into the program or lose employment with the city as a result of the consolidation program.

The study's findings in the area of operations focused on the available

time for additional duties and on the deployment of manpower: Police officers spent approximately one-third of their time on calls for service and the rest on preventive patrol, during which an officer could become aware of fire hazards and could fight fires (it was already routine to dispatch patrol cars to fire scenes). Less than 2 per cent of firemen's time was spent actually fighting fires and in fact approximtely 60 per cent of their time could be called unproductive. If a program could be developed to use public safety employees' time better, a distinct advantage would accrue.

An analysis of other kinds of fire department activities was revealing. Forty-nine per cent of the calls answered by the fire department were either false alarm, standby, or nonfire rescue.[3] Forty-two per cent of all calls were for either grass or car fires.[4] These calls, combined with smoke scares and other small fires, accounted for approximately 98 per cent of all calls, which could be handled by a single pumper truck. In fiscal 1975-76 only 15 of 285 fire calls represented fires that involved over $500 worth of damages; four of them were car fires.[5] These findings indicated that there was an advantage in having a public safety officer patrolling a specific area in a car that was equipped for firefighting. It was reasonable to assume that many of the other small fires could be put out by the extinguishers carried in each patrol car. If a false alarm had been sounded, a public safety officer could alert the fire apparatus and avoid running a heavy piece of equipment.

Maps of the city were used to plot fire and police calls in order to use personnel effectively. (Because the number of public safety officers involved at first was limited, it was important that they be deployed to achieve the best service advantages.) Because this plotting of calls showed that most calls for public safety services were in the center of town, an expanded central business district beat was created to be patrolled by a public safety officer. Two other public safety officers would patrol the remainder of the city—one each in the east and west sides.

Studies of the other municipalities showed that most consolidated public safety programs had a public safety director who was responsible for both fire and police departments and usually had a chief or other ranking officer working for him in each of these areas. After reviewing Morganton's organizational needs, we decided to maintain dual supervision through the police and fire chiefs for two primary reasons.

First, Morganton is a small city with much smaller police and fire departments than the cities that were studied, and we had to consider the cost of adding a "super department head" who was not needed. Since Morganton currently had two chiefs who could supervise the operations of a small number of men, we felt that it would be expensive and unnecessary to create another position.

A second consideration for maintaining dual supervision was morale. We could have hired a director to supervise two existing chiefs or promoted one of them; either course would have produced morale problems. The public safety officer program, being new, needed all the support possible and did not need divisive actions. The ultimate approach was to make both chiefs feel that the program was theirs and that they were responsible for public safety officers who were assigned to their departments.

On an operational basis, the police sergeants and lieutenants and the fire lieutenants and captains would retain supervision. When public safety officers were performing police functions they would be responsible to police supervisors, and when performing fire functions they would report to fire supervisors. This arrangement would take advantage of experienced supervisors in both departments who were not interested in becoming PSOs. In addition, maintaining a cadre of fire department personnel on 24-hour shifts meant that supervision would be needed in both police and fire functions.

The study's manpower findings generated the most discussion while the proposal was being completed. Each fire shift in Morganton had two officers, five drivers, and two to three firefighters. Since the supervising officers and the drivers would have to remain in the fire station, members of the fire department's ranks would be encouraged to apply for positions in the public safety program. These public safety officers would then be firefighters under the fire department's supervision when a call for service was received.

Twenty-four hour shifts would be maintained. Because the public safety program itself was a controversial concept with firemen, a change from their preferred 24-hour shift to eight-hour shifts could possibly cause dissatisfaction in the fire department. Further study of this issue revealed that parity in pay with the police department would have to be given to firemen if eight-hour shifts were adopted or there would have been massive disruption in the fire department. This parity in pay would have been costly without producing any noticeable benefits such as increased productivity or training.

The police department's need was simply to have enough public safety officers on duty so that if a large fire should occur, enough officers could remain on nonfire duties to provide police protection for the rest of the city. The police department therefore wanted a large number of PSO recruits to come from the fire department. The key for meeting the needs of both departments was to find the proper mix of fire and police volunteers that would keep an adequate number of personnel in the fire station while at the same time providing a contingent of public safety officers working eight-hour shifts large enough to be able both to fight fires and to maintain police protection. All of this had to be done with existing personnel.

During the study the possibility of consolidation became common knowledge. Surprisingly, the employees—especially young firemen—began talking very favorably of such a program. Rumors floated that many firemen were ready to volunteer. This informal information was crucial in calculating the possible number of volunteers and therefore crucial to the final adoption, since this estimate could be conveyed to the city council's finance and personnel committee, who were responsible for reviewing proposals and recommending action to the entire council.

Cost estimates revealed that a sub-

3. Morganton Fire Department, *Annual Report*, July 1, 1975—June 30, 1976, p. 10.
4. *Ibid.*, p. 8.
5. *Ibid.*, p. 12.

Table 4

Effect of Reallocating Positions

	Reallocation of Positions				Available Personnel				
	Police Dept.		Fire Department		Police Dept.		Fire Department		
								Per Shift[1]	
	Patrolmen	PSOs	Fire-fighters	PSOs	Total	Per Shift	Total	In Station	Total
Before PSO Program	19	—	22	—	19	4.75	22	7.33	7.33
Initial PSO Program Aug. 76	13	6	16	6	25	6.25	28	5.33	9.33

1. There were three fire department shifts before the PSO program. With the PSO program, the fire department personnel continue on a three-shift basis, while the 12 public safety officers are on a four-shift basis. Therefore the available personnel per shift for fire services is calculated by dividing 16 firefighters plus 12 PSOs (28) by 3 fire department shifts for a total of 9.33.

stantial amount of money ($35,000) was needed to begin a public safety program. Most of the funds would be spent on equipment and salary increases, while the balance would be used for items such as training and uniforms. But there was a potential for long-term savings because projected population increases and annexations would require increases in personnel. Under consolidation, only one employee would have to be hired instead of two for separate police and fire duties. This same principle could be applied to the increased need for firefighters that was expected as a result of the council's proscription of new volunteer firemen and the consequent need to hire full-time paid personnel. A public safety officer could be hired instead of a fireman and thereby also benefit police services. Even with the short-term costs it appeared that, if nothing else, simply increasing the productive time of police and fire personnel would provide a cost advantage over the present system.

Adoption and implementation

Unfortunately the consolidation study could not be completed and considered by the council as scheduled because of the need to prepare the 1976-77 annual budget. (The study was begun in October 1975 and finished in July 1976.) On August 2, 1976, the Morganton city council adopted a public safety program by a 3-1 vote. Six fire department positions and six police department positions were to be reclassified as public safety officer positions and filled by existing personnel—six employees coming from each department. Total available police personnel on each of the four police shifts would therefore increase from 4.75 men per shift to 6.25 men per shift. Total available fire personnel would likewise increase on each of the three fire shifts from 7.33 men per shift to 9.33 men per shift (Table 4). All public safety officers would be extensively trained in both police and fire services and would work the regular police eight-hour shift. Salary was to be increased and pegged to the pay scale for the Patrolman II position, the exact salary to be determined by number of years in city employment. The total budget called for an initial expenditure of $35,000 for implementing the PSO program.

The council vote came at a propitious time, since there were three vacancies in the fire department in the summer of 1976. Ordinarily this department had little turnover and vacancies were rare. While the number of qualified recruits who would come from the fire department could not be precisely predicted, the vacancies meant that new employees could be hired for public safety positions if there were not six qualified recruits from the fire department.

Morganton city government generally receives favorable coverage from the local media, but those who planned the PSO program were not sure how a radical departure from the status quo that required a lot of money would strike the press. Too often political rhetoric had defeated PSO proposals in other municipalities before they had had a chance; therefore, Morganton planners tried to avert such an occurrence.

Once the proposal was made public, it seemed necessary to act quickly to implement it. If a program were introduced and postponed, organized political opposition could arise. To expedite the political process, copies of the proposal were presented to all council members following the personnel and finance committee's approval in July 1976. At the next council meeting, city staff discussed the proposal and emphasized the need to pass it.

Immediately after the council adopted the PSO program in August, all police and fire personnel were brought together so that the program could be explained and their questions answered. Each employee was assured that he would not lose his job or be forced into the program and that anyone selected as a public safety officer could move into a supervisor's position in either department. After these meetings, applications were taken. One assumption of the study held true: There was great interest within both departments—thirteen firemen applied for the six positions allotted to that department and fourteen police

officers applied for the six police department positions.

The police chief, the fire chief, and the assistant city manager selected the twelve PSO officers on the basis of evaluations, training, recommendations of supervisors, and personal interviews. The twelve who were promoted proved to be the young, well-educated employees (Table 5). They were obviously persuaded to become public safety officers by salary increases, but they were enthusiastic about their new duties. Recruits from the fire department were enrolled in one-week basic training school at Western Piedmont Community College. Recruits from the police department received one week of training at the Morganton fire department followed by two weeks at the fire school in Wilson, North Carolina. Following this training in which all new recruits excelled, Morganton's public safety program officially began on October 25, 1976.

The years since consolidation

In the nearly three years since the consolidation program was adopted, at least one basic assumption of the study has proved to be correct. Morganton's PSO program has been dynamic and flexible, as three expansions of the program indicate.

Shortly after the program began, it became clear that three-officer shifts simply were not enough to cover the entire city—considering that vacation, sick-leave, and court time had to be taken. Moreover, morale began to be a problem because many individuals in each department wanted to become public safety officers. No major opposition had arisen to the program, and it was well received by the public mainly because of the initial performance of public safety personnel and the excellent exposure given the program by the press.

In January 1977 a recommendation was made by staff and discussed with the city council's finance and personnel committee to increase the number of public safety officers from 12 to 20—7 positions to be reallocated from existing police positions and one position from the fire department (only one, because all other fire personnel were needed in the station as drivers). This recommendation justified the expansion by pointing to the program's success and the need to move forward.

At its meeting on February 7, 1977, the council adopted the staff's proposal unanimously and the program was expanded. In much the same way as in the initial recruiting process, ample applications were received from existing police and fire personnel. Fourteen applications were received for the one fire position and 13 for the seven police positions. By a process similar to the one used at the outset of the program, eight new public safety officers were selected, including the first female in the program.

Except possibly for inadequate training time, no major problems occurred until June 1977, when a city councilman who had voted against consolidation called for a council investigation of the program because of morale problems that had been brought to his attention. The mayor asked the finance and personnel committee to investigate. The committee interviewed public safety officers, policemen, firemen, and the councilman who called for the investigation. It found that the program did work and should not be abandoned. However, it suggested returning two dissatisfied public safety officers to the fire department, more direct involvement by the city manager in the program, and the creation of three more positions.

As recommended, two new firefighter positions and one public safety officer position were created. In addition, one existing firefighter position and two existing police officer positions were reallocated to the PSO program, making a total of 24 public safety officers (Table 6). Manpower in the fire station was also supplemented with four public safety officers who rotate into the station each month—for a one-month period of time—to work on regular fire department 24-hour shifts. This schedule means that once every

Table 5

Public Safety Officers' Profiles
(Original Twelve Who Began the Program)

Average Age:		27.33
Education:		
High School		5
Working on Associate of Applied Sciences		3
Associate of Applied Science		3
Bachelor of Science		1
Average Yrs. of Former Service:		
Patrolman I		1.81 yrs
Patrolman II		4.14
Firefighter I		1.74
Firefighter II		5.42
	Average Years	2.66
Former Positions:		
Patrolman I		3
Patrolman II		3
Firefighter I		5
Firefighter II		1
	Total	12
Average Percentage Salary Increases after Promotion to PSO:		
Patrolman I		10.16 %
Patrolman II		11.92
Firefighter I		28.13
Firefighter II		21.73
	Average Increases	19.08 %

Table 6

Reallocation of Positions

	Police Department		Fire Department	
	Patrolmen	PSOs	Firefighters	PSOs
Before PSO Program	19	—	22	—
Initial Program (Aug. 1976)	13	6	16	6
January 1977 Expansion	6	13	15	7
October 1977 Expansion	4	15	16[1]	9[2]

1. One new position.
2. Two new positions.

six months a public safety officer spends a month training and working side-by-side with firemen at the station. This arrangement should provide more training time and help develop some espirit de corps between public safety officers and fire personnel. Lack of this unity has been a problem, since most of the public safety officer's time is spent in police patrol.

A third expansion of the program took place in July 1978, when the four remaining patrol positions were reallocated to the PSO program. The patrolmen who now fill those positions will not be forced to become public safety officers, but may do so if they wish. Through attrition these four positions eventually will be filled with cross-trained officers.

In accordance with the original premise that Morganton's program would be flexible, meetings were held periodically with all employees affected by consolidation. These meetings proved to be of great value since working public safety officers could provide much information on deployment patterns, needed equipment, and desirable policy, and the supervisors in the police and fire departments could avoid many problems. Joint work sessions have accomplished much, and we plan to continue them.

At this point the public safety program seems to be operating smoothly and should continue to improve. Clearly, consolidated services *do* work in a small community. □

Police Chief and Fire Chief

(continued from p. 12)

teamwork is difficult to develop in a public safety program, which is one reason that larger cities have not adopted such programs.

Lynch: So it's fair to say that since major cities have unique problems, it's necessary to have highly trained specialists in fire work?

Lee: Yes. Although the public safety problems that large and small cities face may be similar, the magnitude of these problems is quite different. What is too much and what is too little fire protection? Frankly, I would not recommend a public safety program for a city the size of Charlotte, with its complex fire problems. The program simply would not provide enough fire protection for our city. Another community, particularly a smaller one, may be satisfied with the level of fire protection offered through police-fire consolidation and a public safety program.

Lynch: Assume that the governing body of a community decides to undertake a public safety program. In your opinion, which of the two services—police or fire—would suffer more if the new program is not carefully planned?

Lee: I have only limited experience in police work, but I think fire services would suffer more. The team approach is more critical in fire protection than in law enforcement. Even in a well-planned program it is difficult to develop adequate teamwork for firefighting in a public safety program; in a poorly planned program such teamwork is next to impossible. For each fire the firefighting forces are likely to have to be assembled anew from available personnel within a zone. They would not be a team, and such a force would find it extremely difficult to provide the type of service necessary to prevent serious losses, structural damage, and spread of fires. On the other hand, a public safety program, even a poorly planned one, would increase the availability of personnel for police patrol; this added visibility, while not necessarily reducing crime, would certainly not harm law enforcement efforts.

Ron, fire protection is very complex. It involves prevention, education, engineering, inspection, pre-fire planning, and careful deliberate preparation. All of these activities are necessary to create and maintain an alert and competent firefighting organization. Unfortunately, all of these tend to be downgraded in a public safety program, and this will lower the level and quality of the public's fire protection. We are back to the point I made in the beginning: The top leaders and the citizens of each community have to decide how much fire protection they want and how much they are willing to pay for it. □

Administering Subdivision Ordinances:

PROBLEMS
LOOPHOLES
SUGGESTIONS

What is the scope of subdivision regulation in North Carolina? What are the penalties for evasion of the law and how is the law enforced?

Richard D. Ducker

SUBDIVISION REGULATIONS may serve a wide range of purposes. For tax officials, attorneys, and registers of deeds they are a means of securing adequate land records through a requirement that subdivision lots be platted. For planners, engineers, public works directors, and managers they are a means of ensuring proper lot and street design and ensuring that public improvements such as streets, utilities, and drainage facilities are provided and properly constructed. For the lot purchaser they serve as a consumer-protection device, since the purchaser may not have the information or technical competence to evaluate the design details of the subdivision or the nature of the utility and street systems that serve his property.

It has been almost 50 years since North Carolina municipalities were first given general authority to regulate the subdivision of land within their jurisdictions and almost 20 years since counties were first permitted to exercise this power.[1] The statutory provisions regarding the scope and coverage of the subdivision statutes and the means of enforcing local subdivision regulations have undergone relatively little change in recent years. Nevertheless, as more and more local governments (especially counties) have developed regulatory experience under the state statutes and their own local ordinances,[2] a number of questions and problems have arisen concerning the types of land transactions and divisions that are subject to regulation and the methods by which regulations may be enforced.

Scope of subdivision law

One key to subdivision regulation is the scope of the coverage of local subdivision ordinances. What types of land divisions fall within the ambit of the regulations, what types of land divisions and property transactions may be outside the coverage, and what types of divisions are specifically exempted? In North Carolina the answers are primarily found in the municipal and county subdivision enabling statutes (G.S. 160A-376, municipal; G.S. 153A-335, county), which govern the coverage of city and county subdivision ordinances by defining the term "subdivision" for regulatory purposes. G.S. 160A-376 provides:

> For the purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose

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1. North Carolina's first general municipal subdivision control enabling statute was enacted as N.C. Pub. Laws 1929, Ch. 186, and codified as G.S. 160-226 and -227. This legislation was considerably amplified by N.C. Sess. Laws 1955, Ch. 1334, codified as G.S. 160-226.1 et seq. The first county enabling statute was enacted as N.C. Sess. Laws 1959, Ch. 1007, and codified as G.S. 153-266.1 et seq.

