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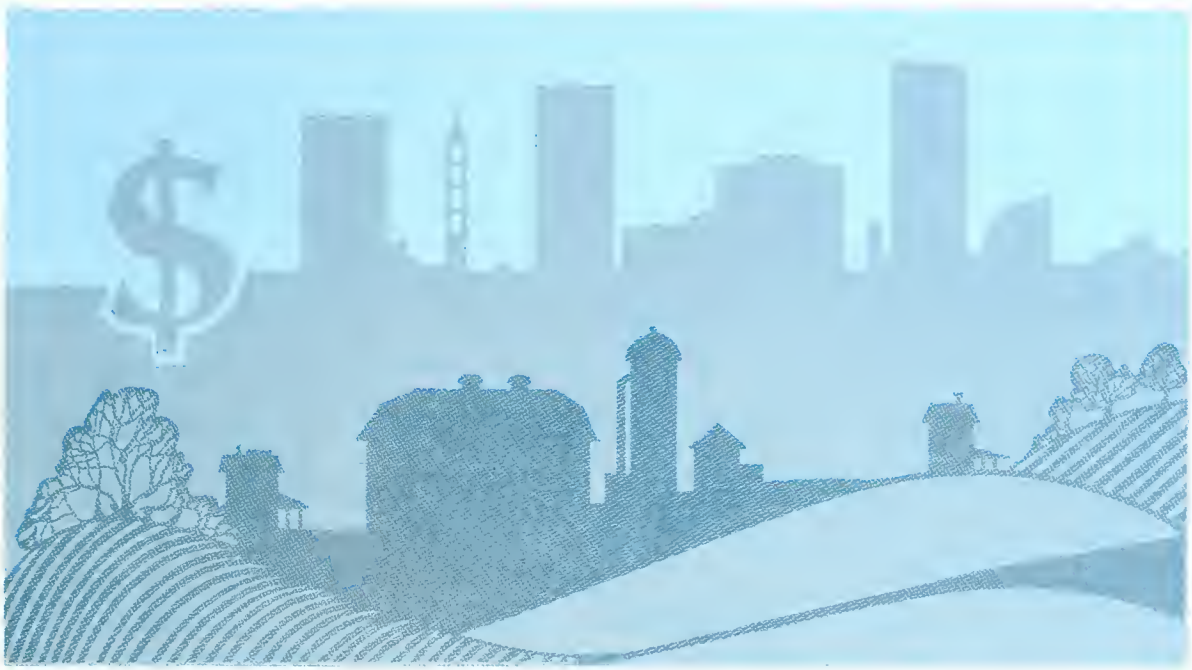

Charlotte's Productivity / Downtown Revitalization / Off-Street Parking / Rural Land Use
Comparison of UNC Campuses / Coates Professorship

State Administrative Process

New Science-Math School

A Pay Plan for Greensboro

Summer 1980

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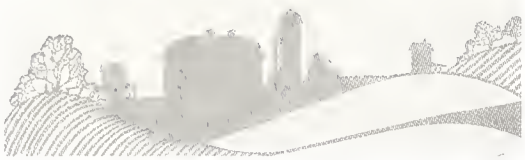

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Greensboro's Performance Based Pay Plan

Ed Kitchen

EMPLOYEE PAY generally constitutes the largest single item in the operating budget of governmental organizations. Despite the significance this item holds for overall budget increases (and often the tax rate), pay is frequently a poorly managed facet of government operations. Payroll costs are usually considered as an aggregate expenditure, with little attention to the parts that make up the whole. In their analyses management, budget analysts, and personnel specialists tend to focus on "across-the-board" concepts rather than on differences in performance and productivity among individual employees.

Pay and classification systems are grouping processes; the rule is uniform treatment of people and positions under like circumstances. The orderly grouping of positions into classes and classes into grades in a pay plan is essential to any sound system of personnel administration. Too often, however, insufficient attention is given to another consideration—how to reward superior workers and provide incentive to those employees who are not yet performing at a superior level. In 1975 the City of Greensboro adopted a performance-based pay system that eliminated across-the-board increases: The amount of each increase is now contingent on the employee's performance. This article points out the drawbacks to the typical government pay plan and then describes Greensboro's present system.

Pay plans in the public sector usually have a schedule of pay grades that includes one or more rates of pay for each grade. Integrated rate ranges commonly consist of a minimum, a maximum, and some number of intervening steps for each grade. Table 1 shows a sample of ranges from a typical plan with six steps, each step reflecting a 5 per cent higher salary than the preceding one. Jobs are assigned to the various grades on the basis of internal relationships among classes (determined through one of several common job-evaluation techniques) and on the amount that other employers are paying for similar jobs (determined through pay surveys). As of July 1979 the State of North Carolina and all but two of its major cities that had formal pay plans were using pay ranges with some number of intervening steps (Greensboro and High Point were the exceptions). Adjustments are usually made to the basic pay schedule at regular intervals to compensate for economic or labor-market changes. Because of recent high inflation rates, most governmental units have made this adjustment annually—usually across-the-board to all employees through some standard percentage amount.