2. The North Carolina Attorney General has ruled that the subdivision enabling statutes pre-empt the regulatory field and that local ordinances must conform to statutory framework, including the scope, coverage, and exemptions of the statutes. 44 N.C.A.G. 251 (1975).

of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded[3] lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in the subdivision regulations;
(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
(3) The public acquisition by purchase of strips of land for the widening or opening of streets;
(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

Number of parcels required for subdivision regulation. Nearly every phrase or section of this statute has raised some important issues of interpretation. But one fundamental question is: How many lots must be created before subdivision regulations come into play? North Carolina's approach to the problem has been to include within the regulatory scheme "all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future)." This language, found in both G.S. 160A-376 and G.S. 153A-335, has remained essentially unchanged from the language of the 1955 subdivision statute.[4] One authority claimed over twenty-five years ago that a similar form of this language "is almost universally used in enabling statutes relating to subdivision control and planning."[5] Although the origin of this phraseology is uncertain, a prominent national model subdivision enabling act published in 1935 displayed the language in essentially identical form.[6]

Some states have chosen to define "subdivision" by statute in such a way that only divisions of land into *more* than two lots, parcels, or building sites are subject to regulation. For example, for many years the California statute permitted regulation of only those divisions of land that resulted in five or more parcels.[7] Kentucky's enabling statute extends only to those divisions that result in three or more lots or divisions.[8] Still other states (e.g., Wisconsin) *require* any local government that is reviewing subdivisions under a local ordinance to (a) regulate those divisions that result in five or more parcels but (b) *permit* local units to bring within the scope of coverage those divisions that result in only two or more parcels.[9]

Those who have argued for looser subdivision control have traditionally maintained that a property owner should be able to sell an occasional lot or two from his property without having to prepare a surveyor's plat and subject himself to the time-consuming process of having a subdivision plat reviewed by the local unit of government. As one land-use attorney puts it:

> This kind of law (including divisions of land into no more than two parcels) presents enforcement problems. It also arouses political resistance from small builders who must go through expensive and time-consuming procedures to get approval, and from farmers who must secure planning board approval before they can sell their sons a quarter acre section on which to build a house.[10]

But many others strongly oppose exempting subdivisions that have only a few lots. The attorneys responsible for the Model Subdivisions Regulations published in 1975 by the American Society of Planning Officials have said:

> While this [method of exempting small subdivisions] has the theoretically salutary purpose of protecting the farmer from onerous bureaucratic regulations and excluding minor divisions of land because of the relatively small impact they are likely to make on patterns of land development, it establishes enormous areas for avoidance and legal trouble for subsequent purchasers of lots divided without subdivision approval.[11]

During the period in which California subdivision law permitted the review of only those divisions of land that resulted in five or more lots, widespread circumvention of local ordinances is reported to have oc-

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3. The county "subdivision" definition, found in G.S. 153A-335, is identical.

4. *See* note 1 above.

5. Melli, *Subdivision Control in Wisconsin,* 1953 Wis. L. Rev. 389, 398.

6. *See* Bettman, *Municipal Subdivision Regulation Act,* Model Laws for Planning Cities, Counties, and States 87 (Bassett et al. 1935).

7. First statutory application to "five or more parcels" enacted as 1943 Cal. Stat. c. 128, p. 866, § 1 [Cal. Bus. & Prof. Code § 11535 (West 1954)], repealed by 1974 Cal. Stat. c. 1536, p. 3464, § 1, effective March 1, 1975.

8. Ky. Rev. Stat. § 100.111 (1970).

9. Wis. Stat. Ann. § 236.02(8)(a)(1957) and Wis. Stat. Ann. § 236.45(2)(a)(1957).

10. D. Mandelker, Managing Our Urban Environment 1057 (2d ed. 1971).

11. R. Freilich & P. Levi, Model Subdivision Regulations, Text and Commentary 49 (1975).

curred in that state and the so-called "4 x 4 subdivision" appeared.[12] Owners of large properties would simply divide their land into four parcels in a way that would exempt the division under California law. Each new owner of these parcels would then divide his parcel into another four sections, and each of these new divisions would fall outside the scope of the state statutes and local ordinances. This pattern would continue until tracts of several hundred acres would be divided into one-, two-, five-, or ten-acre parcels. This avoidance technique led to the current California statute, which permits the regulation of all land divisions otherwise subject to regulation regardless of how many lots were created or when they were created.[13]

Attorney General's opinion

Since most land subdivisions are designed to promote the sale of fee simple (full ownership) interests in undeveloped land, little attention has been paid to the statutory phrase "for the purpose of sale or building development (whether immediate or future)." An enabling statute (like North Carolina's) that applies to "divisions into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future)" has been thought to cover even the simplest division of land into two parcels, unless the division were specifically exempted by the statute.

It was remarkable, then, that in the fall of 1975 the North Carolina Attorney General issued an opinion that a farmer who owns a fifty-acre tract of land is not subject to the North Carolina subdivision statutes if he conveys title to a one-acre parcel of land split off from his farm.[14] According to the Attorney General's opinion, such transfer would not amount to a division of a tract of land into "two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future)" because only the one-acre parcel would be created for purposes of sale or building development. According to the opinion, the farmer's residual tract of land would presumably not be held for sale or development purposes. The Attorney General went on to say that only if a second lot were separated from the original tract would a subdivision for statutory purposes arise. The opinion did not dispute the fact that two lots, building sites, or other divisions are created by such a division. The Attorney General simply indicated that the "purpose of sale or building development" can be attributed to only one of the two resulting parcels of land—the undeveloped lot split off from the larger residential parcel that is used as a farm. To indicate what sort of a transaction would constitute a "subdivision," the opinion went on to say that if a second lot were separated from the original tract, the statutory definition would be satisfied and the property owner would be subject to the subdivision regulations.

Opinions of the Attorney General dealing with the authority of local governments are advisory only, and their significance depends on their persuasive ability. In this case, it appears that the Attorney General's interpretation of the meaning and application of the definition language in the subdivision enabling statutes is not widely shared. The prevalent interpretation is that the division of a small building lot from a much larger farm parcel is indeed subject to the state's subdivision statutes. This interpretation is based on several arguments. First, the larger residual parcel may also be sold or developed later. The Attorney General's opinion seems to ignore the statutory language that speaks of including divisions "for the purpose of sale or building development (whether *immediate or future*)" (emphasis added). The phrase "(whether immediate or future)" forestalls the argument that the statute does not apply unless parcels are actually offered for sale at the time the subdivision is made. It also implies that a subdivision includes all land that the subdivider intends to sell or develop at some future date. In determining the subdivider's intention regarding future sale or development, the location of the property, its market value, and the extent of development in the vicinity must be considered. The subdivision statutes seem to indicate clearly that if a residual tract of farm land is held for future sales or development, the statutory definition of "subdivision" applies to that tract as well, and the residual parcel should be treated as part of the subdivision.

The other major problem posed by the Attorney General's contention is that although the subdivision statutes do *not* apply when one building site is separated from a larger residual tract of land, the division from the tract of a *second* parcel to be sold or developed would meet the definitional requirements of "subdivision." Unfortunately this interpretation gives insufficient consideration to the timing of subdivision activity. Suppose that building lot No. 1 is split off from the residual tract of farm property today, and lot No. 2 several years later. Typically, lots that are subdivided at different times are considered separate, discrete subdivisions. Thus if we assume, as the Attorney General does, that one lot may be divided from the residual tract of land without creating a subdivision, why is it not possible simply to repeat the process later and create another one-lot division that would also fall outside the scope of the statute? The probable answer

12. *See* Shasta County (Cal.) Planning Report on "lot splits" quoted at pp. Q-27 to Q-31 in D. Hagman, Urban Planning and Controls: Problems and Materials, Part II (1972).

13. Cal. Gov't. Code § 66424 (1966) (West Supp. 1977).

14. 44 N.C.A.G. 251 (1975).

is that if repeated one-lot subdivision activity were not subject to subdivision regulation, wholesale circumvention of the statute might result. But the Attorney General, in his opinion, appears to have constructed a special rule. Despite the time lapse between the creation of the first and second building lots, he would apparently treat the division of these lots as if they were divided at the same time. His opinion implies that despite the time lapse we may combine the division of the second parcel with the division of the first to form a subdivision that includes both lots, but we apparently must treat all lots later divided from the remaining farm property as separate, discrete subdivisions.

The practical application of the Attorney General's interpretation poses still further problems. Assume that one building lot is divided from a large farm and a second building site is divided from the residual tract some time later. Does the subdivision consist simply of the two building lots? If so, and if the first lot has already been sold, how can subdivision regulations be applied to the first lot? Or assume that the two building lots are not contiguous. Are we to assume that the territorial boundaries of the subdivision so created consist of two entirely separate building lots? Consider the application of the Attorney General's interpretation of the statute to property that changes hands. Suppose Farmer A divides from his 50-acre tract an eight-acre parcel that he sells to B. He claims that his residual 42-acre tract is not to be sold or developed and that the division of the eight-acre parcel does not fall within the statute's coverage. Sometime thereafter Farmer A sells his residual parcel to C. Apparently the new property owners B and C could each convey a small building site to still other buyers and claim that the transaction is not subject to the statutes by maintaining that their own residual parcels will not be sold or developed. Furthermore, if B and C conveyed their residual tracts of land to still other buyers, those parties could also make use of the single-lot loophole. Under the Attorney General's interpretation, it is possible that a 50-acre tract could be divided in such a manner that most of the resulting lots were part of single-lot subdivisions outside the scope of the statutes. In such circumstances, properly administering a system of subdivision regulation in rural areas where piecemeal subdivision is common and property is sold with some regularity would be extraordinarily difficult. It is very unlikely that those who supported, drafted, and enacted the North Carolina subdivision statutes intended that G.S. 160A-376 and G.S. 153A-335 be interpreted to exclude the single-lot subdivision.

Divisions arising from the settlement of an estate. Much of the confusion over the term "subdivision" in the subdivision enabling statutes has centered around whether the residual parcel of land retained by the subdivider is a part of the subdivision. But the definition also has posed at least one other problem of interpretation. Is land divided pursuant to the settlement of a decedent's estate subject to local subdivision regulations? Suppose the owner of a 25-acre farm prepares a will that specifically describes the three portions of his farm that are to be distributed one each to his three children when he dies. Upon his death, the probate court will provide for the land to be divided into the three parcels described in the will. Even if resulting parcels are less than 10 acres in size,[15] the courts have generally found that such a division is not for the "purpose of sale or building development." One New Jersey court remarked that "the incidence of testamentary subdividing is not of serious proportions, unconcerned as is the average testator with the usual 'profit motive' associated with land division."[16]

A somewhat different situation arises when the decedent simply leaves his entire property to his three children or dies intestate (without a will) and the property passes to his intestate heirs. The three children (or the heirs) must take the entire property as tenants in common. For each child to take title to his own separate portion of the property, the property must be divided. One way to achieve the partition is for one of the tenants in common to petition the superior court for an *involuntary* partition proceeding.[17] The other way avoids court proceedings entirely and calls into play a *voluntary* partition whereby the tenants in common all agree to exchange deeds dividing their commonly held parcel of land into divisions representing equal shares or interests for each. Such a voluntary partition could be accomplished almost immediately after the children (or heirs) take the decedent's land as tenants in common, or it could come years later.

Is voluntary partition of land a "subdivision" for purposes of G.S. 160A-376 and G.S. 153A-335? Apparently not in North Carolina, according to the court in *Williamson v. Avant.*[18] In that case the court declared that a "conveyance made for the purpose of dividing up the estate of a decedent among his heirs was not a 'division of land for immediate or future sale or development' within the meaning of G.S. 153-266.1 et seq."[19] The heirs apparently agreed to a voluntary partition of their commonly owned property that they received from the decedent and took the additional step of having a plat prepared indicating the lots to be

15. If the parcels were all larger than 10 acres, exemption number (2) of G.S. 160A-376 and G.S. 153A-335 would be applicable, and subdivision regulations would clearly not apply.

16. Metzdorf v. Rumson, 67 N.J. Super. 121, 125, 170 A.2d 249, 253 (1961).

17. *See* N.C. GEN. STAT. § 46-3.

18. 21 N.C. App. 211, *cert. denied* 285 N.C. 596 (1974).

19. This statute preceded G.S. 153A-335, which contains essentially the same language.

distributed to each. The court does not indicate how many lots were distributed to each heir or how long after the decedent's death the division was made. The significance of *Williamson* is unclear. Some attorneys read it as indicating that any sort of partition proceeding by tenants in common is categorically exempt from the subdivision statutes. But it is just as plausible to claim that if any group of tenants in common goes through a voluntary partition in which each tenant is to receive more than one parcel of a size and shape suited for building sites, a subdivision for the purpose of creating lots for sale or building development has occurred even if the division occurs soon after the decedent's death. The question remains whether tenants in common who purchase their property outright, rather than taking the property through a decedent's estate, may circumvent the subdivision regulations by voluntarily partitioning among themselves a property that is suitable for development. Courts in other states have refused to recognize the facade of a voluntary partition and have found an intention to subdivide lots for sale or development in such situations.[20]

Enforcement of subdivision laws

Perhaps the biggest single problem in subdivision regulation by local governments in North Carolina is ordinance evasion and enforcement. The practice of selling parcels of land in a manner that constitutes "subdivision" under the state statutes and local ordinances without the approval of the local government's approval appears to be limited in those areas that are within the jurisdiction of municipalities—perhaps because the subdivider or developer is interested in the services that the municipality provides (particularly water and sewer service and street maintenance). Usually the municipality has something the subdivider wants, and he therefore complies with the subdivision ordinance. Furthermore it is in the urban fringe, within a municipality's subdivision regulations jurisdiction, that the market for finished lots with urban services generally is greatest. As a result, the property is more likely to be owned by a development company that is interested not only in subdividing lots but in building homes as well. If the developer needs building permits from the town or city, he is likely to comply with the subdivision regulations.

But the situation may be much different in the rural areas located within a county's subdivision jurisdiction. In many cases the property to be subdivided is held by a farmer or rural landowner who lacks the resources to finance a subdivision with urban services and has little interest in marketing new homes. The most feasible approach for the developer may simply be to sell lots big enough to accommodate septic tanks and wells along an existing road. Since the lot purchaser will be expected to obtain his own improvements (septic tank) permit and building permit, the county has virtually no leverage over the subdivider. Whatever deficiencies exist in the subdivision are passed on to the lot purchasers. In circumstances like these, the property owner can easily sell individual lots described by metes and bounds in the deeds of conveyance despite requirements that all subdivisions of land be platted.[21] In some cases the subdivider will even describe a private street or joint driveway serving a number of lots in the deeds of conveyance or even incorporate a map of the subdivision by reference in the deeds of conveyance. Officials claim that in some North Carolina counties as many as 300 lots are illegally subdivided each year.

Criminal and civil penalties

How has such evasion been allowed to continue? A precise answer to this question rests with the authority of local governmental units to take action under both civil and criminal laws and how effective the available remedies are.

Violators of a local subdivision ordinance can be prosecuted. The subdivision enabling statutes make it clear that any property owner who "subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor."[22] Under G.S. 14-4, misdemeanors are punishable by a fine of not more than $50 or imprisonment for not more than 30 days. Why are violations rarely prosecuted? Because there has been virtually no popular push for district attorneys to take action in these cases. Many prosecutors are wary of proceeding into this area, where there is a certain ambivalence about whether subdivision activity should be regulated at all. Few prosecutors understand the subdivision process and the regulatory process that affects it very well, and they are unlikely to be much concerned with this area of the law. Unless lot purchasers are sufficiently distressed by the illegality

20. *See, e.g.,* Pratt v. Adams, 229 Cal. App.2d 602, 40 Cal. Rptr. 505 (1964), and Mount Laurel Township v. Barbieri, ____ N.J. Super. ____, 376 A.2d 541 (1977).

21. Note that North Carolina statutes do not require all subdivisions to be platted; this requirement is left at the local governments' option (G.S. 160A-372; G.S. 153A-331). These statutes raise the possibility that a local government might choose to approve only the deed of conveyance rather than a subdivision plat where only small minor subdivisions were concerned. Metes and bounds conveyances, however, are not exempt from regulation under the General Statutes.

22. N.C. Gen. Stat. § 160A-375; N.C. Gen. Stat. § 153A-334.

of the subdivider's actions, there is no organized, vocal group of victims who will stir an overloaded prosecutor to give such a matter precedence over typical criminal complaints.

The statutes also provide various civil remedies for violations of local subdivision ordinances. The municipal statute (G.S. 160A-375) provides that the enforcing jurisdiction "may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance."[23] These remedies have not been very effective for a variety of reasons. First, the most typical violation of a subdivision ordinance involves the sale of lots before approval by the local government and recordation of a final plat. In many cases not until lots have been prematurely sold is it clear that illegal subdivision has occurred. But once lots have been sold, most remedies are inadequate to restore the status quo. Without explicit statutory authority, courts are unlikely to require a reconveyance by purchasers of lots sold in an illegal subdivision. A court order may require a subdivider to submit a properly designed plat, but he no longer has control over the entire property to be subdivided. A court order enjoining further violation of the subdivision ordinance is another civil remedy that a city or county attorney may use. While such an order may prevent the further sale of other illegally subdivided lots, it would not alone correct violations that have already occurred. City councils and boards of county commissioners are often reluctant to finance the legal actions necessary to bring suit against violators, and in many counties the ambivalence many commissioners feel about subdivision regulations is reflected in spotty and inadequate enforcement and in the inability of subdivision ordinance administrators to convince the governing body that any legal action should be taken against ordinance violators.

One rarely used remedy that may hold some promise involves civil penalties. Local governments are authorized[24] to establish a system whereby violators of their subdivision ordinance are subject to a monetary penalty. The governing body may delegate responsibility for the system to an administrative official. If a property owner violates the ordinance, the enforcement officer sends him a citation explaining the nature of his violations and gives him a prescribed period of time either to pay the penalty or to be heard in small-claims court. If he fails to pay, the unit files suit for the penalty. If the court finds that a violation has occurred, the subdivider must pay both court costs and the penalty. The system of civil penalties for subdivision ordinance violations could be best administered in the way that traffic or parking tickets are handled. There is some question as to what dollar amount may be imposed in this civil penalty. If civil penalties were limited to $50 per violation (the maximum permissible criminal fine), it may be worthwhile for a subdivider to incur this liability as the price of evading costly subdivision requirements. Nevertheless, a properly administered system of enforcement penalties might well have a salutary effect on compliance with ordinance requirements.

Administrative remedies

If court action proves to be inadequate for dealing with subdivision ordinance violations, why not use administrative remedies and sanctions to produce the desired result? Unfortunately either the administrative mechanisms and sanctions that would make this possible are impermissible under North Carolina law or their legality has not been clearly established. The major problem in administering subdivision regulations in North Carolina is the absence of appropriate administrative means of ensuring compliance. Generally speaking, administrative enforcement mechanisms involve the delaying of some related administrative action or the withholding of some related administrative permit until the applicant proves that he has complied with another set of procedures, regulations, or laws. To the extent that local units can execute this delay or withholding tactic, compliance is likely to be enhanced. The two primary administrative procedures considered here that offer some potential for coordinated administrative enforcement and improved subdivision ordinance compliance are (1) the recording of a deed for a subdivision lot by the county register of deeds, and (2) the issuance of a building permit for a subdivided lot by a city or county building inspector.

Consider the recording of deeds and plats by the register of deeds. Normally this recordation is a ministerial act; if the deed or plat otherwise meets the requirements for recordation, the register has no discretion to deny recordation. The subdivision enabling statutes do, however, impose an important requirement on him:

> From the time that a subdivision ordinance is filed with the register of deeds of the county, no subdivision plat of land within the city's [county's] jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by

23. The equivalent county statute merely provided that the county "may enjoin illegal subdivision, transfer, or sale of land by action by injunction."

24. *See* N.C. GEN. STAT. § 160A-175(c) and N.C. GEN. STAT. § 153A-123(c).

the chairman or head of the agency. The register of deeds may not file or record a plat of a subdivision located within the territorial jurisdiction of the (city) (county) that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section.[25]

As the statute indicates, the register of deeds may not record a subdivision plat that lacks evidence that the appropriate local subdivision approval agency has approved it. Since the register is explicitly prohibited from recording an unapproved subdivision plat but the statute is silent as to the recordation of deeds that refer to lots in unapproved subdivisions, he has no authority to refuse to record such deeds. As a result, even though a subdivider has flagrantly violated the provisions of a local subdivision ordinance (whether municipal or county), the register of deeds risks incurring liability if he refuses to record a deed that refers to a lot in the illegal subdivision. Legal authority requiring the register to screen all deeds for compliance with subdivision regulations could help to stop subdivision evasion.

Perhaps the most important governmental permission that may play a role in enforcing subdivision ordinances is the building permit. Most jurisdictions that have enacted subdivision ordinances also enforce the State Building Code, and often the building inspector either has certain subdivision inspection responsibilities or serves as the subdivision ordinance enforcement officer. Traditionally the building permit has served as the final certification that construction on a site can proceed as proposed. The North Carolina statutes that govern the duties of inspectors provide:

> No person may commence or proceed with:
> (1) The construction, reconstruction, alteration, repair, removal, or demolition of any building;
> (2) The installation, extension, or general repair, of any plumbing system;
> (3) The installation, extension, alteration, or general repair of any heating or cooling equipment system;
> (4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances or equipment
>
> without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. . . .[26]

It is not clear whether the term "work" as used in the statute includes building construction only or whether it also includes the work involved in preparing subdivided lots for development. It can be argued that the issuance of a building permit should serve as the final blanket approval for all development and construction plans and that this statute merely confirms that unless the subdivision ordinance has been complied with, no building permit will be issued. Nearly all subdivision ordinances enacted in the state contain a provision similar to the following:

> No construction permit shall be issued for a lot in any subdivision for which a plat is required to be approved until such final plat has been approved by the Planning Board.

In practice, most municipalities have withheld building permits from developers who have violated their respective subdivision regulations. This withholding rarely occurs, however, because the developer who is also in the home construction business knows that he needs the local building inspector's cooperation if he expects to conform to his construction schedule; evading the subdivision regulations is only asking for future trouble and delay.

Suppose that a property owner who sells a group of lots to a builder violates the subdivision ordinance—perhaps by failing to prepare a plat for approval. In such a circumstance some jurisdictions expect the builder to know whether his predecessor in interest complied with the ordinance. That is, the builder is assumed to have had constructive or actual notice of the violation when he purchased the lots, and he is expected to shoulder the ordinance burdens that the subdivider dodged. (The builder probably does know of any major violations of the ordinance before he contracts for the land, and he may be quite willing to fulfill the requirements placed on a subdivider in order to enjoy the cooperation of the jurisdiction that issues building permits.)

It is yet another circumstance that poses administrative and legal problems. The subdivider may not be interested in financing a subdivision with urban services or amenities and may have no interest in marketing new homes. Often a farmer or long-time rural resident, he simply wishes to sell unimproved lots without the bother of regulations that govern platting, lot and road design, and public improvements. He is most likely to violate the ordinance by selling unimproved individual lots to purchasers without preparing a plat for the government's approval. Often the lot purchaser does not know that his lot is part of an illegal subdivision. Building inspectors are usually reluctant to withhold the building permit from innocent third parties in situations like these, particularly since there is usually no reasonably productive use that can be made of the lot without the building permit. In the

25. N.C. Gen. Stat. § 160A-373; N.C. Gen Stat. § 153A-332.
26. N.C. Gen. Stat. § 160A-417; N.C. Gen. Stat. § 153A-357.

absence of statutory language governing the matter, many courts have refused to allow the withholding of building permits for lots in an illegal subdivision if the lot purchaser had no actual knowledge that violations occurred.[27]

The case for withholding building permits in unapproved subdivisions, however, has become more and more compelling in the past few years as it has become clear that illegal subdivision has continued with impunity. Some authorities have taken the hard-line position that only by withholding building permits in every case of evasion can evasion be stopped.[28] Yet withholding building permits from those who buy lots in unapproved subdivisions unaware of ordinance violations hardly solves the problem. One variation of this approach, used in a few states, is for local units of governments to issue building permits to innocent lot purchasers but impose such conditions as would have been imposed on the subdivider at the time he conveyed the lots illegally.[29] If the subdivider has violated the ordinance by failing to provide a paved street or sufficient right of way or by failing to provide certain drainage improvements, then the unit may require the purchaser to plat his own lot, dedicate to the public those easements that the subdivider failed to provide, and enter into an agreement for sharing the cost of installing required public facilities and improvements (e.g., street paving, drainage improvements). Even where local governments have this authority, it is virtually impossible either to correct subdivision design deficiencies once some of the lots have been sold or to overcome the problems created by lots of inadequate size or width. And in North Carolina, as in many other states, local units have no authority to condition the issuance of building permits in this manner.

Another approach to illegal subdivision is to allow the innocent purchaser to rescind his land purchase contract and get his money back. In the states where local governments are allowed to withhold building permits for illegally subdivided lots, the innocent purchaser often has either this option[30] or the option to sue the subdivider for damages caused by his noncompliance. Thus if the local unit places the hardship caused by the lack of compliance with subdivision regulations on the lot purchaser by withholding the building permit, the purchaser may protect himself by reconveying the lot or parcel to the subdivider and demanding a refund of all moneys paid for the lot. Some states that do *not* permit local governments to withhold building permits from innocent lot purchasers still permit the purchaser this right of rescission.[31] In these states the city or county has no power to force compliance with the subdivision regulations unless the lot purchaser voluntarily chooses to repudiate his contract. If he does and the lot is reconveyed to the original subdivider, then the local unit can enforce a court order prohibiting the future sale of unapproved lots.

Here in North Carolina no statutory provisions speak directly to the right of the innocent purchaser to rescind his contract, but the State Supreme Court has considered whether this right is implied in these circumstances under the common law. In *Financial Services v. Capitol Funds*[32] it found that no such right exists if no misrepresentation concerning the legality of the subdivided lots has been made. In the *Financial Services* case, the Court characterized the land sales contract between a subdividing property owner and an innocent purchaser of an unapproved subdivision lot as illegal. It showed little sympathy for the purchaser in that case, perhaps because the plaintiff-purchaser had used poor business judgment in entering into a disadvantageous land sales contract for a commercial business site and there was no evidence whatever that the local government (City of Raleigh) had withheld building permission from the plaintiff because of the subdivision ordinance violation. The case is particularly important, however, since unless the innocent lot purchaser's right to rescind the land sales contract for an illegally subdivided lot is established, it is unlikely that a North Carolina court would allow a local government to withhold a building permit from the purchaser of an illegally subdivided lot.

During the 1977 session of the North Carolina General Assembly, a bill was introduced that would have permitted a court to order the reconveyance of a lot purchased in an illegal subdivision upon the motion of either the lot purchaser or the local government in whose jurisdiction the violation had taken place.[33] The substance of the bill was deleted on the Senate floor. Perhaps the bill's unique feature was that it would have permitted the local unit to initiate or become a party to the suit and would have permitted the court to order the reconveyance of an unapproved lot over the lot purchaser's objection. Some have speculated that the broad grant of authority to local units to intervene in

27. *See, e.g.*, State *ex rel.* Craven v. City of Tacoma, 63 Wash. 2d 23, 385 P.2d 372 (1963); Keizer v. Adams, 88 Cal. Rptr. 183, 471 P.2d 983, 2 C.3d 976 (1970).

28. Freilich & Levi, *supra* note 11, at 50.

29. This is the thrust of some 1977 amendments to California's "Subdivision Map Act." See Cal. Gov't. Code § 66499.34 (1966) (West Supp. 1977).

30. California for example. See Cal. Gov't. Code § 66499.32 (1966) (West Supp. 1977).

31. Wisconsin, Michigan, Rhode Island, and Washington. 4 A. Rathkopf, The Law of Planning and Zoning 71-125 (4th ed. 1977 Supp.).

32. 288 N.C. 122, 217 S.E.2d 551 (1975).

33. The skeleton of Senate bill 686 was eventually enacted as N.C. Sess. Laws 1977, Ch. 820, and resulted in the slight rewording of G.S. 160A-375.

this manner was responsible for the bill's demise. Perhaps a future bill permitting the innocent lot purchaser alone to rescind the land sales contract within a certain period of time after he discovered his lot was in violation of the subdivision ordinance might fare better. And only then might a court determine that a local government's practice of withholding a building permit from all purchasers of illegally subdivided lots is legitimate.

Conclusion

Subdivision regulation in North Carolina today suffers from legal ambiguities concerning the scope and coverage of the state subdivision control enabling statutes and the means by which local ordinances adopted pursuant to these statutes are to be enforced. Early subdivision statutes paid insufficient attention to defining "subdivision" for purposes of regulation. The result is that G.S. 160A-376 and G.S. 153A-335, those statutory provisions that define the scope of subdivision regulation by local governments, are difficult to interpret. The continuing disagreement over the applicability of the statutes to the first lot divided from a larger tract of land can probably best be reconciled by amending both of these statutes so that the ambiguities are removed. The best approach may be to rewrite the first portion of the "definition" section to define "subdivision" as "all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions" and to delete entirely the language about the "purpose of sale or building development." If special types of divisions of land (partitions of land, division of land by ground lease, division of land resulting from condemnation or other court order) should be excluded from coverage, specific exemptions should be added to the statute to deal with each circumstance. Language referring to the purpose or intention of the property owner should be avoided.

Statutory changes might also serve to clarify the range of remedies that can be used in administering and enforcing subdivision ordinances. Legislation that would permit the purchaser of a lot in an illegal, unapproved subdivision to rescind his land sales contract within a certain time period after he discovered, or was notified of, the subdivision's illegal status would be beneficial. Likewise, a statutory provision clarifying the authority of local governments to withhold building permits for lots in illegal subdivisions is needed. Finally, we need to investigate what other administrative mechanisms might be conveniently used to help enforce subdivision ordinances (e.g., withholding deed recordation, withholding septic tank permits or utility connections.) Only when the necessary statutory changes are made to clarify and strengthen administrative mechanisms for enforcement will there be increasing compliance with the law. □

Book Review

PUBLIC HISTORY IN NORTH CAROLINA, 1903-1978. Jeffrey J. Crow, editor. (Raleigh: North Carolina Department of Cultural Resources, Division of Archives and History, 1979. Pp. ix, 110. $3.50 in paperback. Available from the Division of Archives and History, Raleigh.)

The seventy-fifth anniversary of the establishment of the North Carolina Historical Commission (as the state agency now called the Division of Archives and History originally was known) was marked by a day-long celebration in Raleigh on March 7, 1978. The chief feature of the day was a series of papers by noted specialists from outside North Carolina on the development and achievements of the various programs of the Division—archives, publications, museum, historic sites, and historic preservation—and of the Division as a whole. Even after discounting for the generosity of spirit likely to inform the remarks of anyone invited to speak on such a program, these accounts of the high achievement and national recognition of the Division are impressive and pride-inspiring. A short history of the policy-making board of the Division (once more called the Historical Commission after carrying other titles) by one of its long-time members opens this collection of the day's addresses and a brief forecast by its Director of the future of the agency closes it.

Appendices include a list of all Historical Commission members from 1903 to date and biographical sketches of all Secretaries and Directors of the agency.—JLS

Housing Costs and Government Regulations

Richard D. Ducker

This article is a review of the book, *Housing Costs and Government Regulations,* by Stephen R. Seidel (New Brunswick, N.J.: The Center for Urban Policy Research, Rutgers University, 1978) 434 pp., $15.00.

In the past several years concern has grown about the costs imposed by government regulations at all levels of government. State and local governments have focused on the cost implications of land use, environmental, and building controls on land development. The most ambitious effort to investigate and research this topic has resulted in the publication of *Housing Costs and Government Regulations* by Stephen R. Seidel, a research associate at the Center for Urban Policy Research, Rutgers University. He purports to analyze the extent to which seven types of government regulations are responsible for the recent rapid inflation in the price of new housing across the country—namely, building codes, energy-conservation codes, zoning, growth controls, subdivision regulations, environmental regulations, and settlement and home financing regulations. In cooperation with the National Association of Home Builders, Seidel and his research staff at the Center for Urban Policy Research sent a questionnaire to roughly 33,000 developers and builders across the country. Approximately 2,500 responded, and 400 were interviewed individually. About 300 public officials were also interviewed.

The data describing just how housing costs have climbed during the '70s reveal few surprises but are remarkable nevertheless. The median sales price of single-family residences nationwide (both new and used) has climbed from $23,300 in 1970 to roughly $50,000 in the fall of 1976, and the figure now exceeds $60,000. Although 73 per cent of the new single-family construction sold for under $30,000 in 1970, that percentage had decreased to 13 per cent by 1976. Incomes did not keep pace. During the period 1965-72 personal income nationally increased an average of 6.8 per cent annually while housing prices moved at a rate of 5 per cent. However, in the period 1973-76, incomes jumped 7.9 per cent while housing prices nationwide escalated at a rate of 12.4 per cent per year.

Clearly housing prices have climbed dramatically during the 1970s. But can it be proved that governmental regulations have been a crucial explanatory factor? Seidel's methodology involves asking land developers and builders how regulations have affected the market in which they sell. Although some bias in the responses received is inevitable, the results are noteworthy. As recently as 1969, a survey of developers and builders revealed that only 4.1 per cent of those surveyed considered government regulations and procedures a "significant problem in doing business." Seidel's 1976 survey, however, indicated that 38.1 per cent of those surveyed (33.8 per cent in the South) considered "government-imposed regulations" to be a "significant problem in doing business." Furthermore, government regulations were named more often than any other single problem—more often than the unavailability of land, the unavailability of financing, or high interest rates. When asked to describe the nature of the problem, developers in the Northeast and West found the improper exercise of local administrative discretion to be the crux of the problem, while developers in the South often cited governmental delay.

Direct costs of government regulation

Just what kinds of cost may be imposed on a developer or builder as a result of government regulations? The author suggests that we first consider "di-

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rect" costs, that is, those out-of-pocket expenses that the developer or builder incurs in order to have his plans reviewed and approved and his work inspected by government authority. For example, certain development plans, construction illustrations, and market studies, which the developer would not otherwise prepare, may be required by governmental review agencies. In addition, a developer or landowner may need to enlist an engineer, land planner, or attorney for the express purpose of presenting the development proposal to a reviewing governmental agency, or to the public at a public hearing. There are also permit application and inspection fees that a developer or builder must pay—fees for plan review (subdivision plat review, for example), fees for inspection services, fees imposed on a developer for seeking various sorts of administrative or legislative permission (subdivision plat review), fees for inspection services rendered by government (building inspection fees), and other special fees and charges (utility tap-on fees). The costs of reviewing development proposals, once thought to be properly assumed by the general public, are now increasingly being shifted to the applicant or petitioner.

Indirect costs: delay

A second major type of cost borne by developers attributable to government regulations results from delay in the development review and approval process. Delay in this process takes many forms. The number of approvals, review, and permits required by various levels of government has increased, reflecting in part an increased awareness of the complex effects that land development has on a community and the environment. In some cases, a government agency may refuse to approve plans or issue a necessary permit until another agency acts, even though both might have been able to review the proposal simultaneously. The increased emphasis on citizen participation is reflected in additional public hearings held to discuss land development proposals. Government bodies are also more prone to postpone decisions on development projects while they await additional technical information concerning the project. Unfortunately *Housing Costs and Government Regulations* offers little guidance for determining whether such types of delay are fundamentally "unnecessary," as the author suggests, or whether additional time taken for review is resulting in more appropriate development and better protection for the housing consumer and the public interest.