Pay administration in the public sector has a number of common problems, including the following:

1. Progress through a salary range in many government agencies is automatic, and all but the incompetent reach top pay at some point;

2. The common practice of granting across-the-board increases to all employees at one time to reflect necessary adjustments in the pay plan tends to reduce available funds (and thus their impact) for true merit increases—particularly in times of high inflation;

3. Across-the-board increases without regard to levels of performance assume that superior performance remains constant over time and allow no method of penalizing the person who has reached top pay but has slipped in performance;

4. Rate ranges with intervening steps can limit flexibility in awarding merit increases;

5. Pay surveys in the public sector frequently rely too much on similar government agencies because of the unique nature of many key public jobs, and place too little emphasis on the local labor market;

6. Pay surveys tend to focus on range minimums and maximums and often do not consider an equally or perhaps more important group of data—actual rates paid;

7. Public-sector managers and personnel professionals tend to be behind some large private corporations in techniques of compensation management and budgeting;

8. Systems of performance appraisal, although improving, tend to focus on subjective, personality-oriented criteria, and therefore cannot substantiate differences in performance levels for pay purposes.

These problems have led to the pervasive belief that "public employees have a quasi-property right to perpetual annual salary increases."[1]

Between 1975 and the present, Greensboro has taken a number of steps

The author is personnel director for Greensboro, North Carolina.

1. Henri van Adelsberg, "Relating Performance Evaluation to Compensation of Public Sector Employees," *Public Personnel Management* (March-April 1978), 72.

Table 1
Sample Ranges of a Typical Pay Rate Plan

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
9	$ 9,738	$10,225	$10,736	$11,273	$11,837	$12,429
10	10,225	10,736	11,273	11,837	12,429	13,050
11	10,736	11,273	11,837	12,429	13,050	13,702

to eliminate the typical public-sector pay problems and to begin paying for high performance.

THE CITY'S PAY PLAN is part of an overall effort to involve employees at all levels in planning and providing services to the citizens. It begins in the early stages of budget preparation.* Each department head requests results-oriented objectives for the coming fiscal year from his various work units; these objectives are submitted with funding requests to the city manager and the city council for inclusion in the budget. Once approved and/or amended, they become the basis for department heads' performance workplans that are individually negotiated with the city manager. Standards for measuring objectives are developed from the top down through subordinate levels. With certain jobs—especially those at lower levels, where duties are relatively routine—uniform standards throughout a class are used. Supervisors and employees review these workplans and/or standards quarterly and make appropriate adjustments.

Once or twice a year, depending on the employee's salary range position, the supervisor holds a formal appraisal interview with the employee. During the interview, the two discuss how the employee's work performance compares with the established standards. The supervisor then determines whether the employee's achieved results meet or exceed the standard and the amount (if any) of the employee's merit increase.

The current evaluation system in Greensboro consists of four basic ratings of overall performance:

Standard — The employee meets the objectives/standards for the position;
Above standard — The employee's performance clearly exceeds objectives/standards;
Below standard — The employee fails to meet objectives/standards, and his work is unsatisfactory; and
Extended — More time is needed for some reason to appraise performance accurately.

The degree to which the workplan and/or standards have been achieved can be related to salary advancement within the established range. A look at the key components of the pay plan will show how this is accomplished.

Structure. Like many local government pay plans, Greensboro's plan contains a number of grades (35) that include ranges with minimum and maximum rates. Each of the 35 grades has a minimum rate that is 5 per cent greater than the next lower grade. Each grade is keyed to a "job rate" — the prevailing rate in the local labor market for the class and the approximate midpoint of each salary range. Classes are assigned to pay grades according to job evaluation of internal relationships of classes and job rates paid for similar jobs in the labor market.

To insure the competitiveness of the plan, the city's personnel department conducts a comprehensive annual pay survey and periodic limited surveys of major local private-sector employers and other North Carolina cities over 100,000 in population. The survey analysis gives considerable weight to the prevailing rates paid in the local labor market among larger private employers. Although minimum and maximum rates are requested, *the key data collected are actual rates paid* for jobs in the survey. Weighted averages are compared with the city's job rate for comparable classes to establish the level of competitiveness. Since the annual survey provides only a "snapshot" of rates being paid at one time, anticipated adjustments are requested and taken into account — especially in view of current inflationary trends. While differences between the weighted average and the city job rate may cause the salary for a class of positions to be raised or lowered, the information gathered in regard to "bench mark" jobs and anticipated adjustments in the local labor market receive primary emphasis in determining how much the city's pay schedule should be adjusted.

Range adjustment procedure. Since 1976 general adjustments to the pay schedule have *not* been made across-the-board. General changes in the pay schedule made in response to survey results and general economic trends are called "range adjustments." When a range is adjusted upward, the employee's rate of pay does not immediately change; only his pay potential changes, and his relative position within the range is reduced by the amount of the adjustment. Figure 1 shows how the process works.

For an employee to regain or exceed his previous relative range position, he must receive a "standard" or better evaluation at his next performance review. Advancement through the range is based entirely on merit.

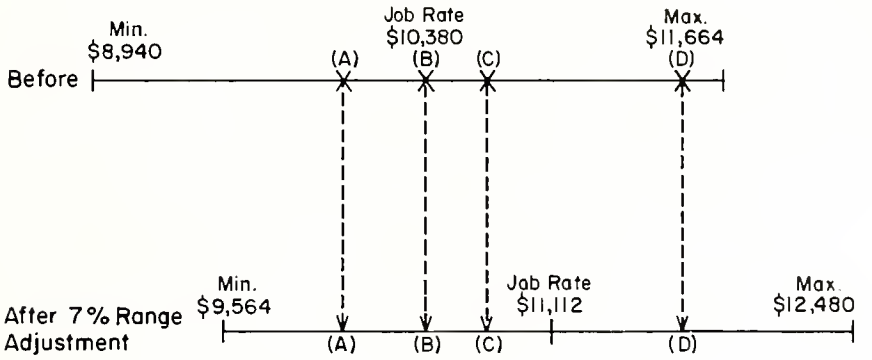
Within-range pay administration. Pay ranges of the 35 grades are administered under two systems. The cutoff point that divides the two systems comes between Grades 23 and 24. Grades 24-35 encompass most of the managerial and higher-level decision-making positions such as department and division heads. Since these grades represent only about 5 per cent of all permanent positions, this article will concentrate on the administration of Grades 1-23.[2]

For Grades 1-23, the width of the total range is approximately 33 per cent — that is, the top salary level is roughly 33 per cent higher than the lowest. Each grade is divided by a job rate at the approximate midpoint of the range. The segment of the range below

*Editor's Note: The performance-based pay plan depends heavily on the performance-appraisal system, which includes the setting of individual objectives. *Popular Government* plans to carry an article on performance appraisal by the author of this article in a forthcoming issue.

2. In Grades 24-35, pay ranges are wider (36%) than in Grades 1-23 (33%). Employees in the higher grades are evaluated only once a year. In 1979-80 they were eligible for increases ranging from 0 to 12 per cent, depending on range position and level of performance. Wider ranges and less frequent reviews for management positions is common practice in private industry.

Figure 1
Range Adjustment Process
(Example shows Grade 10 before and after a 7 per cent range adustment.)



(A) Employee *below* job rate before adjustment. After adjustment the employee is an additional 7 per cent *below* the new job rate and will be eligible for two increases per year until he attains the job rate.
(B) Employee *at* job rate before adjustment and 7 per cent *below* job rate after adjustment. This employee will be eligible for one merit increase during the year. If he is rated "standard," his increase will be 7 per cent. If he is rated "above standard," his increase will be more than 7 per cent — up to the maximum.
(C) Employee *above* job rate before adjustment and *below* job rate after adjustment. This employee will be eligible for one merit increase during the year. If he is rated "standard," his increase will be to the new job rate (less than 7%). If he is rated "above standard," his increase can be to any amount within the incentive range up to new maximum.
(D) Employee *above* job rate before adjustment and *above* the new job rate after adjustment. This employee will be eligible for one merit increase during the year. If he is rated "standard," he will receive no increase. If he is rated "above standard," he may receive an increase up to the new maximum.

job rate is called the "development range"; the segment above job rate is the "incentive range." Except for the job rate, there are no set steps within the range. Pay increases and rates paid may be at any amount within the established range. Table 2 shows an example of a range in Grades 1-23.

In Grades 1-23, employees in the development segment of the range are evaluated for merit increases twice a year until they reach job rate. One evaluation takes place in the first half of the fiscal year (the date determined by when the employee came on the job); the second evaluation comes six months later. If the employee is rated "standard," the first increase is the amount of the range adjustment, which insures that the previous relative range position is recovered. If he is rated "above standard," the first increase is slightly more than the range adjustment, which recognizes the higher than "standard" level performance. The second review calls for a range of percentage increases that depends on the level of performance.

Table 2
Sample Range: Grades 1-23

Grade	Development Range D	Job Rate J	Incentive Range I
15	$12,240	$14,196	$15,960

After they reach job rate, employees are reviewed for a merit increase only once a year. An employee may advance to but not beyond the job rate by being consistently rated "standard" (*i.e.*, he meets objectives). A new employee who is consistently rated "standard" will reach the job rate in approximately two years; "above standard" ratings for an employee in the development range will accelerate his movement to the job rate. To receive increases within the performance incentive segment of the range, an employee must be rated "above standard" (*i.e.*, he exceeds the established objectives). An employee in the development range who rates "above standard" will reach the job rate faster than his "standard" colleague.

This system is based on several axioms: (1) An employee who does an average or "standard" job should be paid at or near the prevailing or job rate in the market. (2) Most new employees will need a development period to learn how to do all aspects of the job competently. (3) Frequent evaluations insure close attention by his supervisor to the new employee's progress and encourage him. An employee who rates "below standard" has his merit increase delayed until he improves his performance to "standard," which he must do within 90 days or face adverse action. An "extended" rating is available when a valid evaluation cannot, for some good reason, be made at the normal time.[3]

Controls. Greensboro's pay plan, like other pay systems, includes a set of management controls that both insure integrity and restrict expenditures. Greensboro's controls place primary management responsibility on the various departments rather than on the city manager or personnel department. Every year each department is given a limited number of merit "percentage points" to allocate among its employees for advancement above job rate. Unlike Greensboro's former system, which is still used by many public agencies, the current system does not stipulate that an arbitrary percentage of employees may be awarded merit increases in a given year. The former system creates an "either/or" choice and, when coupled with set steps, severely limits flexibility in management. Greensboro's system avoids this simple yes-or-no method by assuming that everyone may receive a merit increase (there are no across-the-board adjustments) that varies in amount according to individual performance.

The amount of incentive-range "percentage points" a department receives is calculated by computer and is based on a within-range profile of employees in

3. There are currently no quotas imposed on the number of employees rated "standard," and "above standard," "below standard," or "extended." In 1979, 41 per cent of employees were rated "standard," 54 per cent "above standard," and 5 per cent "below standard" or "extended."

that department.[4] Every percentage increase awarded to an employee at or above job rate is deducted from the total of incentive-range points allocated to the department. For example, if the department has 300 points and decides to rate a given employee "above standard" and advance him to a salary that is 5 per cent above job rate, 295 points remain for the rest of the eligible employees. Once these points are exhausted, the department is out of money for rewarding "above standard" performance for that year.