We do know, according to Seidel's survey of home builders, that 78.9 per cent of their projects could be completed within seven months in 1970, but only 27.3 per cent could be finished within this time period in 1975. Some of this difference may result from an increase in the size and complexity of the average project undertaken five years later. Likewise the soft market for housing in 1975 may have encouraged developers to stage their development over a longer time. Nevertheless, it does appear that increasing complexity and delay in development approval may contribute to lengthening the process. To the developer, of course, time is money. Most land development and home construction projects are highly leveraged—that is, the developer or builder invests relatively little of his own money and relies heavily on borrowed capital. The developer/builder has to pay high interest charges for borrowing this money, and the interest payments continue until residences or other developed property in the project are sold, thus providing the developer or builder the funds to pay back early maturing loans. Seidel estimates that because of these interest or financing charges, for every month the completion date of a typical development project is delayed, the developer or builder must increase the price of a residence 1 to 2 per cent in order to realize his expected profit.

Some states have prescribed time limits within which official action must be taken on permit applications and development plans in an effort to deal with this problem of delay. For example, here in North Carolina the relatively new Coastal Area Management Act imposes the time limits for action and carries the deadline concept one step further by providing that if a permit application for "major development" is not approved or denied by the Coastal Resources Commission within 90 days, the application is to be treated as having been approved. The 90-day deadline, however, may be extended another 90 days at the behest of the Commission. The statutes specifically provide that no waiver of this time limitation may be required of any applicant.[1]

The rezoning process in North Carolina local government offers some peculiar possibilities for delay. In this state, before an amendment to a county zoning ordinance may be adopted, it must be referred to a planning agency, which must have at least 30 days in which to offer its recommendation.[2] Similarly, although not required by state statute, most municipal zoning ordinances also provide for planning agency review. Some city and county planning agencies hold their own public hearings on proposed zoning amendments in addition to the one that by statute a governing body must hold. To avoid delay and to ensure that both bodies are exposed to the same public comment, a joint public hearing could be advantageous. Another approach may be to reduce the time

1. N.C. Gen. Stat. § 113A-121(c).
2. N.C. Gen. Stat. § 153A-344.

period required to advertise this public hearing. First newspaper publication of the required public hearing notice must occur no later than 15 days before the hearing. At its fall 1978 meeting the North Carolina League of Municipalities adopted a 1979 Legislative Goals and Policy Statement that calls for the reduction of the statutory 15-day notice period (which applies to the amendment of a variety of development-related ordinances) to 10 days in order to speed up consideration of rezoning proposals. Such a change may enable governing bodies to act more quickly on rezoning proposals if they choose to do so, but it will have little effect on those governing bodies that are not particularly inclined to bring the matter to a vote. Since zoning amendments are treated by the courts as legislative acts, North Carolina city councils or county boards of commissioners are under no obligation to review or vote on a petition for a zoning amendment unless the governing body has bound itself to do so in its zoning ordinance.

Certain local governments in North Carolina have already taken steps to streamline the administrative review of development plans. The city of Winston-Salem has established within the Public Works Department a plans-and-permits coordinator who helps shepherd development plans through the various departments and agencies of city and county government and expedite the review process. In Durham, Wilmington, and several other localities, interdepartmental subdivision review committees have been established to ensure that, if possible, plan reviews are conducted simultaneously and disagreements between agencies over inconsistent requirements are resolved quickly.

It is obvious that development proposals cannot be adequately reviewed, inspections properly made, and permits properly issued instantaneously. The question is rather one of what kind of review is cost-effective. That is, what review process will ensure that the benefits to the public of appropriate review will exceed the costs of delay to the developer. The time necessary for review, in turn, can be reduced to a minimum by ensuring that necessary staff is available to handle applications, plans, and petitions adequately.

Indirect costs: more stringent development standards

The third and most significant type of cost is that of complying with the substance of land development regulations. Subdivision regulations serve as a good example. Where 6-inch sewer lines were once the standard, 8-inch lines are now required. Once 18-foot street pavement widths were sufficient. Now communities around the country often require pavement widths of at least 26 feet for local residential streets. As requirements become stiffer, the developer's costs of compliance increase, and these invariably are passed on to the consumer in the form of higher lot and home prices.

Is this trend undesirable? According to Seidel's survey, more and more developers believe that many regulations have been added or changed in a way that restricts or prevents the most cost-effective development design. Developers argue that the costs of compliance exceed the benefit to the lot purchaser and the general public. For example, in many instances where sidewalks would be appropriate, providing a sidewalk on one side of a street is sufficient and a requirement that they be provided on both sides of a street is both unnecessary and excessive. Similarly, requiring four extra feet of pavement width on a short cul-de-sac street may produce a rather marginal benefit to property owners and the public while imposing a substantial cost on the subdivider and hence ultimately to the home buyer.

The study criticizes the trend toward higher subdivision standards for another reason. Seidel notes a growing trend toward burdening developers (and hence subdivision residents) with improvement costs that were previously considered to be the responsibility of local governments. More and more communities require that storm sewers, sidewalks, paved streets, and water and sewer lines be installed at the developer's expense. The trend, however, has continued despite the fact that some towns and cities subsidize the costs of providing these same kinds of capital improvements—for example, street paving, and the installation of sanitary and storm sewer lines—in older areas of the city, where none existed before. Seidel suggests that subdivision regulations may be used as a means of shifting a greater share of the cost of capital facilities (streets, utilities) to new residents of a community than are imposed on existing residents. Furthermore, the same may be true of the maintenance costs of such facilities. For example, a public works department may find that a street with a certain crushed stone base and a certain thickness of appropriate paving material may require less maintenance through time than streets constructed to lower standards located in other areas of town. If lot purchasers ultimately pay for a higher standard street, they will, in effect, be subsidizing the future maintenance of the street, a function financed out of the general fund in most communities.

A third reason that higher development standards may be undesirable is that compliance costs can inflate housing costs to such an extent that only a small percentage of the population can afford to buy a new house. According to Seidel, development controls may have an "exclusionary" effect in the sense that they are, in part, responsible for such a high cost of new housing that low- and middle-income households are excluded

from more and more of the housing market. As Seidel shows, on a nationwide basis there is a strong relation between the income of residents in the community and development standards. The lower the income of the community, the more likely the community is to encourage any kind of development it can get; the higher the income, the more likely the community is to be selective and impose higher standards on newcomers.

Zoning may also have an exclusionary effect. According to the developers' poll, the two major impacts of zoning are to increase land costs and decrease the density of residential development actually constructed. Many communities have a surplus of land zoned for industrial uses—far more than market forces would demand or nuisance prevention and good planning would suggest. However, districts suitable for mobile home and apartment houses are undermapped, driving up the price of land that is available and suitably zoned. The other feature of zoning ordinances that Seidel finds to be subject to abuse is the minimum lot-size requirement. According to a study of New Jersey local governments, roughly two-thirds of all land zoned for single-family residences throughout the state was restricted to lots of at least 40,000 square feet. Large-lot zoning has the effect of creating a shortage of suitably zoned smaller lots and artificially inflates the costs of housing in areas with those lots. Furthermore, large lots are generally characterized by wider lot frontages, and lot width has been found to be closely related to the capital costs of installing subdivision improvements such as streets and utilities. Finally, Seidel points out that large-lot zoning may result in the construction of houses with greater floor area because many lenders assume a fixed ratio between lot value and total housing price in setting mortgage loan terms. For all these reasons, artificially high minimum lot-size requirements and zoning maps that overly restrict certain housing types may contribute to higher housing costs.

The costs and benefits of regulation

In light of Seidel's arguments that the costs of regulation have increased dramatically in recent years, the reader might assume that land use and building regulation is the root cause for the increase in housing prices and that a substantial amount of the regulation that occurs is excessive or inappropriate. Yet there is no good evidence that either circumstance is necessarily true. Despite the emphasis on the costs imposed by regulations, Seidel's own statistics indicate that the unprecedented rise in interest rates and the costs of financing during the 1970s for developers and builders—as well as consumers—alone can explain much of the increase in housing prices. Costs of materials and labor have escalated during this period of inflation as well. The poor performance of the stock market in the 1970s has also made real estate more attractive in what has increasingly become a seller's market. Clearly there are other fundamental explanations for increased housing prices apart from increased regulations. Even in those areas where development costs have increased faster than other components of housing cost, it is difficult to know whether such costs imposed by increased regulation were justified or not. Some would argue that only in the 1970s have units of government acted to rectify some of the developer abuses of the past, to prevent further land use and environmental damage at the expense of the public, and to protect the housing consumer. Perhaps evidence that the costs of complying with land-use regulations are rapidly increasing simply indicates that the public is beginning to catch up in these areas.

Perhaps the biggest problem with Seidel's analysis is that it is easier to measure the costs of regulation than to measure the benefits. It is easier to document the expenditures that a developer makes on drainage and storm water improvements than to determine the costs of soil erosion, sedimentation of creeks, or the flood that will result if preventive measures are not taken. It is easier to calculate the interest on a construction loan that accrues while a developer waits for a review of his plans than to measure the benefits derived because the administrative agency required additional engineering or environmental information before it made its decision. Since we can generally estimate the developer's costs more easily than we can measure public environmental costs, we may well underestimate the latter.

What relevance does Seidel's study have for North Carolina?

The author does include two short case studies of the North Carolina experience of two developers, one from Guilford County and one from Chapel Hill, in obtaining approval for their respective development projects. These two examples are likely to be of particular interest to North Carolina readers. However, much of the information from the Seidel study seems to be drawn from larger metropolitan areas (outside the South) where development pressures have been more intense and units of governments have imposed greater requirements on developers without fear that the development will be lost to neighboring jurisdictions. Also, the local governments in most other states rely far more on revenues from the local property tax than do North Carolina communities and the fiscal impact of land development assumes greater significance elsewhere because of this. Large-lot zoning does not seem to be nearly as pronounced here as in more urban states. Nor do subdivision controls appear to be

nearly as demanding as in many of the country's larger metropolitan areas. The average price for a new house in North Carolina is at least 10 per cent lower than the average for the entire country. In the area of code enforcement, North Carolina has adopted a State Building Code that is superior to the proliferation of local codes found in many other states. Variation among local building codes imposes added costs on builders who must spend time and money to learn the different building standards and specifications and to maintain larger inventories of building materials to meet the varying local requirements. In general, the costs of development regulation in North Carolina seem to be relatively moderate and well justified, although there may be considerable variation among some communities.

In the past the general public absorbed most of the environmental and nuisance-related costs of new development as well as the costs of providing public facilities to serve it. Now, especially in some of the larger metropolitan areas around the country, the pendulum is swinging back so that more and more of these costs are being returned to the developer and the consumer. We now know that determining the extent of these costs and shifting them back to the developer and property owner creates still further costs in terms of paperwork, inspection fees, and delay. With these lessons of experience, we may be entering a period in which each regulatory requirement and review procedure will have to be justified in terms of the costs it imposes and the benefits it generates. Perhaps that is the way it should have been all along. □

Public Safety Programs

(continued from p. 8)

safety program will maintain a high quality of service to protect lives and property rather than being a way to save money at the expense of adequate public protection. The public and fire and police employees should know that public safety is not an untried adventure but has been successfully implemented in North Carolina cities and in other communities throughout the country. Therefore, those in the community who make the final decision about starting a public safety program should receive as much information as possible about the operation of such programs elsewhere. They should visit cities where some form of public safety program is being used and interview police and fire officials in those places as well as people in their own police and fire departments.

Elected and appointed community officials should also gather data about the community's own police and fire operations that are relevant to deciding about a public safety program. They should look at fire department operations in terms of number of fires, types of fires, response time, fire loss, etc., and at police operations in terms of the number of patrol calls, average number of calls per day, the location of such calls, number of officers now available to answer such calls, average response time, etc.

The process by which a governing body decides on public safety is important. A decision that seems to have been reached without careful thought or planning is likely to have a serious negative effect on the program as it is implemented. Therefore the decision-making process should show the careful preparation and work that has gone before. This process should bring out how the purposes of the program were established, what information was analyzed, the numerous alternatives that were reviewed, and why the governing body selected that specific public safety program for the community.

The implementing of a public safety program also usually requires new managerial approaches. The public safety director and the police and fire chiefs become less involved in day-to-day problems; they delegate responsibility on individual projects to supervisors and field commanders.

A public safety program also means new approaches to organizing and providing police, fire, and other protective services. With the traditional approach, efficiency is normally achieved through specialization in organization and assignment—for example, traffic and juvenile divisions in the police department and fire suppression, arson investigation, and fire prevention in the fire department.

Public safety is a program that must be carefully reviewed before any decision to adopt it is made. Then if a community decides to adopt the program, the change over should be carefully planned, supported, and implemented. Long-term purposes should be established, and these should be explained to all interested parties. Information must be fully disseminated to everyone involved in or affected by the program.

Public safety is not a panacea to solve the ills of police and fire services, but only one possible alternative. If government is to become more effective and productive, then public officials must be willing to examine new approaches and to accept the challenges that innovations bring. □

Campaign Finance in North Carolina: The '76 Experience

In the early '70s the General Assembly passed two campaign-financing laws. Their application to the 1976 general elections provides some insight into the relationship between money and political decision-making.

Jack D. Fleer

THE FINANCING OF POLITICAL campaigns continues to be a subject of much discussion and criticism. Public officials, politicians, and students of politics have tried to understand how private and public campaign funds affect the nature of democratic political systems and the decisions made within them. The basic relationship between money and political decision-making commands careful study by both citizens and public leaders.

In 1974 *Popular Government* carried an article by me that examined campaign finance costs in the 1972 North Carolina elections as they were reported according to regulations in the state's Corrupt Practices Act of 1931.[1] That article pointed out deficiencies in the law. Since it was published, the General Assembly has enacted two laws that have altered the legal context of campaign finance. This article reviews those laws—the Campaign Finance Regulation Act (1974, 1975) and the Campaign Election Fund Act (1975)—and examines their implementation during the 1976 election year.

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1. Jack D. Fleer, "Campaign Costs in North Carolina: The 1972 Elections," *Popular Government* 40 (Summer 1974), 38-49.

New campaign finance disclosure law

The 1974 Campaign Finance Regulation Act, as amended in 1975, differs greatly from the 1931 Corrupt Practices Act that it replaced.[2] The new legislation was part of a general wave of reforms in political finance practices that affected national and state campaigns for public offices. During the period from 1972 to 1976 forty-five states enacted laws that provide for disclosure of campaign finance activities.[3]

Major changes in the 1974 North Carolina campaign finance law include: (1) more inclusive coverage of those required to file financial disclosure reports; (2) more frequent reporting and more precise directions in reporting requirements; (3) more stringent regulations on campaign contributions and expenditures; and (4) provision for improved enforcement of the act by the independent, bipartisan State Board of Elections. (The 1975 and 1976 Federal Elections Campaign Act Amendments also established significant new campaign finance regulations for state-elected national offices.[4] These are not discussed here.)

More inclusive coverage. The 1974 law includes three groups that must report campaign finance activities: candidates and candidate committees, noncandidate political committees, and media that receive campaign expenditures. Reports must be filed by treasurers of candidates and treasurers of committees organized on candidates' behalf for all statewide offices (executive and judicial), all General Assembly offices, and all municipal and county offices except in those jurisdictions with less than 50,000 population. Two contrasts with the former law illustrate the broader coverage:

—Under the 1931 law, candidates were required to file only during primaries. Now treasurers of candidates

2. N.C. Gen. Stat., Ch. 163, Art. 22. A brief discussion of the passage of the law is found in H. Rutherford Turnbull, III, "Campaign Financing," in *North Carolina Legislation, 1974* (Chapel Hill: Institute of Government, 1974), pp. 24-28, 46.

3. Herbert E. Alexander, *Financing Politics: Money, Elections and Political Reform* (Washington, D.C.: Congressional Quarterly Press, 1976), especially Ch. 7; Herbert E. Alexander, ed., *Campaign Money: Reform and Reality in the States* (New York: The Free Press, 1976); and Common Cause, "Four Years of Reform: States Enact Accountability Measures" (mimeograph, December 1976), pp. 1-3.

4. See *United States Code*, Title 2, Sections 431-56; and Alexander, *Financing Politics*.

and committees must file for both primary and general election campaigns.

—Persons who had no opposition in an election were exempt from reporting under the former law. The 1974 law requires a candidate to file whether or not he is opposed.

The 1974 law subjects political committees to its regulations. It includes teachers' organizations and labor unions as well as political action committees of corporations, insurance companies, medical associations, and other organizations.

Finally, all media (printed and electronic) must report all expenditures by candidates and political committees for advertising, production, and other media services. This major addition to the reporting coverage derives from the fact that media expenditures make up a large portion of campaign costs.[5]

Frequency and mechanics of reporting. The law places the responsibility for reporting on each treasurer of a candidate or a committee; thus a specific, named person is identified. Five reports must be filed by all candidates and committees: an organizational report, pre- and post-primary reports, and pre- and post-general election reports.

In addition, the media are reqnired to file four reports listing receipts for advertisements and services: post-primary, pre-election, post-election, and final supplemental reports.

Filing requirements and regulations are stated clearly in the law and in a manual prepared by the State Board of Elections.[6] Essentially the law and the manual make reporting of campaign finances more complete, more precise, and more comprehensible to the interested public. Specification of procedures to be used in financing campaigns is much greater in this law than in the previous one. For example, now all expenditures over $25 must be paid by check; all media expenditures regardless of amount must be paid by check; a contribution over $100 must be by check, draft, or money order. Special provided forms must be used for all filings—a requirement that will promote uniformity of reported data.

Restrictions on contributions and expenditures. Limitations on both contributions and media expenditures are included in the act and are major changes in the campaign finance law.

The law provides that individuals or political committees may contribute no more than $3,000 to any candidate or any political committee for any single election. (Primaries and general elections are considered separately.) Candidates, their close relatives, and party committees are exempt from this limitation. Independent expenditures by noncandidates on behalf of candidates are not limited.

Limitations on media expenditures apply to candidates for the ten statewide executive positions (the Governor, the Lieutenant Governor, and the eight Council of State offices). No candidate for these offices may spend more for media advertising in any one election than $.10 multiplied by the state's voting-age population. In 1976, the maximum permissible expenditure for media in each election was estimated to be $363,900. In calculating media expenses, cost for both production and time or space are included.

Though the United States Supreme Court ruled a similar limitation on general expenditures unconstitutional,[7] the North Carolina law has not been challenged.

Other restrictions on contributions and expenditures are designed to provide more complete records of transactions. Anonymous contributions and contributions in the name of others are prohibited; no cash contributions over $100 are permitted; and expenditures over $25 must be paid by check. Contributions by corporations, labor unions, professional associations, and insurance companies are prohibited. These organizations may form political action groups that may contribute and spend money, but they must file reports under the law—a major new requirement under the law.

Enforcement procedures. The law provides that the bipartisan State Board of Elections shall administer the new regulations, and it gives the Board power to impose strict, systematic enforcement. Under the previous statute on campaign financing, no agency was authorized to examine and investigate the reports. Formerly the only requirement for enforcement was that if a candidate failed to report, the Secretary of State brought the noncompliance to the attention of the proper prosecuting authority.

The State Board of Elections created an office to administer the law—the Campaign Reporting Office. The full-time staff includes a director and a secretary, and other clerical staff are added during peak periods. In its first year the office processed 3,680 reports from candidates, committees, media, and political parties.[8] Examinations of the reports appear to be limited to verifying the information included in a report and cross-checking information from various reports—for example, committee contributions to candidates.[9]

Violations of the law are misdemeanors, and penalties are imposed for late filings. The maximum fine is $1,000 for individuals and $5,000 for persons other than individuals. A maximum sentence of one year in prison may be given. A candidate who fails to file the required reports will not be issued a certificate of nomination or election by the State Board of Elections. Still, in 1976 several candidates who were obliged to file reports on campaign finances failed to do so, but no certificates of nomination or election were withheld because of this failure.[10]

5. Robert L. Peabody, et al., *To Enact a Law: Congress and Campaign Financing* (New York: Praeger Publishers, 1972), and *Dollar Politics: The Issue of Campaign Spending* (Washington, D.C.: Congressional Quarterly, Inc., 1974), pp. 19-28.

6. *Manual of Regulations and Reporting Instructions* (Raleigh: Campaign Reporting Office, State Board of Elections, January 1976).

7. Buckley v. Valeo, 424 U.S. 1 (1976); see also H. Rutherford Turnbull, III, "Election Law: Campaign Financing," *Popular Government* 42 (Winter 1977), 18-19.

8. Interview with Rosemary Stowe, Director, Campaign Reporting Office, July 20, 1978.

9. An assessment of the office is included in Martin Donsky, "Undisclosed Disclosures: A Passive Approach to Campaign Finance Reporting," *N.C. Insight* (Fall 1978), 12-13.

10. *Report of the Campaign Reporting Office* (Raleigh: State Board of Elections, December 1976).

Overview of campaign finances in 1972 and 1976

Although many citizens may see each quadrennial election as "just the same old thing," each election is different and those differences affect campaign finance.[11] The 1972 and 1976 election years will illustrate these differences.

The 1972 and 1976 elections involved many of the same offices—for example, President, Governor, Council of State seats[12]—but the 1972 election included a race for the United States Senate and the 1976 election did not. A Senate contest usually attracts considerable attention and money, and its absence in 1976 meant less competition for funds in that year.

The political contexts in 1972 and 1976 also differed. In 1972 the state Democratic Party was not united after its gubernatorial and presidential candidates were selected; in 1976 it was more cohesive. In 1972 the outcome in the gubernatorial contest was uncertain until election night; in 1976 one candidate appeared to have a commanding lead from early in the fall. Also, while both elections involved many incumbent members of the Council of State, the 1976 contest included some very spirited primary challenges.

The 1976 election calendar also differed from the 1972 calendar. In 1974 the General Assembly changed the date of the state primary election from May until August and the date of the presidential primary from May to March. Some believed that the shortened campaign would reduce the costs of state political campaigns.[13]

Table 1
Total Reported Expenditures of All Candidates by Party,[1]
All 1976 Elections

Office	Democrats		Republicans		Total for all Candidates
	No. of Candidates	Amount	No. of Candidates	Amount	
Governor	5	$3,978,586	4	$ 412,094	$ 4,390,680
Lieutenant Governor	8	1,276,031	2	30,199	1,306,230
Council of State					
Secretary of State	2	191,252	2	8,287	199,539
Attorney General	1	170,132	1	17,112	187,244
Treasurer	3	451,237	2	7,175	458,412
Auditor	3	174,165	1	911	175,076
Supt. of Public Instruction	2	78,975	1	9,430	88,405
Commissioner of Agriculture	1	12,677	1	4,884	17,561
Commissioner of Labor	4	210,196	1	173,752	383,948
Commissioner of Insurance	3	270,697	1	8,817	279,514
U.S. House of Rep.					
First District	2	79,207	2	32,175	111,382
Second District	4	267,781	—	—	267,781
Third District	4	200,248	1	94,344	294,592
Fourth District	1	38,695	2	22,246	60,941
Fifth District	2	153,461	1	161,656	315,117
Sixth District	1	16,725	—	—	16,725
Seventh District	1	32,054	1	4,333	36,387
Eighth District	1	58,925	2	5,925	64,850
Ninth District	2	32,187	1	113,136	145,323
Tenth District	2	89,814	1	105,206	195,020
Eleventh District	5	274,885	3	148,502	423,387
State Senate	79	246,755	30	113,312	360,067
State Party Committees	1	281,676	1	166,632	448,308
Total		$8,586,361		$1,640,128	$10,226,489

1. During the year the American Party and the Labor Party reported expenditures of $7,591 and $1,689, respectively.

Source: Reports filed in Campaign Reporting Office, North Carolina State Board of Elections, Raleigh, North Carolina.

Campaign finance is affected by the number of candidates running and the number of incumbents seeking re-election. [The total number of candidates was greater in 1976 (196) than in 1972 (187) primarily because more Democrats ran. There were more Democratic incumbents in 1976 than in 1972 and fewer Republican incumbents.] Whether a run-off primary is needed to nominate a candidate also varies with the campaign, and it influences the financial situation in the campaign.

Expenditures by candidates and their organizations reflect changes in prices for goods and services, and these costs, along with other factors, affect the overall costs of politics in the state.

In 1976 at least $10,241,691 was spent in North Carolina on primary and general election campaigns to elect U.S. congressmen and state senators and executive officials (data on the North Carolina House of Representatives are not available). This amount includes all expenditures reported to appropriate officials on campaign financial disclosure statements filed during the year. Table 1 lists total amounts for all candidates for specific offices in all elections during 1976.

The 1976 total campaign costs for offices included in this study are significantly greater than the total expen-

11. David W. Adamany, *Campaign Finance in America* (North Scituate, Mass.: Duxbury Press, 1972), Ch. 3.

12. The 1976 election is examined in H. Rutherford Turnbull, III, "The 1976 General Election in North Carolina: A Statistical Review," *Popular Government* 42 (Spring 1977), 54-61; and Schley Lyon and William J. McCoy, *Party Politics in North Carolina* (Charlotte: Department of Political Science, The University of North Carolina at Charlotte, 1977). Also see Gerald M. Pomper with colleagues, *The Election of 1976: Reports and Interpretations* (New York: David McKay Co., Inc., 1977).

13. See "Election Laws" in *North Carolina Legislation 1975: A Summary of Legislation in the 1975 General Assembly of Interest to North Carolina Public Officials* (Chapel Hill: Institute of Government, 1975), pp. 99-106.

ditures in 1972. The increase is $3,214,865, or 45.8 per cent over the 1972 totals. A major difference between the two election years was the absence of a U.S. Senate race in 1976, but if expenditures for only those positions that were subject to election in both years are considered, the increase over the four-year period is dramatically greater—$4,568,117, or 80.5 per cent. During the four-year interval (1972-76), the consumer price index rose 34 percentage points. Either the overall costs of politics in North Carolina took an abrupt leap over this period or the new campaign finance reporting regulations caused more expenditures to be disclosed. Since the number of candidates running and the proportion of incumbent candidates were about the same and the intensity of competition at the highest levels of state executive offices was substantially less, the increase in reported expenditures possibly is due in part to more careful and complete reporting, the presence of new reporting requirements, and an enforcement agency that routinely checked filed reports.

Table 2, which shows the total national and North Carolina political expenditures for all elections in 1972 and 1976, indicates substantial increases in political expenditures over the four-year period. Much of this increase results from greater advertising and more active campaigning rather than from inflation.

Expenditures by office and party. Costs of campaigning for various public offices vary, depending on a number of factors that "define" a campaign for office—jurisdiction, term of office, opportunity for re-election, presence of opposition, or a candidate's previous experience—as Tables 1 and 3 suggest. The contrasts between expenditures for some offices within the 1976 political year are startling, and other contrasts are evident when the 1972 and 1976 election years are compared.

The gubernatorial election was the most important statewide contest during the 1976 campaign, and the amount of money spent by gubernatorial candidates in each of the two major parties varies considerably. Gubernatorial candidates spent almost half the money spent by Democratic candidates for major office, whereas Republican gubernatorial candidates spent only a quarter of their party's major-office expenditures. This difference is significant when the competitive situation for these offices is reviewed: The Democrats elected their nominee outright in the primary; the Republicans required a run-off. The Democratic party candidate won both the nomination and the election with very sizable margins. Presumably the large campaign fund aided in these major political victories.

Table 2

Political Expenditures in the United States and North Carolina, 1972 and 1976

	1972		1976	
	Total Expenditures	Cost per Vote	Total Expenditures	Cost per Vote
United States	$425,000,000[1]	$5.47	$540,000,000[3]	$6.62
North Carolina	7,026,826[2]	4.62	10,241,691[4]	6.10

1. Herbert E. Alexander, *Financing Politics: Money, Elections and Political Reform* (Washington, D.C.: Congressional Quarterly Press, 1976) p. 17.
2. Jack D. Fleer, "Campaign Costs in North Carolina: The 1972 Elections," *Popular Government* 40 (Summer 1974), 43.
3. Letter from Herbert E. Alexander to Jack D. Fleer, July 20, 1978.
4. Table 1.

The parties differed in which offices they spent the most campaign money on. Republicans spent the largest sum on campaigns for the U.S. House of Representatives, while Democrats invested most heavily in the gubernatorial campaign. The major parties also differed in campaign expenditures for the office of Lieutenant Governor. The large number of Democratic candidates, the spirited competition, and the need for a run-off meant that the party spent much more than the Republican Party.

A major difference between the two years lies in the percentage of total party funds spent in each year on campaigns for the eight seats on the Council of State. In 1976, much more was spent on these positions than in 1972. In 1976 the five intense Democratic primary contests, including two run-offs, plus the presence of a Republican incumbent Council member who was well-financed in his bid for election, helped explain the greater expenditures.

Three conclusions emerge from comparative data for the two campaign years. Campaigns for Governor are the most expensive. Expenditures for state Senate campaigns and state party organizations are minimal. Much more money is attributed to candidate committees than to party committees.

Relationship between incumbency and expenditures. In general, incumbents who are running for re-election enjoy a great advantage over their challengers.

Council of State. Whereas in 1972 incumbents who ran for Council of State offices spent very little, in 1976 they spent a great deal.[14] Six of the eight

14. Fleer, "Campaign Costs in 1972," 48.

Table 3

Percentages of Total 1976 North Carolina Campaign Expenditures by Office and Party

Office	All Candidates	Democratic Candidates	Republican Candidates
Party Committee	4 %	3%	10%
State Senate	3.5	3	7
Council of State	17.5	18	14
U.S. House	19	14	42
Lt. Governor	13	15	2
Governor	43	46	25

Council of State races involved serious competition in the Democratic primary, and four of these included well-financed campaigns between an incumbent and one or more challengers: The Secretary of State, the Auditor, the Commissioner of Insurance, and the Superintendent of Public Instruction all faced stiff opposition within their party. In each contest the major challenger spent more than the incumbent. For two offices (Secretary of State and Commissioner of Insurance) the ratio was 6 to 1; for another (Auditor), it was 2 to 1. In each instance, the incumbent withstood the challenge and received his party's nomination.

Only one Republican incumbent, the Commissioner of Labor, sought re-election. (He had been appointed by Republican Governor Holshouser following the death of the incumbent commissioner, who had been elected as a Democrat.) He was challenged by a Democrat who had survived a vigorous primary fight. In this instance, however, the incumbent outspent the challenger but lost the election. He was the only incumbent executive to lose the general election in recent years.[15]

In other general election competition, the pattern of incumbent advantages in finances and votes prevailed. In six races that included incumbent candidates, the incumbents reported larger expenditures than their opponents when both primary and general election expenditures are included. However, in contests for both Secretary of State and Superintendent of Public Instruction, the Republican challenger reported greater expenditures than the incumbent for the general election only. Both incumbents had large primary expenditures, and these undoubtedly helped win the general election.

The Democratic incumbents varied widely in their general election expenditures—from a high figure of $170,132 reported for the Attorney General's campaign to a low of $1,454 reported for the Secretary of State. Republican candidates also varied greatly. The incumbent Republican Commissioner of Labor reported expenditures of $173,752 for the general election while all other Republican candidates reported comparatively modest expenditures, the median being approximately $5,000. Whereas reported expenditures differed greatly, electoral majorities did not. Each of the Democratic incumbent candidates received about 68 per cent of the vote. Only for the incumbent Republican Commissioner of Labor did a deviation occur. Party, rather than incumbency or expenditures, appeared to be the critical factor in that instance.

Congressional campaigns. The presence of an incumbent in a congressional campaign affects not only the electoral outcome but also the costs of politics.[16] When an election involves an incumbent, total expenditures are likely to be smaller than in elections with no incumbent. In 1976 no incumbents were running in two North Carolina congressional districts. Expenditures in these elections averaged $358,989. Average costs of 1976 campaigns that involved an incumbent were $135,019—approximately a third of the amount spent in the elections without incumbents.

Table 4 shows the difference in financial resources between incumbents and challengers—whether they were Republican or Democrat—and compares the North Carolina average with the national average. The 1976 pattern is similar to that for 1972, except that the 1976 averages are significantly greater than the 1972 averages.[17]

Table 4
Expenditures by Candidates in Contested General Elections for U.S. House of Representatives (Averages for 1976)

	N.C.	U.S.[1]
Dem. Incumbent	$ 69,502	
Rep. Challenger	44,513	
Rep. Incumbent	109,171	
Dem. Challenger	43,193	
Incumbent	80,837	$79,837
Challenger	44,136	18,945

1. National figures are based on data from Federal Elections Commission as reported in *Congressional Quarterly Weekly Report*, October 29, 1977, p. 2301.

Public campaign financing

A second law affecting campaign financing in North Carolina was enacted in 1975.[18] The law provides a limited system of public financing of campaigns in general elections. This was a significant departure from past legislation because money from the state's General Fund now is being used to support clearly partisan activities. Critics have said that the State Constitution forbids the use of public money for other than public purposes,[19] but the law has not been challenged in the courts. Possibly the Supreme Court's ruling[20] that public funding of federal election campaigns is consistent with the U.S. Constitution has forestalled such an action.[21]

North Carolina joined seven other states in establishing a system of public financing that permits taxpayers to designate a small portion of their taxes to support political campaigns. The states followed the example of the federal tax-checkoff system established in 1972 that provided public funding for the 1976 presidential election.[22]

Under the law each taxpayer may designate $1 of tax liability to be used

15. In the 1974 general election, incumbent Attorney General James Carson, appointed by Governor James E. Holshouser, was defeated.

16. Fleer, "Campaign Costs in 1972," pp. 46-47.

17. See Rhodes Cook, "House Races: More Money to Incumbents," *Congressional Quarterly Weekly Report*, October 29, 1977, 2299-2311; and *Congressional Quarterly Weekly Report*, January 21, 1978, 118-19.

18. N.C. GEN. STAT. Ch. 163, Art. 22B. The law expired on December 31, 1977. It was extended in the 1978 short session of the General Assembly, effective with the tax year that began on January 1, 1978, with a "sunset" date of December 31, 1981. N.C. GEN. STAT. § 105-159.1; N.C. Sess. Laws 1977, Ch. 1298, § 3.

19. North Carolina Constitution, Article V, Section 2(1).

20. Buckley v. Valeo, 424 U.S. 1 (1976).

21. For background of this law see *North Carolina Legislation 1975*, pp. 102-31; and H. Rutherford Turnbull, III, "Election Law: Campaign Financing," *Popular Government* 42 (Winter 1977), 18-20. For the Supreme Court's ruling, see "Buckley v. Valeo," *Supreme Court Reporter* 96, no. 8 (Feb. 15, 1976), 612-796.