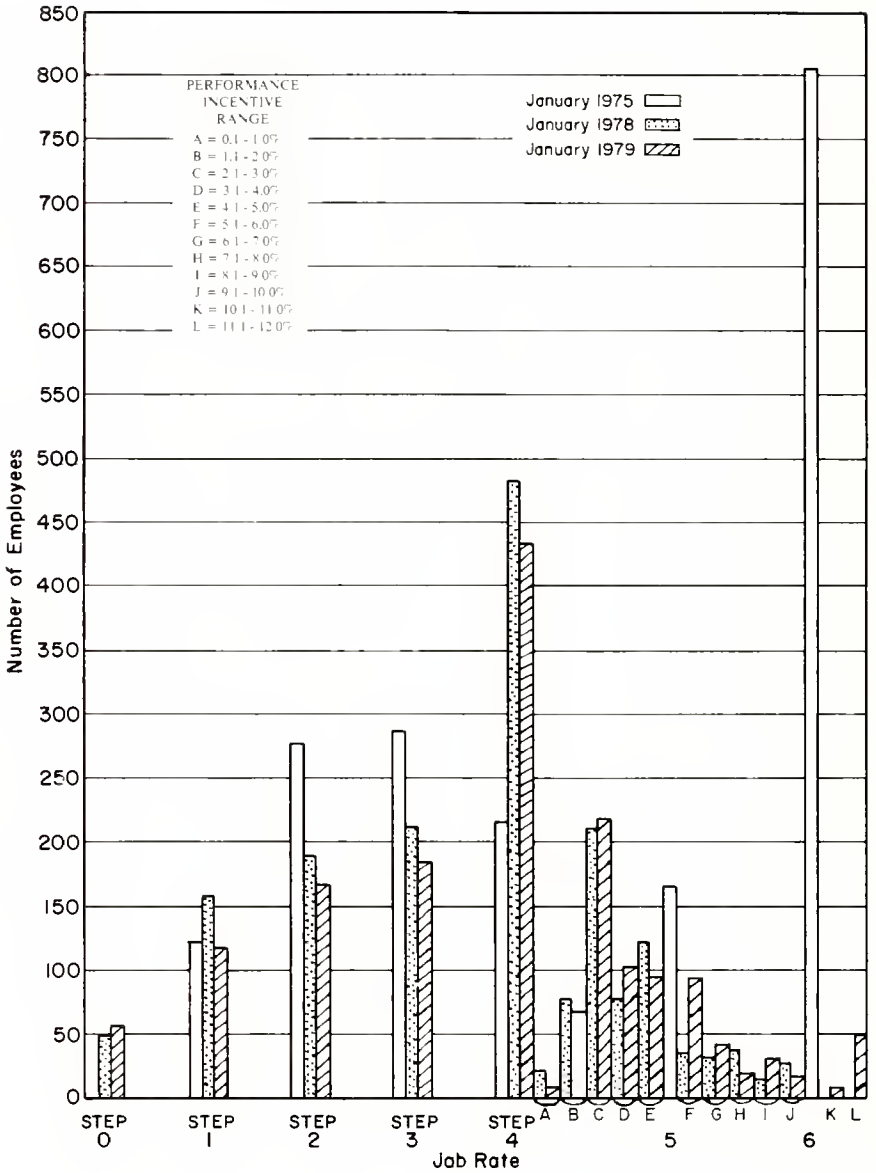
GREENSBORO'S PLAN, in theory and concept, is a sound and effective system of compensation. But what have been the practical results?

First, some significant changes have occurred in patterns of pay throughout the city service. The tendency in the public sector is for employees to advance automatically to the top of their salary range. In January 1975, 43 per cent of all permanent employees in the City of Greensboro were at top pay; by January 1979, only 3 per cent of all permanent employees were at top pay. Under the job-rate and pay-for-performance concepts of Greensboro's current plan, a more "normal" distribution of employees throughout the ranges would be expected. Figure 2 compares the distribution of employees at various times before and after the new plan was adopted. Slightly three years after adoption, the employees were scattered throughout the ranges, and a substantial number were clustered near the job rate—a pattern that Greensboro's management considers desirable.

Second, the new pay plan offers the better worker a distinct relative advantage over the average worker. Under the previous system, the average performer reached top pay nearly as quickly as the superior performer. Once a worker reached top pay, the across-the-board methodology of the old plan produced absolutely no monetary incentive for him, and better performers were not rewarded. Under the current pay plan, an employee who outperforms other workers during the rating period can be rewarded with a higher rate of pay.

Third, to some degree the plan increases productivity. Providing the same or increased services with the same or lower taxes is the "bottom line" of efficiency in local government. In his FY 1979-80 budget message to the council, Greensboro's city manager noted, "In our proposed budget we concentrated on maintaining the same tax rate, and in order to do this we continued to control our largest expense—personnel." By controlling the number of authorized positions, management can gain significant control over expenditures. Although a jurisdiction's effective tax rate can be affected by many other variables (*e.g.*, community and economic growth, annexation, property revaluation, available federal funds, etc.), certainly one major influence on the tax rate is the number of employees on the city payroll. Figure 3 indicates the changes in authorized permanent positions in Greensboro over the last seven years.

Figure 2
Salary Distribution Within Range
(All Employees in Grades 1-23)

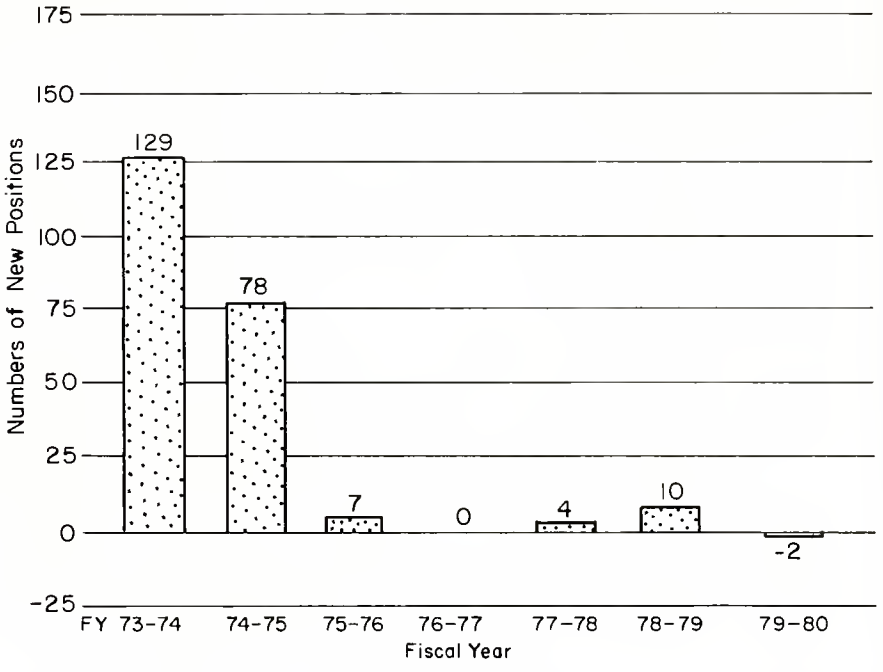


4. Employees in a department who are at or above job rate generate these incentive range "percentage points" according to their position in the range relative to maximum pay. The more employees a department has near the top of their range, the fewer points it receives for increases above job rate for the coming year.

Since the performance-based pay plan was introduced in the fall of 1975, the number of new positions approved each year has dropped drastically. Whether the performance-based pay plan caused this reduction in new positions would be extremely difficult to prove. The new plan certainly created a monetary incentive for increased individual productivity that did not exist before. The increased services from essentially the same size of workforce appears to indicate increased individual productivity as a result of this incentive. Greensboro's managers and supervisors—and the news media—perceive that employee productivity has increased under this system.[5] Community recognition of the plan's success is evident in the Greensboro Chamber of Commerce's feature of the plan in its 1980 economic development publication *Greensboro Works*.

And finally, it is worth noting the widespread reversal in employees' attitude toward the plan since it began. Employees at first took a very dim view of the plan. Perhaps this was so because the effect of the plan on individual employees had not been properly explained to supervisors—a shortcoming that has since been corrected. Supervisors are now being trained in evaluating performance. In the beginning employees were also concerned that the new plan was a money-saving device and that their pay would fall behind others', but the city has kept its salaries in line with local industry and other major cities. In fact, over the past five years, Greensboro's compounded adjustments to the pay plan have exceeded those of all four of the other largest cities in the state. In early 1977, approximately one year after the plan was adopted, I talked extensively with supervisors and employees from each department, who expressed ten major concerns with the plan.[6] Nine of those concerns have been addressed and eliminated to the satisfaction of most supervisors and employees. In these times of high inflation, very few people are entirely satisfied with their pay or the system under which it is administered, but the basic concept of performance-based pay is now rarely questioned in Greensboro.

Figure 3
Changes in Authorized Positions



GREENSBORO'S CITY COUNCIL established several broad goals for the new pay plan before it was adopted in late 1975. The plan should (1) "provide salary adjustments for city employees on a fair and equitable basis related to each individual's performance"; (2) ensure that "factors such as employee productivity and job performance be considered along with the consumer price index in determining future employee pay increases"; and (3) "join private industry in attempting to maintain the stability of our nation and preserve the general economy."[7] Greensboro has made considerable progress toward achieving these goals over the last five years.

Greensboro's experience indicates that certain conditions are necessary for success in establishing a performance-based pay plan, and any public-sector manager who considers adopting such a plan should be certain that they exist within his governmental unit.

—Enough money must be available to keep average performers' pay in line with going rates and allow superior performers to receive true incentive increases. An incentive pay plan is not a short-run money-saving device. The savings will come in longer-range increases in productivity and proportionate decreases in manpower needs.

—A sound system of performance appraisal will be necessary to make and justify distinctions in merit pay in-

(continued on page 16)

5. See, for example, *Greensboro Daily News*, June 28, 1978; *Charlotte Observer*, June 8, 1978; and *Greensboro Record*, June 20, 1979.

6. When the plan was introduced in 1975, for example, six set steps remained in ranges in Grades 1-23. Employees had to be rated "standard" to reach step 4, "above standard" to reach step 5, and "outstanding" to reach step 6. This made the "standard" rating very unattractive and left supervisors with little flexibility in rewarding varying levels of performance above job rate. In FY 1977-78 the "outstanding" category was eliminated, "standard" was redefined in more positive terms, and set steps above job rate were eliminated so that "above standard" performance could be rewarded according to the degree to which employees exceeded objective standards. In FY 1979-80, set steps below job rate were eliminated. Interestingly, this change resulted in part because a group of Water and Sewer employees suggested that there should be more flexibility to reward superior performance among newer employees (those who had not yet reached job rate).

7. Greensboro City Council meeting, official minutes, May 6, 1974.

Increasing Governmental Productivity in Charlotte

Gwen P. Harvey

ON MAY 15, 1978, the Charlotte-Mecklenburg Local Government Productivity Task Force presented to the city council and the county commission a 700-page report entitled "Opportunities for Improving the Productivity of the City of Charlotte and Mecklenburg County." The report identified a number of areas in which it appeared that the local governments could cut their annual operating costs by $9.4 million and sharply reduce (by 820) the number of their employees, while maintaining current levels of services.