22. The development of and some early questions about public financing in the states are examined in Alexander, *Financing Politics*, pp. 182-89. The debate on public financing is summarized in *Congressional Digest*, March 1977.

by a political party that he specifies on the state income tax form. These funds are set aside in the North Carolina Election Campaign Fund and are paid to the officially recognized parties in the state. In 1975, 6.45 per cent of the returns designated the $1 contribution; in 1976, 7.10 per cent did so.[23] The federal figures are 26 per cent and 27 per cent for the respective years.[24]

Clearly North Carolina taxpayers have not contributed to public financing of campaigns in this state to the same extent as have either taxpayers nationwide for federal campaigns or taxpayers in other states that have similar systems. In 1976 their contributions were as follows: Idaho, 12-14 per cent; Iowa, 26 per cent; Michigan, 26 per cent; Minnesota, 29 per cent; Montana, 23 per cent; and New Jersey, 45 per cent.[25] Averaging these figures shows that one-fourth of the citizens in these states contribute to state campaigns—close to the national rate of taxpayer participation in federal campaign financing. North Carolina's rate is significantly less. Whereas taxpayer participation in the six other states and the nation at large has increased substantially over the years, this state's participation has increased only slightly.

Money in the state campaign fund is allocated on the basis of two guidelines. Under the law taxpayers may indicate on their income tax forms which political party shall receive the money. The funds that are "unspecified" are divided among officially recognized parties as defined in the state law in proportion to voter registration in the state. The experience with this provision is set forth below:[26]

Party	Tax Years 1975	1976
Democratic	$87,547 (68%)	$105,854 (73%)
Republican	36,684 (29%)	35,711 (25%)
Labor	181	
Unspecified	4,058 (3%)	3,409 (2%)

By both taxpayers' designations and the allocation based on party registration, the Democratic party has received approximately 70 per cent of the tax funds made available through the tax checkoff.

The law restricts the amount and use of public treasury money that the political parties receive. In the 1975 law, no party could receive more than $200,000 for any tax year. In 1976 the Democratic Party received $90,368, the Republican Party $37,607, and the Labor Party $181.[27]

Public funds may be used only for general election campaigns. Candidates for the following offices may be aided by the funds: Governor, Lieutenant Governor, Council of State, United States Senator, United States House of Representatives, State Supreme Court, and State Court of Appeals. Only candidates who are opposed may receive funds.

Under the 1975 law if a party contributed funds for candidates' use in a category of offices in which several positions are available—such as Council of State—all candidates with opposition had to receive equal amounts of financial support. Under the 1978 law a party committee determines the allocation of funds; the membership of this committee is prescribed in the law and includes all candidates for the eligible offices, except judicial offices. Any candidate may refuse all or part of the funds offered. Funds must be used for "legitimate campaign expenses" (the statute lists examples of legitimate expenses). The chairman of each party that receives funds must file an annual report. Violations in the use of funds are misdemeanors, and violators may be fined and/or imprisoned.

Public funding in the 1976 elections. The 1976 North Carolina general election was the first campaign in which political parties in the state received public funds. The two major parties had different philosophies in spending these funds.

The Democratic Party used a "unified party campaign" approach. The state party headquarters directed the expenditure of all public funds for general assistance to the party and its candidates. No individual candidates and no lower-level party committees received any public funds in the form of direct grants. Decisions on a general spending plan were made by a committee representing interests of the party, the gubernatorial candidate, the candidate for Lieutenant Governor, and the presidential candidate. The state Democratic chairman and the party's executive director then made specific decisions for daily implementation of this general plan.[28]

The Republican Party divided public funds between general expenditures directed from the state headquarters and specific direct cash grants to designated party candidates for offices that were eligible for public financing. The central committee of the state Republican Party decided on allocation of funds between general service expenditures and cash grants to candidates.[29] The party's chairman and its executive director decided on specific expenditures required for generally available services.[30]

A summary of expenditures by the two state parties from 1976 tax-checkoff funds reveals the allocation of funds:[31]

	General Services	Grants to Candidates
Democrats	$ 90,725 (100%)	0
Republicans	25,607 (68%)	$12,000 (32%)
Total	$116,332	$12,000
Percentage	91%	9%

23. Letters from B. W. Brown, Director, Individual Income Tax Division, Department of Revenue, State of North Carolina, March 1, 1977, and July 14, 1978.

24. Fact Sheet on the Dollar Tax Checkoff and Its Cost, Common Cause, March 1977.

25. "Campaign Finance Reform in the States," Common Cause, April 1978. Data were available on only six of the seven other states that use the checkoff system.

26. Information drawn from letters of B. W. Brown, Director, Individual Income Tax Division, Department of Revenue, State of North Carolina, March 1, 1977, and July 14, 1978.

27. State of North Carolina, Department of State Treasurer, *Campaign Election Fund for Period January 1, 1976 to July 15, 1978* (July 18, 1978).

28. Based on interviews with Betty R. McCain, State Chairman, North Carolina Democratic Party Executive Committee; Steve Glass, Executive Director, North Carolina Democratic Party; and Sam Johnson, Campaign Manager, Green for Lieutenant Governor Committee.

29. The composition of the State Central Committee is set forth in the North Carolina Republican Party State Plan of Organization, April 16, 1977.

30. Based on interviews with Todd Reece, Executive Director, North Carolina Republican Party.

31. "Report of Expenditures by North Carolina Democratic Party from North Carolina Campaign Election Fund," (no date), and "Report of North Carolina Republican Executive Committee, 1976 Cam-

Democratic Party officials believe that the "unified party campaign" benefited all of its candidates. A former executive director of the party explained that whereas in 1972 it lost the governorship and a U.S. Senate seat, in 1976 the party succeeded in electing all of its candidates for statewide office through a carefully planned and executed get-out-the-vote effort that was supported by the tax-checkoff funds.

1978 legislation affecting public campaign funds. The experiences of 1976—especially the fact that the state Democratic Party allocated no funds for specific candidates—resulted in a change in the law in 1978. This new legislation provides that, except for a transition period, future disbursements of public funds will be equally divided between party and candidates in both presidential-year and nonpresidential-year general elections. Allocation of funds among the candidates will be determined by a committee in each of the respective parties. These committees consist of the state party chairman, the state party treasurer, and occupants of or nominees for the major state executive and national legislative offices. The state party chairman serves as chairman of the committee, which has complete discretion in allocating the funds among eligible candidates. The requirement of equal funds for similar offices has been abandoned.

The state parties may receive half of the money currently available in the campaign fund in years when there are no general elections. The other half will be placed in a "Presidential Election Year Candidates Fund," to be allocated among eligible candidates. Presumably these funds are integrated with the other campaign funds received in a presidential year and all are subject to the 50-50 split between candidates and party. This provision reduces the amount of money allocated to the party and increases the amount available to party and candidate in those years when the most state and congressional offices are up for election.

Political parties have been weakened by forces in the political system, and directing money specifically and exclusively to candidates may further erode their strength and vitality.[32] If all funds go to a state party, however, there is a risk that a dominant party element will decide on the use of funds, with other elements being left out and dissatisfied. The 1978 law attempts a compromise by prescribing that funds designated by taxpayers be allocated to the parties and to specific candidates. Whether the compromise will succeed must await evaluation of the 1978 and 1980 experience. The new law ignores the dominant patterns for funds distribution used in other states—allocating money to either parties only (six states) or candidates only (five states).

North Carolina is the only state with a public-funding law that specifically states that candidates for national legislative offices (U.S. Senate and House) are eligible for tax-checkoff moneys (though some state laws may be *interpreted* to permit allocation of party funds to such candidates). By including congressional candidates, North Carolina has established a source of campaign finance that the Congress has focused on for the past several years—public financing of congressional elections. Every year since 1974, when the Congress enacted public financing of presidential elections, a concerted but yet unsuccessful effort has been made to enact similar funding of national legislative campaigns.[33]

The North Carolina law does permit a candidate who is eligible for public funds to refuse them. In 1976 no candidate used this privilege.

Public funding provided a large portion of the party budgets in 1976—a third of the Democrats' reported revenue and 23 per cent of the Republicans' reported revenue. As taxpayer participation increases and the fund expands, these proportions are likely to grow also.

Summary

The 1976 elections in North Carolina were conducted under the influence of two new laws that regulate campaign finance. The financial disclosure law is more comprehensive, precise, and stringent than former legislation and is enforced by an independent bipartisan agency. Significantly greater expenditures have been reported under this law, and the new regulations and enforcement procedures deserve some credit for more complete and accurate disclosure. If supporters of the law anticipated holding down expenses, they must be disappointed. Despite the absence of a U.S. Senate campaign and limitations on media expenditures for statewide races, reported expenditures in 1976 increased dramatically over those in 1972.

Public financing was introduced on a trial basis in 1976. Taxes designated for the parties were used in two contrasting ways by the two major parties. This provided a laboratory for testing the funding of a unified party campaign and the funding of independent candidate campaigns. While the experiment was limited, it was also short-lived. The 1978 General Assembly revised the law to specify clearly the distribution of funds between party and candidates. With increased participation, public funding could become a major resource for parties and their candidates. A unique component of public funding in North Carolina is the specific eligibility of congressional candidates to receive tax funds. By making congressional campaigns eligible for public funding, North Carolina is leading the nation in this significant campaign finance reform that so far has eluded its national proponents.

The two new laws and their implementation in the 1976 general elections are major changes in North Carolina's political scene and they should be continually assessed by the state's political leaders and citizens. □

paign Contributions from North Carolina Campaign Election Fund" (no date).

32. For a summary of this element of American political history, see Joyce Gelb and Marian Leif Palley, *Tradition and Change in American Party Politics* (New York: Thomas Y. Crowell, 1975), pp. 7-19; and Austin Ranney, *Curing the Mischiefs of Faction: Party Reform in America* (Berkeley: University of California Press, 1975).

33. Developments in this effort are examined in David A. Caputo, "The Politics of Campaign Finance Reform in America," in David A. Caputo, ed., *The Politics of Policy Making in America* (San Francisco: W. H. Freeman and Company, 1977), pp. 71-99. Also see "House Blocks Rule on Campaign Finance Bill," *Congressional Quarterly Weekly Report*, March 25, 1978, pp. 752-53; "Public Financing Fails," *Congressional Quarterly Weekly Report*, July 22, 1978, p. 1866; and "Backers Ponder Failure of Campaign Finance Bill," *Congressional Quarterly Weekly Report*, August 5, 1978, pp. 2029-32.

The Origins and Development of the North Carolina System of Taxation

Charles D. Liner[1]

THE DRAMATIC SUCCESS of Proposition 13 in June 1978 has focused widespread attention on state and local taxation, on the property tax in particular, and on growth in government expenditures and taxation. Proposition 13 has prompted many North Carolinians to ask whether a popular tax revolt is likely to occur in North Carolina, where total expenditures of the state and local governments have been increasing faster than in all but a few states.[2] The most frequent response to this question is that a tax revolt is not as likely in North Carolina as in other states because property tax rates are low and fairly stable. But this answer merely suggests a second question: Why are property taxes lower and more stable in North Carolina when government expenditures in the state have been increasing so fast? For an answer to this question and for a better understanding of North Carolina's system of taxation, it is helpful to review the origins and development of that system.

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1. This survey would not have been possible except for the work of several scholars who have written detailed treatises on certain periods in the history of taxation in the state. Foremost among these works are Coralie Parker, *The History of Taxation in North Carolina During the Colonial Period, 1663-1776* (New York: Columbia University Press, 1928); Hershal L. Macon, "A Fiscal History of North Carolina, 1776-1860" (Ph.D. diss., University of North Carolina, 1932); B. U. Ratchford, "North Carolina's Finances During the Past Quarter Century" (master's thesis, Duke University, 1927); and Clement Harold Donovan, "The Readjustment of State and Local Fiscal Relations in North Carolina, 1929-1938" (Ph.D. diss., University of North Carolina, 1940). Also see Paul V. Betters, ed., *State Centralization in North Carolina* (Washington, D.C.: The Brookings Institution, 1932).

2. From 1965-66 to 1976-77 total direct general expenditures of state and local governments in North Carolina increased by 227 per cent, a rate exceeded by seven states—Alaska, Hawaii, Illinois, Maryland, New Jersey, New York, and South Carolina. U.S. Bureau of the Census, *Governmental Finances* (Washington, D.C.: G.P.O., annual publication).

The colonial period

North Carolina's colonial system of taxation had an important and lasting influence on the state's subsequent history of taxation. Unlike northern colonies, whose governments were organized around independent and self-governing towns, the southern colonies were governed by a central authority. In North Carolina this authority was the Lord Proprietors, beginning in 1663, and the Crown, beginning in 1729. Counties were created to serve as agents of the central government in administering government services at the local level. They derived their authority from the colonial government, and their chief administrative officers, the justices of the peace, were appointed by the Governor or the colonial assembly. Local taxes, which were first authorized in 1722 to build courthouses and jails, could be levied only on authorization from the colonial assembly.[3] County officials collected both colonial and local taxes, and in the case of the poll tax (the principal tax), the colonial and local taxes were levied according to the same listing of persons subject to the tax.[4] Then, as now, counties were responsible for government services that applied to all people of the county. The few incorporated towns provided additional services that were needed by those living in towns, and they levied their own taxes in addition to county taxes to finance town services.

In the northern colonies and in Virginia and South Carolina, trade-related customs duties and excise taxes were important sources of public revenue. But North Carolina had no important deep-water ports during the colonial period, and the main transportation corridors were the rivers and streams that ran in a north-south direction in the area where the colony was first settled. Although North Carolina used customs duties to some extent,[5] the fact

3. Parker, *History of Taxation,* pp. 136-37. In addition to counties and towns, church parishes also levied taxes under authorization of the colonial assembly.

4. *Ibid.,* p. 139.

5. Duties were placed on exports of tobacco and hides and imports of liquors. *Ibid.,* Ch. III, pp. 68-96.

that it had no major port and the difficulty of collecting customs duties and excise taxes when trade flowed over so many routes meant that the colony had to rely more than other colonies on other taxes.[6]

In northern colonies the basic tax for local governments, at least during the latter part of the colonial period, was the ad valorem property tax, which fell not only on land but also on other forms of property. Except for a special tax on the number of acres of privately owned land that was used between 1715 and 1722 to pay Indian war debts[7] and an occasional special town tax on lots, neither land taxes nor more general property taxes were used in North Carolina during the colonial period. There are two reasons why this was so. First, the colonial assembly was controlled by a ruling class of eastern landowners whose interests were better served by the poll, or head, tax.[8] Second, use of property taxes may have been pre-empted, for both practical and political reasons, by the unpopular and poorly administered system of quit-rents levied by the Proprietors, and later by the Crown, to collect revenue from the colonists.[9] The quit-rent, a relic of the feudal manorial system in England, was an annual charge per acre of land owned, similar in nature to a property tax on land.

With customs duties and land taxes effectively eliminated as sources of revenue, North Carolina turned to the poll tax. The poll tax was imposed beginning in 1715 at a flat rate on all white males over age 18 and on all slaves, male and female, over age 16.[10]. North Carolina relied on the poll tax more than other colonies, including its neighboring colonies,[11] and the tax continued to be largest source of tax revenue until the Civil War.[12]

The centralization of government authority and the subordinate relationship of local governments to the central government that developed in North Carolina during the colonial period continued after 1776, and this influenced the development of taxation and government organization throughout the state's history.[13] Indeed, the characteristic that most sharply distinguishes North Carolina's system of governmental finance today is its high degree of centralized authority and responsibility.

North Carolina's colonial system of taxation had an important and lasting influence on the state's subsequent history of taxation.

Early statehood: 1776—1835

The Constitution of 1776 essentially preserved the colonial system of government except that almost all of the Governor's authority was shifted to the General Assembly, which elected the Governor and other state officials. Since each county, regardless of size or population, had one senator and two members of the House of Commons, for many decades the same class of eastern landowners that had controlled the colonial assembly maintained its power by forming new counties in the east to offset the votes of new counties formed in the west. After tolerating a more equitable tax system during the Revolutionary War, this ruling class of landowners was able to impose a system of taxation based on land taxes and the poll tax that differed little from the colonial system of quit-rents and poll taxes.

The first law enacted by the General Assembly in 1777 under the new Constitution established a militia; the second law established a new tax system. The principal tax was a uniform ad valorem property tax that fell on almost every form of property, including "all Lands, Lots, Houses, Slaves, Money, Money at Interest, Stock in Trade, Horses and Cattle . . . ."[14] During the Revolutionary War the poll tax was relegated to a minor role; its purpose was to complement the property tax by setting a lower limit of taxation on those who owned little property. It was imposed on free men over age 21 who owned property valued at less than 100 pounds, and the rate was equivalent to the tax on property valued at 100 pounds.

The adoption of a uniform ad valorem property tax on most forms of property placed North Carolina several decades ahead of the major egalitarian tax movement of the nineteenth century—the movement toward uniform and universal property taxation. But this first attempt to devise a tax system based on ability to pay was created during the patriotic fervor of the Revolution to finance a war that was fought mainly by small landowners and common citizens, and the new tax system did not survive the war. Although the power of eastern landowners waned at the beginning of the war, it was soon regained, and the new tax system began to crumble.[15] The property

6. *Ibid.*, p. 100.
7. *Ibid.*, pp. 126, 147.
8. *Ibid.*, pp. 73, 122.
9. *Ibid.*, pp. 36-37 and Ch. II, pp. 39-67.
10. *Ibid.*, p. 98.
11. *Ibid.*, pp. 99-100. License taxes were also used, though apparently they produced little revenue. The first such tax, on "Ordinary Keepers and Tippling Houses," was enacted in 1715. *Ibid.*, pp. 129-32.
12. Macon, "Fiscal History," p. 98.
13. At first this legacy proved to be unfortunate. It produced an undemocratic, oligarchic form of local government largely controlled by a ruling class of leading families. Appointed justices continued to govern counties until after the Civil War, and, except for a few years after 1868, not until the late nineteenth century did county commissioners become elected officials throughout the state. The collection of state taxes by county officials caused serious problems in tax administration and school finance until the system was changed in 1921. But on the whole, the history and tradition of centralized authority and responsibility have had a powerful and salutary influence on the development of the North Carolina system of governmental finance.
14. Public Laws of North Carolina, 1777, Ch. II. The act began: "Whereas the levying a Tax on property, by Way of General Assessment, will tend to the Ease of the Inhabitants of this State, and will greatly relieve the poor People . . . ."
15. Macon, "Fiscal History," pp. 105-7.

tax was modified in 1780 so that intangible property was taxed only one-third as heavily as other property, and two years later intangible property was exempted from taxation. In 1784 all horses, mules, cattle, and improvements to land were exempted. The Revenue Act of 1784 replaced the 1777 tax system with one that closely resembled the colonial system. All land, except lots, was to be taxed according to the number of acres instead of value; all personal property was exempted except for slaves, who were to be taxed only under the poll tax; and the rate of taxation on land was tied to the poll tax and the rate on town lots.[16] Local poll and land taxes were to be levied on the same base as state taxes.

For the next three decades tax rates on land remained stable, and revenues increased very little; by 1812 the poll tax produced twice as much revenue as the land tax.[17] Since the state land tax rate was tied to the poll tax rate, the land tax rate was the same for all of the state's rural land even though eastern land was worth more than land in the west. Consequently, until 1814 western land was taxed more heavily than eastern land.[18] As a result of the growing political power of central and western counties, however, the General Assembly in 1814 enacted an ad valorem tax on real estate (exclusive of improvements on rural land) and reduced poll tax rates. Revenues from the ad valorem land tax exceeded poll tax revenues in 1815, but in the ensuing economic depression, they declined continuously. During this period the state began to rely increasingly on license taxes, which had first been enacted in 1782.[19]

Several factors retarded progress in government and the state as a whole during these first decades of the state's history. The eastern landowners who controlled the General Assembly resisted popular demands for expansion of government activity. The colonial period had left a legacy of popular opposition to taxation and distrust of local tax collectors. Taxes imposed by the General Assembly were used mainly to support the General Assembly, the legal system, and officials in the state capital; local taxes were used mainly to provide courthouses, jails, and poorhouses.[20] Except perhaps for town taxes, taxes supported few services that directly benefited the common citizen. And the period from about 1819 to 1835 was one of chronic economic depression and mass emigration to the West, where fertile land was available and taxes were low.

The two most important and lasting developments of this period were the establishment in 1839 of a statewide, state-financed system of free public schools and a tax system based on ability to pay that was to serve the state until 1921.

A new tax system: 1836-68

The period from 1836 to 1860 was, in contrast, a time of prosperity and progress. The Constitution of 1835 provided for the popular election of the Governor and changed the undemocratic system of representation in the General Assembly, which ended the domination of eastern landowners and gave a greater voice to the growing central and western portions of the state. During this period the state's economy prospered, a two-party political system developed, railroads were introduced, and the federal government distributed a large revenue surplus to the states. All these factors contributed to a dramatic expansion in government activity.[21] A new state capital was constructed; state programs for the insane, deaf, and blind were begun; and an ambitious program of railroad, navigation, and turnpike projects was launched. But the two most important and lasting developments of this period were the establishment in 1839 of a statewide, state-financed system of free public schools[22] and a tax system based on ability to pay that was to serve the state until 1921.

This new tax system supplemented the ad valorem tax on real property and the poll tax with taxes that fell on income, inheritances, and commercial enterprises and taxes on personal property that reflected wealth or ability to pay. These taxes included an income tax, an inheritance tax, a luxury property tax, a tax on capital of merchants and corporations, and numerous privilege license taxes.[23] The income tax, enacted in 1849, was levied on interest, dividends, profits, salaries, fees,

16. Macon reminds us that the equity of such a tax system should not be judged according to contemporary standards of equity: "The fact that land and slaves were the primary forms of wealth in North Carolina for decades shows that the use of land and poll taxes alone was more equitable than the use of these same taxes would be in an economic system in which considerable income was derived from industrial and commercial enterprise, salaries, and investments in stocks and bonds." *Ibid.*, p. 4.

17. *Ibid.*, Table XII, p. 112.

18. *Ibid.*, p. 255.

19. The first license tax, the forerunner of the many license taxes that were to be used throughout the state's history, was a tax on carriages. Although license taxes were imposed primarily to obtain revenue, they were also a means of taxing business activities and property, such as carriages, that represented ability to pay. Some license taxes were used for regulatory purposes. *Ibid.*, pp. 120-29.

20. Roads were maintained by male citizens, who were required to devote a certain number of days each year to this duty. This practice survived until the twentieth century in some counties. *Ibid.*, p. 198.

21. Total state expenditures per capita increased from 23 cents in 1836 to $1.24 in 1860. *Ibid.*, Table XLVII, p. 347. Average annual receipts of the state increased from $208,000 from 1836-40 to $2,240,000 from 1856-60. *Ibid.*, p. 395.

22. The state provided funds for local public schools through the State Literary Fund, which had been established in 1825 but had been inadequate. In 1837 the state endowed the fund with a million dollars from its share of surplus federal funds. Several other sources of state revenue were also set aside for endowment of the fund. Each county was required to contribute local funds equal to half the proceeds from the Literary Fund. For a review of the history of school finance in North Carolina, see Charles D. Liner, "Public School Finance," *Popular Government* 42, no. 4 (Spring 1977), 12-19.

23. Macon, "Fiscal History," pp. 398-406.

and wages.[24] Intended as a supplement to the real property tax, its purpose was to tax dealers, merchants, security owners, professional men, and others who did not earn their income primarily from land; it therefore did not fall on income from real property. By 1854 the income tax produced more revenue than the real property tax—real property and poll taxes produced only 44 per cent of total tax revenues, compared with 76 per cent in 1847.[25] The luxury property tax was levied on the value of gold and silver plate, watches, pleasure carriages, harps, pianos, bowling alleys, and playing cards.

During the early nineteenth century there was a nationwide movement toward uniform and universal, or general, property taxation based on the egalitarian principle that all forms of property should be taxed at an equal rate on the basis of value. North Carolina did not incorporate a general property tax into its Constitution until 1868, but it moved in this direction by statute. Although the state did not tax intangible property until the Civil War, the income tax enacted in 1849 taxed income from stocks, savings, and profits. The luxury property tax fell on certain forms of personal property, and corporations were taxed on capital stock (the forerunner of today's franchise tax). After the General Assembly doubled the rates on the real property and poll taxes in 1854, a movement developed to institute a system of universal property taxation that would tax intangible property and slaves (who were then taxed only under the poll tax, as required by the Constitution).[26] In 1860 the Whig Party ran on a platform that called for constitutional amendments requiring uniform ad valorem taxation of all property, including slaves. The Whigs lost the election, but during the Civil War the Democrats enacted legislation taxing most forms of property according to value, including slaves, improvements to land, household furniture and other personal property, and intangible personal property.[27]

Taxation under the New Constitution: 1868—1900

The Civil War and its aftermath brought severe economic, social, and political disruption that influenced taxation and government policy for decades. The Constitution of 1868, which was to serve the state for over 100 years, incorporated the basic tax structure that had developed during the previous three decades, but it imposed restrictions and limitations on state and local taxation that caused problems for half a century.

The Civil War and its aftermath brought severe economic, social, and political disruption that influenced taxation and government policy for decades.

The new Constitution required the General Assembly and the counties to levy a "capitation" (poll) tax on all males between 21 and 50 years of age (with exemption in special cases of "poverty and infirmity") and required that at least three-fourths of the revenue be used for education and the balance for care of the poor. The Constitution mandated uniform and universal property taxation by requiring that "laws shall be passed taxing, by a uniform rule, all monies, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also, all real and personal property, according to its true value in money."[28] The Constitution authorized the General Assembly to tax "trades, professions, franchises, and incomes," which the state had been doing since 1849, but the Constitution added a provision that "no income shall be taxed when the property from which the income is derived, is taxed."[29]

Several other constitutional restrictions also caused serious problems. First, local governments were permitted to incur debt or to levy taxes only for "necessary expenses" unless the debt or tax was approved by a majority of qualified voters. The second restriction was caused by the "equation and limitation" provisions, which required the poll tax to be equal to the property tax on $300 worth of property and limited the combined state and county poll tax to $2.[30] The effect of these provisions was to limit the combined county and state property tax rates to 66⅔ cents per $100 valuation. Another restriction limited county tax rates to not more than twice the state tax rate without special authorization.

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24. The preamble expressed the act's purpose as follows: "Whereas there are many wealthy citizens who derive very considerable revenue from monies which produce interest, dividends and profits, and who do not contribute a due proportion to the public exigencies be it enacted that . . . ." N.C. Pub. Laws 1848-49, Ch. 72.

25. Macon, "Fiscal History," pp. 405-6. From 1849 to 1921 the income tax continued to be an important part of the tax structure because it taxed those who would not have been taxed according to ability to pay under the property tax. After the Civil War, however, it was not a major revenue source and was not collected uniformly—primarily because the tax was collected by local rather than state officials, and there was no way to assure honest listing of income. A progressive rate structure was first used in 1866, with rates from 1 per cent to 3½ per cent, but in 1869 the state returned to proportional rates with a $1,000 family exemption. Progressive rates were used again from 1893 to 1901. In 1913 the General Assembly adopted a progressive rate structure varying from 1 per cent to 2½ per cent, which was incorporated into the state-administered income tax enacted in 1921.

26. *Ibid.*, pp. 410-13.

27. N.C. Laws of 1861-64, Ch. 53.

28. N.C. Const. 1868, art. V, sec. 3.

29. *Ibid.* This provision was consistent with the prevailing concept that the income tax, as well as taxation of inheritances and intangible property, was necessary in order to tax those whose ability to pay was not based solely on property ownership, but later it prevented the state from developing an equitable and productive income tax until it was amended in 1920.

30. An equation provision had been used in 1777 to link property tax and poll tax rates. The Revenue Act of 1784 tied the tax rate on land to the rate on polls and town lots. That provision was designed to protect eastern landowners from land tax increases. The equation and limitation provision in the 1868 Constitution may have been a compromise between the Republicans, who had an overwhelming majority in the constitu-

The new Constitution required the General Assembly to provide a "general and uniform system of schools" for a minimum of four months each year and required county commissioners in each county to levy property and poll taxes sufficient to produce revenues that, when added to the revenues from property and poll taxes levied by the General Assembly for schools, would support a four-month school term. Yet the equation and limitation provisions of the Constitution placed a limit on poll and property tax rates that severely limited local tax rates. Problems were compounded by the courts, which ruled that local public school expenses were not "necessary" expenses in the meaning of the Constitution. As a consequence, local taxes for schools had to be approved by a majority of voters, and in the economically depressed and politically turbulent era following the Civil War it was difficult to obtain voter approval for countywide school taxes.

The movement toward reform: 1900—1921

Although few changes occurred in the state tax system between 1900 and 1920, the stage was set during these years for a major reformulation of the system in 1921. The period was similar to the progressive era from 1835 to 1860, with relative prosperity, strong political leadership, and expansion in government expenditures—particularly in schools, roads and highways, and public health and welfare programs.[31] The most notable achievements were in public education. After Governor Charles B. Aycock revived popular support for local public schools, the state sharply increased its direct financial support of local schools. The number of special school tax districts increased to 757 in 1909 from 18 in 1900.[32] In fact, it was popular interest in lengthening the minimum school term from four to six months that sparked the first movement in 1913 to reform the tax system that North Carolina had used since the system was created before the Civil War.[33]

The dissatisfaction with the tax system during this period stemmed from fundamental faults in the state and local tax system. The primary fault was that state programs were financed partly from taxes levied on the local tax base. This was true not only of state-administered programs like mental hospitals and prisons but also of public schools. The Constitution required the General Assembly to enact laws to provide a uniform system of public schools. The legislature tried to fulfill this obligation by levying property and poll taxes on the same base on which local property and poll taxes were levied. Revenues from the state property tax for schools were apportioned among the counties by the state, and, as the Constitution required, at least 75 per cent of the state poll tax revenues were used to support public schools.[34] The state also levied two other property taxes on the county base—one to support general programs of the state government and another to provide pensions for state employees. Although the state property and poll taxes were paid to the state treasury, they were collected by county officials, as the state income tax was. Every four years taxpayers were required to list property and income with township list takers, who were appointed only for the quadrennial assessment. Real property did not receive an on-site appraisal, as it does today. Instead, the list takers had to rely largely on the honesty of taxpayers.[35] There was no effective supervision by the state to insure uniformity of appraisals and assessments across the state.[36]

This system produced adverse effects that further undermined the system. The integrity of the property tax was eroded because the system gave an incentive to keep property assessments low in order to minimize the amount of taxes that went to the state treasury.[37] But with low assessments, tax rates had to be high to produce sufficient revenue for the county and municipal governments, as well as for the state, and high tax rates on property provided an additional incentive for taxpayers to avoid listing property and to keep assessments low. High tax rates caused still another problem: Since the Constitution limited the combined state and county property tax rate to 66⅔ cents for necessary expenses, the state property tax (which amounted to over 40 cents on the $100 valuation during this period) and low assessments forced counties to seek special authorization or voter approval for most tax increases. By 1919, when the average county-wide property tax rate was $1.51, property tax rates exceeded the constitutional limit in every county.[38] In addition, since both tangible and intangible property were subject to the same tax rates, underassessment of real property caused an inequity because intangible property was assessed at full market value when it was listed. The higher effective tax rates on intangible

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tional convention, and the Conservatives. The limitation on the poll tax rate protected blacks, while the limitation on property tax rates protected property-owning whites from the recently enfranchised blacks, who outnumbered whites in many eastern counties. Another explanation is also plausible. For the first time, the Constitution of 1868 provided for popular election of governing officials of counties. The equation and limitation provision may have been intended to protect all landowners from high property tax rates that might be imposed by popularly elected officials.

31. Donovan, "Readjustment of State and Local Fiscal Relations," Chs. II and III.

32. Superintendent of Public Instruction, *Local Taxation in North Carolina from 1875 to the Present* (Raleigh: 1909).

33. According to one writer, popular interest in tax reform became "acute" during the 1913 session of the General Assembly because the movement to increase the school term was frustrated by a state deficit. O. C. Nance, "Taxation and the State," *The University of North Carolina Magazine* (November 1913), 96-104.

34. However, only a small minority actually paid poll taxes, which accounted for only 1.4 per cent of state revenues in 1901. Ratchford, "North Carolina's Finances," p. 1.

35. "In the assessment of taxables, the government leaves it largely to the citizen to list his property and put valuations upon it; and its supervision of assessment is largely perfunctory. The work of assessing value for taxation has, therefore, been performed for the most part with remarkable ineffectiveness—a fact known in every county and township in North Carolina." Charles Lee Raper, "North Carolina's Taxation Problem and Its Solution," *The South Atlantic Quarterly*, 14, no. 1 (January 1915), 1-15.

36. Ratchford, "North Carolina's Finances," pp. 33-37.

37. *Ibid.*, p. 55.

38. Report of the Corporation Commission (Raleigh: 1920), p. 345.

property led taxpayers to avoid listing this property.[39]

There was also dissatisfaction with the income tax. Since the Constitution prohibited the taxation of income from property, critics charged that "earned" income from wages and salaries was taxable while "unearned" income from property or capital gains was not.[40] Others complained that the rate of taxation on nonproperty income was too low when compared with the rate on income from property.[41]

At first the General Assembly tried to solve some of the problems of the tax system without changing the system. In 1901 it made a special appropriation to an "equalizing fund," which was distributed only to poor counties to help them finance a four-month school term. The State Tax Commission was created in 1901 and authorized to supervise local assessment practices and to equalize assessments between counties, and the State Equalization Board was created in 1907 to equalize property assessments between counties. But neither of these measures was effective in improving property assessment.[42]

In response to the movement to increase the statewide school term, which was frustrated by the tax system and recurring state deficits, the 1913 General Assembly proposed two constitutional amendments that were intended to address the system's fundamental problems. One amendment would have "segregated" state taxes from local taxes.[43] The state would relinquish use of the property tax, leaving this tax solely as a local tax source and thus eliminate the incentive for counties to underassess property. The state would rely solely on income, license, franchise, and inheritance taxes. The second amendment would have made the general property tax a classified property tax, thus permitting the General Assembly to tax intangible property as a special class of property at a lower rate. The purpose of the classification amendment was not to reduce taxation of intangible property but rather to encourage more complete listing of intangibles by making the effective tax rate on intangible property closer to the effective rate on tangible property.[44]

This first attempt to reform the tax system failed when the voters rejected the two tax amendments and an amendment to increase the school term in 1914,[45] but efforts to reform the system continued. In 1915 an attempt was made to equalize assessments between counties.[46] Under the leadership of Governor T. W. Bickett, the 1919 General Assembly enacted a Revaluation Act, which called for a statewide revaluation of all property under the supervision of the State Tax Commission.[47] The 1919 General Assembly also enacted several proposals for constitutional amendments that would eliminate the requirement that the poll tax be tied to the property tax and permit the taxation of all income, including income from property. (Since the revaluation was intended to assess all property uniformly, the General Assembly did not propose an amendment to authorize a classified property tax.)