The responses of the city and county administrators differed. The county manager immediately imposed a hiring freeze on 114 open county positions. The city manager was more cautious. Fearing that the recommendations might well mean a cutback in services, he warned (since the report came out only three days before the 1979 budget proposal was submitted) that they should be examined with utmost care. Other officials shared this cautious attitude, and some clearly disagreed with the report.

Since fiscal year 1973 Charlotte had viewed improvement in productivity as a part of the management-by-objectives (MBO) system.[1] The release of the Task Force findings forced the city to re-evaluate its service-delivery systems and to refine its administrative mechanism for getting maximum use of resources at the lowest cost.

This article will examine how Charlotte city government responded to the Charlotte-Mecklenburg Local Government Productivity Task Force report and continues to respond by providing professional productivity management.

The author is an administrative assistant in the office of the Charlotte city manager.

1. For a discussion of management by objectives, see Malchus L. Watlington and Susan J. Dankel, "New Approaches to Budgeting: Are They Worth the Cost?" *Popular Government* 43 (Spring 1978).

Public productivity refers essentially to the relationship between governmental performance and cost. *High productivity* may mean getting the most or the highest-quality services for the tax dollar, saving dollars without cutting back on services, or both.

The concept of productivity has two basic components — efficiency and effectiveness. *Efficiency* relates program outputs to the inputs (usually expenditures) that are required to produce the outputs over time. To the extent that outputs can be measured accurately, the ratio of outputs to inputs determines efficiency. *Effectiveness* relates proposed levels of accomplishment of goals and objectives to actual levels of accomplishment. The productivity of public organizations generally is judged in terms of values and responsiveness as well as "tangible" goods and services. The emphasis is on quality of output as well as efficiency of input.

The Productivity Task Force study

The idea of a local government productivity study, to be directed by private citizens in Charlotte/Mecklenburg, was borrowed from Winston-Salem and Forsyth County, where a local government efficiency review had been performed in 1975. The Charlotte city council investigated the Winston-Salem/Forsyth study and other similar studies in a number of cities throughout the country. Satisfied that cities that had participated in these studies had realized substantial savings and considerable improvement in their service delivery, the council passed a resolution in February 1977 stating its intent to establish, in conjunction with the board of county commissioners, a task force to develop preliminary plans for a local government productivity study.

The council and the commission placed only two restrictions on the study design. First, the study was forbidden to evaluate personnel and the merits of the ex-

isting political structure. Second, it was not to address the kinds of services being provided by the city and county, but rather *how* they were provided.

On October 3, 1977, the two legislative bodies jointly established the Local Government Productivity Task Force, which was composed of the executive officers of 25 of the community's major business and academic organizations. The council and the commission directed the Task Force to analyze local government operations and make recommendations for increasing the cost effectiveness of such operations. Task Force members contributed their own time in supervising the study and provided qualified volunteers from their organizations to help in making the study and in developing the recommendations. Cresap, McCormick, and Paget, Inc., a professional management consulting firm with experience in local government and other productivity studies, organized and directed the volunteer effort under the auspices of the Task Force.

The study's overall objectives were: (1) to examine local government units within the city and county; (2) to identify opportunities for improving organization, administration, and operations; and (3) to develop specific recommendations for increasing productivity in government operations while maintaining or increasing the existing level of service. The study encompassed all city and county government units except the Charlotte/Mecklenburg school system, the hospital authority, the area mental health authority, the city council, and the county commission.

The consulting firm recognized several key concepts:[2]

1. Local government is a labor-intensive operation, and labor costs have risen steadily in response to a number of pressures such as employee unionism and inflation.

2. Rising labor costs have not been offset by increased productivity, so that the costs of government services have generally consumed larger and larger proportions of the Gross National Product.

3. The search for cost savings and improvements in productivity should focus on police, fire, and public works, since these operations (aside from education) consume the largest part of a local operating budget.

4. The best opportunity for improving productivity is likely to be found in the primary operations of departments rather than in peripheral activities.

The study team used a combination of quantitative and qualitative techniques. It collected available data on current and projected demographic, economic, and social make-up; budgets; expenditures; departmental workloads; and other factors that they judged had an effect on productivity. Representative members of the city council and county commission were interviewed, as were key executives in both governments and a variety of employees at all levels. "Vertical probes" — intense examinations from top to bottom — were conducted in the major operating departments.

The Task Force met four times to structure the study, to review its progress, and to evaluate the recommendations developed by the consultants and the study team. Each Task Force member also reviewed with the team member from his organization that section of the report for which the team member was responsible. Initial drafts of the report were made available for review by the city manager and the county manager before release, and some modifications were made. The final report had the unanimous endorsement of the Task Force.

Task Force recommendations

In general, the Task Force's final report concluded that the citizens of Charlotte enjoy "government services of high quality" and that the greater Charlotte/Mecklenburg community enjoys "an enviable reputation as a desirable place in which to live and work."[3] The report proposed 113 specific actions for a plan to improve productivity in the city. These steps involved reducing the number of positions in city government by 519, with a projected annual savings of $6,309,760. (In addition 92 specific productivity actions were proposed for Mecklenburg County government, with a reduction of 301 positions and a net annual savings of $3,145,200.) Specific proposals ranged from minor changes in administrative practices like adding a part-time position in the city clerk's office to major changes in organizational structure — such as reorganizing the police department. The major recommendations (and subsequent actions taken by the city) are outlined in Table 1.