The results of the statewide revaluation of 1919-20 demonstrated dramatically the faults of the system of local assessment and collection of state taxes. The assessed value of property tripled, more than one million acres of land were added to the tax lists, and over 200,000 people were added to the list of those subject to the poll tax.[48]

The proposed amendments were passed by large majorities in the election of 1920, and on the basis of these amendments the 1921 General Assembly reformulated the state tax system according to the concept of segregation of state and local tax sources that had not gained voter approval in 1914. The General Assembly adopted the policy that, as stated in the Revenue Act of 1921, "no tax on any property in the State shall be levied for any of the uses of the State Government."[49] To replace property tax revenues, the General Assembly enacted two new taxes, a state-administered personal income tax and a corporation income tax. A gasoline tax of 1 cent per gallon was also enacted to finance a new state highway system created by authorizing the State Highway Commission to assume responsibility for 5,500 miles of county roads. North Carolina had had a personal income tax since 1849, but for the first time all income, including income from property, was subject to taxation. The new personal income tax (which was based on a model income tax developed by the National Tax Association[50]) included exemptions, deductions, and a system of progressive rates. The other existing state taxes—the privilege license, franchise, and inheritance taxes—were continued with some modifications.

With the reforms of 1921, North Carolina became one of the first states to relinquish use of the property tax and to adopt a state-administered income tax.[51] By relinquishing the property tax, the state government lost a source of revenue that had accounted

39. Ratchford, "North Carolina's Finances," p. 56.

40. "Letter Advocating Amending Constitution to Permit Taxing Income from Property," by A. J. Maxwell, member of Special Legislative Tax Commission, dated October 22, 1918, in *Report of the Corporation Commission as a Board of State Tax Commissioners*, 1918 (Raleigh: 1919), p. xii.

41. Ratchford, "North Carolina's Finances," p. 86.

42. *Ibid.*, pp. 33, 37.

43. This solution had been recommended by the State Tax Commission in 1903. *Report of the State Tax Commission* (Raleigh: 1903), p. 5.

44. In 1913, Attorney General T. W. Bickett urged classification and a lower rate on intangibles as the only way to get taxpayers to list intangibles. Ratchford, "North Carolina's Finances," p. 57.

45. A constitutional amendment that lengthened the minimum school term passed in 1918 by a large majority. The 1919 General Assembly increased state support significantly: The state would pay teacher salaries for half the school term, and counties that could not support the remaining expenses of the school term with a school tax of 35 cents would receive funds from the equalizing fund to ensure a six-month school term. N.C. Laws of 1919, Ch. 102.

46. Ratchford, "North Carolina's Finances," pp. 74-75.

47. N.C. Laws of 1919, Ch. 84.

48. Ratchford, "North Carolina's Finances," pp. 103-4.

49. N.C. Laws of 1921, Ch. 34.

50. *Report of the Tax Commission* (Raleigh: 1928), p. 35.

51. According to current sources, North Carolina was the eleventh state to enact a state income tax, but in fact the state enacted a state income tax in 1849, long before Hawaii (1901) or Wisconsin (1911), and has used the tax continuously since then. Several other states had locally administered income taxes in the nineteenth century, but only Virginia and North Carolina have used the tax continuously since the 1840s. See n. 25.

for over 30 per cent of the total revenue in 1919;[52] but by shifting administration of the income tax to the state level and enacting the gasoline tax, the state more than offset the loss in revenue, and it gained revenue sources that proved to be very fast-growing. The problems of low and unequal assessments and high tax rates were not permanently solved by the reforms of 1921, but the policy of segregating revenue sources that was established in 1921—the property tax should be used for local purposes while statewide revenue sources should be used to finance state programs—was an important influence on the second reformulation of the tax system during the early 1930s.

The fiscal revolution of 1931-33

The reformulation of the tax system in 1921 was the first step in creating the present tax system. The second and final step occurred in an even more revolutionary manner in 1931 and 1933, when the responsibility for financing schools, roads, and prisons was shifted from counties to the state and the retail sales tax was enacted. The changes of 1931 and 1933 are commonly attributed simply to a financial crisis caused by the Great Depression. Yet, while all other states also suffered from the effects of the Depression, not one transformed its system of governmental finances as radically as North Carolina, and the fiscal revolution still has no parallel in the history of any other state.

Several significant changes were occurring in the state during the period before the Depression. One important change was an acceleration of urbanization and industrialization, which tended to concentrate population and assessed valuation in a few counties. Ten counties, which had less than one-third of the state's assessed valuation of property in 1921, had over 41 per cent of the total property valuation by 1928.[53] As a consequence tax bases and rates became increasingly unequal. In 1926, for example, county-wide property tax rates to support the six-month school term varied from 28 cents in Forsyth County to $1.25 in Pender County.[54]

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The 1920s were a period of prosperity for every segment of the North Carolina economy but agriculture. From the turn of the century to the end of World War I—a golden age for agriculture—land and agricultural prices increased dramatically. Land prices peaked shortly after the revaluation of 1919-20, however, and then agricultural prosperity ended with the recession of 1920-21. Throughout the next decade farm prices and farm income fell.[55] One consequence of the falling farm income was continuing pressure on the local property tax. Taxes as a proportion of farm cash income were estimated to have increased from 2.5 per cent in 1920 to 11.1 per cent in 1930.[56]

Faced with continuing demand for better schools, roads, and other government services, local governments found an easy escape from higher property taxes by issuing bonds. Local governments' indebtedness increased from $94 million in 1920 to $385 million in 1928.[57] By 1928 total property tax levies for debt service equaled 46 per cent of total property tax levies;[58] total debt of the state and local governments exceeded that of all states except New York; and per capita debt was 4½ times the average per capita debt in other states.[59] As an illustration of how heavy the burden of debt had become, the State Tax Commission reported in 1930 that debt service on existing indebtedness of local governments would require an average property tax rate of $1 on the total state valuation for 10 years following 1929, when the average countywide tax rate for all purposes was $1.21.[60]

Throughout the 1920s there had been constant pressure, especially from farmers, to relieve the burden of property taxation, and a number of fiscal measures had been taken to accomplish this objective. State tax rates were increased several times to enable the state to increase grants for schools, roads, and health programs, and the state continued to take more county roads into the state system. Several local government fiscal control measures were adopted in 1927 and 1929.

52. Ratchford, "North Carolina's Finances," p. 194.

53. Donovan, "State and Local Fiscal Relations," Table VII, p. 27.

54. *Report of the State Educational Commission on the Public School System of North Carolina, 1927,* Part IV, pp. 46-49.

55. The index of cotton prices, for example, fell from 184 per cent of the 1904-14 level in 1920 to 133 per cent in 1929; it fell to 48 per cent in 1932. Donovan, "State and Local Fiscal Relations," p. 19, n. 13.

56. G. W. Foster and M. C. Leager, *Taxation of Agriculture in North Carolina,* Technical Bulletin No. 43 (Raleigh: Agricultural Experiment Station, 1933), p. 19, cited by Donovan in "State and Local Fiscal Relations," p. 20.

57. *Report of the Tax Commission, 1928,* p. 28.

58. *Ibid.*, pp. 5, 28.

59. Ibid., p. 27. The surge in indebtedness was made possible by the strong, speculative market for bonds in the 1920s and by a breakdown in the constitutional restrictions on debt. From 1868 to 1903 the courts had held local governments to a strict interpretation of the constitutional limitation that local debt could be incurred only for necessary expenses unless approved by a vote of the people, but beginning in 1903 the courts began liberalizing their interpretation of this limitation until it had little meaning. For example, governments were able to issue notes and bonds to finance operating deficits without regard to the necessary expense limitation. "A Return to Actual Self Government and Protection of Taxpayers," address by A. J. Maxwell, Commissioner of Revenue, to the Kiwanis Club of Selma, August 6, 1931, cited by John A. McMahon, *The North Carolina Local Government Commission* (Raleigh: North Carolina Association of County Commissioners, 1960), p. 5. To compound the problem, the issuance of bonds had been haphazard, with little thought given to maturity schedules, and inadequate provision was made for sinking funds to pay principal.

60. *Report of the Tax Commission,* 1930, p. 244.

With the onset of the Depression, the burden of excessive debt and high tax rates created a serious financial crisis for the state and local governments and a popular demand for property tax relief.[61] The General Assembly responded with a boldness that made the reforms of 1921 seem mild.[62] In one of the first bills enacted in 1931, the General Assembly declared "that the public school system for the constitutional term of at least six months shall be general and uniform in all the counties and shall be maintained by the State from sources other than ad valorem taxation on property."[63] The School Machinery Act was enacted to provide full state funding of operating expenses for a six-month term in all public schools.[64] But the General Assembly did not stop there. The State Road Act abolished all local road boards, prohibited counties from levying property taxes for roads, and placed full responsibility for all county roads in the hands of the State Highway Commission.[65] The extraordinary nature of these actions is suggested by the fact that until that time no state except Delaware had accepted full financial responsibility for public schools and no state had assumed responsibility for all roads. In addition to schools and roads, however, the state assumed responsibility for all county prison camps and all prisoners sentenced to 60 days or longer. Thus in one stroke the state assumed responsibility for three of the major functions of county government.

To raise the revenue needed to finance these measures from existing state taxes would have required large increases in rates on existing taxes. For the state to finance the six-month school term for 1931-32 required an additional $12 million—more than double the amount it had spent for this purpose in the previous year.[66] The one new tax source that would provide significant amounts of revenue at a low rate was a general retail sales tax. The retail sales tax had not yet been adopted by any state, although 24 states were to adopt it during the Depression years. The House passed a bill authorizing a 1 per cent retail sales tax, but in the Senate a "poor man's luxury tax," a selective sales tax on cigarettes, soft drinks, movies, candy, and other items, was substituted. After a deadlock, the General Assembly reverted to a temporary state property tax, increased state tax rates, and called for a major reduction in operating expenses.[67]

Despite the increases in tax rates, state revenues continued to decline. When the 1933 General Assembly convened, the state faced a large deficit and a financial crisis of its own; 40 counties and 106 municipalities had defaulted on debt payments, and other defaults were imminent.[68] In response, the 1933 General Assembly acted as boldly as the 1931 General Assembly had. Instead of closing schools for a time, as some had proposed, the General Assembly appropriated funds sufficient to finance an eight-month school term throughout the state.[69] Governor Ehringhaus was later to boast that North Carolina was the first state to achieve equality in school finance[70] and the only state to keep schools open without interruption during the Depression.[71] The General Assembly chose to finance schools without the property tax: it eliminated the state property tax and abolished all local school taxes. An Emergency Revenue Act was passed to levy "additional and extraordinary" taxes "to meet a supreme emergency in the shrinkage of the ordinary revenues of the State and as a further relief from property taxes to provide another form of revenue for the support of the public schools of the State in substitution for the taxes levied on property for this purpose."[72] The act authorized a state retail sales tax at a rate of 3 per cent. A tax on alcoholic beverages was also enacted, and franchise and income tax rates were increased.

One of the most important benefits of the fiscal revolution of 1931 and 1933 has been a permanent reduction in the reliance on local property taxes.

Taxation since the fiscal revolution

The changes of 1931 and 1933 revolutionized North Carolina's fiscal system. Responsibility for financing major functions of county government—schools, roads, and prisons—passed to the state, which financed them from statewide taxes. The ability to finance the constitutionally mandated school term no longer depended on local property tax bases. Between 1930-31 and 1936-37, local tax revenues fell from two-thirds of total state and local tax revenues to just over one-third.[73] County property tax revenues were reduced by half between 1928-29 and 1933-34.[74]

61. Governor O. Max Gardner, in his address to the 1931 General Assembly, said, "Of one conclusion I am absolutely certain: taxes on property must be reduced. This is one clear mandate from the people." *Public Papers and Letters of O. M. Gardner,* David Leroy Corbitt, ed. (Raleigh: Council of State, 1937).

62. For a full acount of the 1931 actions see Betters, *State Centralization in North Carolina.*

63. N.C. Public Laws of 1931, Ch. 10.

64. *Ibid.*, Ch. 430.

65. *Ibid.*, Ch. 145.

66. Donovan, "State and Local Fiscal Relations," pp. 127-28.

67. *Ibid.*, p. 128.

68. Gov. J. C. B. Ehringhaus, North Carolina's Financial Situation," address delivered February 2, 1934, in David L. Corbitt, ed., *Addresses Letters and Papers of John Christoph Blucher Ehringhaus* (Raleigh: Council of State, 1950), pp. 125-26. By November 1933, 61 counties and 146 of the 260 municipalities with bonded debt were in default. *Report of the Local Government Commission,* 1934, p. 8.

69. N.C. Public Laws of 1933, Ch. 562.

70. "North Carolina Makes Economic Adjustments," by Gov. J. C. B. Ehringhaus, in Corbitt, *Papers of Ehringhaus,* p. 198.

71. Letter from Governor Ehringhaus to Dr. Marcus W. Newcomb, January 27, 1936, *ibid.*, p. 402.

72. N.C. Public Laws of 1933, Ch. 445, Art. V.

73. Donovan, "State and Local Fiscal Relations," Table XXXIII, p. 183, and Appendix D, p. 239.

74. *Ibid.*, Appendix B.

More important than the immediate effects of the fiscal revolution, however, were the long-term effects. The system of taxation and government finance that emerged in 1933 was to remain essentially unchanged. Yet it has enabled the state to undertake a vast expansion in programs and expenditures with relatively little change in tax rates.[75] As incomes increased during World War II and the post-war era, North Carolina, unlike many states, could meet the demands for increased public services largely without increasing tax rates or imposing new taxes. While total revenues from state tax sources increased from $44 million in 1933-34 to $2,373 million in 1977-78, there have been only a few minor changes in the tax system and only a few significant increases in tax rates. The gasoline tax rate has increased from 6 cents to 9 cents, but 1 cent of the tax increase is distributed to municipalities for street construction and maintenance. A 7 per cent tax rate for taxable income above $10,000 was added to the personal income tax schedule in 1937, but the exemption for dependents has increased from $200 to $600. All food for home consumption was exempted from the retail sales tax in 1941, and prescription medicines were exempted in 1945, but the exemption of food was repealed in 1961 to provide additional revenue for expanding public school programs. A gift tax was enacted in the late 1930s to complement the income tax and the inheritance tax, and the cigarette and soft-drink taxes were enacted in 1969; but these have remained minor sources of tax revenue, together accounting for only 2.1 per cent of General Fund revenues in 1977-78. Alcoholic beverage taxes, on the other hand, have been increased substantially.

Although the state tax system has remained essentially unchanged for over four decades, the composition of tax revenues has changed considerably because of the system's structure. Of total General Fund tax revenues in 1934-35, the personal income tax accounted for 5.5 per cent, the corporation income tax for 25.1 per cent, the retail sales tax for 31.3 per cent, and the franchise tax for 27.4 per cent. In 1977-78, the personal income tax accounted for 41.2 per cent, the corporate income tax for 11.1 per cent, the sales tax for 28.1 per cent, and the franchise tax for 7.9 per cent. The most significant change has occurred in personal income tax revenue, which increased from $1.3 million in 1934-35 to $848 million in 1977-78. Revenue from taxes imposed principally on businesses—the corporation income tax and license and franchise taxes, have declined from 59.6 per cent to only 19.5 per cent in 1977-78. Property tax revenue as a percentage of total state and local tax revenue has continued to fall until now it is about 25 per cent of these total revenues.[76]

One of the most important benefits of the fiscal revolution of 1931 and 1933 has been a permanent reduction in the reliance on local property taxes. In states where local governments continued to have financial responsibility for schools, roads, or prisons, the tremendous pressure after World War II to increase government expenditures, especially for schools, fell mainly on local governments and therefore on the local property tax. Although local governments in North Carolina have also been under pressure to increase expenditures since World War II, the shift of responsibility for schools, roads, prisons—and later the courts—to the state shifted much of the pressure away from the property tax to broad-based state taxes whose revenue yields increased automatically with growth in the state economy. And because state tax revenues have grown so fast, the state has been able to share its revenues and tax base with counties and municipalities, which further reduces pressures on the local property tax.[77]

Summary

The development of the North Carolina system of taxation can be divided into two phases. The first phase, which stretched from the colonial period to the ratification of the 1868 Constitution, involved an evolution from a primitive colonial system of poll and land taxes to a system of uniform and universal property taxation, complemented by taxes on income, inheritances, and business, based on an early nineteenth-century ideal of tax equity. But while the tax system embedded in the 1868 Constitution may have been suitable for an agrarian economy in which land was the primary form of wealth and source of income, it proved to be unsuitable for an age of increasing industrialization and urbanization and inconsistent with the long-standing ideal of a uniform, statewide school system and the state's tradition of centralized responsibility for government services. Thus, the second phase of development, from 1868 to the present, has involved a transformation from the nineteenth-century system of taxation based primarily on property taxes to a modern system based primarily on broad-based, statewide income and sales taxes. □

75. Total annual state expenditures have increased from $50 million in 1933-34 to almost $4 billion in 1977-78. The 1933-34 figure is from Donovan, "State and Local Fiscal Relations," Appendix A, p. 233.

76. Although state taxes have changed very little since 1933, the property tax has undergone a fundamental change. The nineteenth-century concept of uniform and universal property taxation was finally abandoned in principle by constitutional amendment in 1936. This amendment authorized classification of property for taxation and broadened the General Assembly's power to grant exemptions. In 1937 the General Assembly classified certain types of intangible property, removing them from the local tax base, and the state began collecting taxes on this property at lower rates for local governments. Except for classifying intangible property, however, the General Assembly was slow in using its classification powers. Unlike most other states, North Carolina has not yet excluded intangible property and household personal property from taxation. Agricultural products held in storage were classified for preferential treatment in 1947, and peanuts and other agricultural products were classified in 1955. In recent years the classification power has been used to provide an income-conditioned exclusion for retired people and use-value assessment of farm and timber land.

77. Since 1933 the state has begun sharing the gasoline tax with municipalities, the local-option 1-cent sales tax has been made available to counties and their municipalities (all but one county have elected to use this tax), the municipal share of utility franchise taxes has been tripled, and more revenues from alcoholic beverage taxes have been made available to local governments.

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