The study's last chapter outlined a plan to help the city council and the county commission determine what steps had to be taken to implement the proposed recommendations. Because some recommendations would require more time than others, the Task Force advised the city council and board of county commissioners to fix a schedule of specific recommendations and direct the respective managers to prepare a program for consideration. It further suggested that as each recommendation was adopted, a fixed schedule be set for executing it and that quarterly reviews be made.

Response of the city council and administration

The city council that received and reviewed the Task Force report in May 1978 was not the same council that had initiated the study. District representation, ap-

2. Charlotte-Mecklenburg Local Government Productivity Task Force, *Opportunities for Improving Productivity in the Governments of the City of Charlotte and Mecklenburg County*, Report of the Task Force Study (Charlotte, May 15, 1978), p. I-3.

3. *Ibid.*, p. II-2.

Table 1
Summary of City Action on Major Recommendations

Department and Action Recommended	Estimated Position Reduction	Estimated Savings	City Action	Justification	Impact
Police: Reorganize patrol forces	91	$1,296,000	Alternative under study	Received LEAA Grant to implement Managing Patrol Organizations (MPO) project.	To be determined
Fire: Create district flying squads	76	938,000	Alternative under study	Alternate proposal would reduce the number of fire companies and revise manning schedule	$300,000 savings; reduction of 17 positions
Public Works: Contract commercial garbage collection	26	100,000	Approved	Cheaper than current city cost	$100,000 savings; 26 positions will be eliminated
Revise residential collection program	85	774,000	Approved test of roll-out trash container system	Council voted not to implement city-wide because of service-level considerations	None
Restructure street maintenance	32	285,000	Approved	Increased crew-assignment flexibility	$129,000 savings; 15 positions eliminated
Utilities: Restructure on-call capability	12	65,000	Approved	Infrequency of emergency calls	$65,000 savings; 5 positions eliminated
Reduce size of sewer construction and maintenance crews	9	86,000	Approved work measurement study by outside consultant	Better use of equipment operators and private contractors	$53,182 savings

proved by voter referendum and implemented in the 1977 election, had produced a twelve-member governing body with only three incumbents returning to office. Of these, only the mayor pro tempore had staunchly supported the Task Force. As a result, a new mayor and a largely inexperienced council had the responsibility of assuring significant administrative response.

The point that the city manager had to get across to the council and the public during the first days of the productivity furor was that sizable reductions in operating expenditures were not likely to happen immediately; city administrators would need time to evaluate the Task Force recommendations, figure out how to put them into effect, and coordinate improvement efforts while at the same time preventing service disruption, loss of employee morale, or other unintended and adverse effects. But, it was, he said, time for professional, serious review and—over a reasonable period of time—implementation.

From the preparation of an initial response to the presentation of case-by-case studies, city administrators approached the investigation of productivity on three basic levels—analysis, negotiation, and co-option.

Analysis was a two-phase operation. First, each productivity proposal was examined for its true potential to achieve improvement. This meant testing the data used by the Task Force for completeness and accuracy, assessing all relevant cost, and calculating projected one-time costs and annual savings according to the prevailing price, wage, and salary indexes. Several recommendations proved to be inaccurate because of misinformation or faulty cost calculations. Second, an attempt was made to determine the possible impacts—intended or unintended, beneficial or negative—that each recommended action would have on services. This meant a critical overview of all recommendations with the understanding that something useful could perhaps be drawn from each.

Negotiation, as the second level of productivity investigation, pursued progress through compromise and bargaining. It meant grasping the improvement concept wholeheartedly and devising alternate plans for productivity goals when necessary. Most of the suggestions made by the city administration for resolving the problems encountered with the Task Force recommendations to council expressed this theme: "We can't do it the way the Task Force said it could be done, but we can do this. . . ."

Co-option, the third level of productivity investigation, remained faithful to the Task Force intent but assimilated and transformed improvement of productivity into something different: It moved beyond the base recommendation and on to more sophisticated methods and larger results than the Task Force had envisioned. This meant using Task Force recommendations as a reason to do something untested. For example, one new idea was to hire a productivity analyst to perform work-measurement studies in the utilities department; another was to experiment with roll-out trash collection in selected city neighborhoods.

In addition, some proposals for improved productivity had been generated by city employees themselves, including adoption of a system for appraising employees' performance, the development of a federal cost-allocation plan; and the purchase of a vacuum-operated fare retriever, counter, and sorter for the public transit system. By adopting these recommendations for improvement the Task Force helped to gain staff support.

Using the above approaches, city administrators felt that they had developed a workable plan for improving productivity. On October 19, 1978, approximately four months after the Task Force report was released, the city manager presented to the council the first full response to the productivity-study recommendations. This report suggested that action could be taken on 77 of the 113 recommendations, through either full or partial implementation or alternatives. Of the remaining 36 recommendations, 18 required more time to evaluate and the other 18 were not supported. His report calculated annual savings of over $600,000 and elimination of 75 positions. These savings were much less than the Task Force estimate ($6.3 million and 519 positions) but were based on what the city believed was a more realistic plan.

City council members did not play an aggressive role in developing counterproposals or in other bargaining sessions on the Task Force recommendations; but they were genuinely open-minded in their discussion of the policy issues that were raised and showed little hesitation to question traditional methods. City administrators were given the professional latitude to investigate and propose, and the council has unanimously supported the staff's opinion in each of the productivity cases resolved thus far.

Current status

Charlotte has implemented 77 of the 113 Task Force recommendations to date for a projected annual savings of approximately $1,021,000. The increase in savings over the manager's original prediction of $600,000 results from (1) the switch from partial (or trial) implementation of some recommendations, and (2) optimistic projections on the basis of positive experience with some recommendations. The dollar figure represents the city's best effort at making cost estimates before the results of full implementation are known. Forty-seven positions have already been eliminated, 32 are scheduled for elimination, and 399 are under consideration for elimination. "You're talking about $1 million in hard savings and no disruption in services," the budget and evaluation director explained.

In addition, an exchange of information has been developed among officials and departments. The budget and evaluation department translated the productivity proposals, as approved by management and the city council, into specific productivity objectives, which were then incorporated into the city's management-by-objectives process. Departments will now have to report on the status of achievement for productivity improvements being phased into operations at quarterly intervals during the fiscal year. The budget and evaluation department will then analyze each department's data to see whether it is on schedule for meeting its established productivity goals, whether the improvement has already been achieved, and what the service consequences have been. A comprehensive status report will be submitted to the city council at the end of each fiscal year when the annual operating budget request is submitted. (The first productivity report was presented to city council on May 21, 1980, with the proposed operating budget for FY 1981, and reflected $2.9 million of "hard-dollar" savings and elimination of 127 positions).

Lessons learned

The view in Charlotte is that outside consultants can be very useful in providing information and direction for measuring improvement in productivity. They usually have little territory to defend and can be objective in making recommendations in sensitive areas. Furthermore, they usually have had experience with other organizations, and they have a fresh perspective on problems. However, a municipality should not apply consultants' findings without due consideration, and it will need a well-trained cadré of managers and analysts to implement and maintain the program once the consultants leave.

A municipality must also realize that results may not be visible overnight. A successful program will require

(continued on page 25)

How does a city entice new development to its downtown area?

DOWNTOWN REVITALIZATION
An Exploration of Legal and Financial Issues

David M. Lawrence

CITIES AND TOWNS in North Carolina, and throughout the country, continue to be concerned about their downtowns. As retail stores, and increasingly office workers, have left for shopping centers and other outlying locations, some of the state's central business districts have come to look almost as empty during the day as at night. Even if daytime use has not fallen off drastically, most downtowns do have a number of empty storefronts and buildings that clearly show a decline in tax base and threaten, both psychologically and physically, the businesses that remain. It is no wonder that cities everywhere continue to worry about their downtown business areas.

This municipal concern, of course, is not new. A generation ago, cities were worried about downtown deterioration and looking for ways to intercede and reverse the trend. Often they focused on public improvements in the downtown, hoping that improved efficiency and appearance might attract new development. The loop roads that surround a number of downtowns, the serpentine mainstreets and specially paved sidewalks, the downtown parking lots and garages are all results of those efforts. Some were successful, but many others were not; and so governments have sought to do more. One approach has been public action that in some fashion increases the potential return on private investment, and thus makes that investment more attractive. The purpose of

Aerial view of the Fayetteville Street Mall, downtown Raleigh.

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this article is to sketch some variations of this approach and to explore the legal issues that they raise.

Tax incentives

A principal goal of any downtown revitalization effort is new downtown private investment, whether it occurs through rehabilitation of existing structures or construction of new. One possible means to that end, which is fairly common nationally, is to offer tax incentives to those who rehabilitate old buildings or construct new ones downtown. The federal Tax Reform Act of 1976, for example, offers income tax incentives for rehabilitation of historically valuable buildings, many of which are in downtowns.[1]

At the state and local level the most frequent use of tax incentives of this sort involves the property tax. Many states now provide for some sort of property tax abatement on a variety of commercial development projects in downtown areas; in a few cases, tax incentives are also available for certain kinds of housing projects. Typically, a project is entirely exempt from taxation during construction, and a steadily declining portion of the project's value is exempt from the tax base for a number of years—anywhere from five or seven to as long as 20—thereafter. For example, the exemption might extend for 10 years, an additional 10 per cent of the project's value coming subject to taxation each year.

In some cities this sort of program may be unnecessary, simply providing a gratuitous benefit to someone who would have invested in the downtown area in any event; but in others evidence suggests that it can indeed generate new investment. For example, it seems fairly clear that a tax incentive was necessary to the construction two decades ago of Boston's Prudential Center, a project that in many ways began the revitalization of that city's downtown.[2]

1. 26 U.S.C. § 191.

2. Timmins, W. M., "The Prudential Center Agreement: A Case Study in Property Tax Concession," *Assessor's Journal* 2, no. 2 (July 1967): 1-17.

Raleigh's Fayetteville Street Mall at night.

But property tax incentive to downtown development is not now possible in North Carolina; nor can any single city establish such a program. The State Constitution, in Article V, Sections 2(2) and 2(3), requires that any property tax exemption or classification be established by the General Assembly and only by statewide legislation. Thus any such program in North Carolina must be a matter of statewide policy. Still, encouraging downtown economic development through property tax abatement would not be a radically new policy in North Carolina, because a number of existing tax exemptions or classifications are intended to encourage other sorts of development: state ports, distribution centers, and agricultural and forest products industries.

If North Carolina should permit property tax incentives to be used to encourage downtown development, several issues would have to be resolved. Two of these might be mentioned to show some of the fundamental questions.

First, should such a tax incentive be available only for commercial development, or should it also be available for multi-unit housing or for industrial development? To answer this question we must focus somewhat our image of what a downtown should be. Traditionally downtowns have been commercial centers, and limiting incentives to commercial development would maintain that expectation. But many argue that downtowns need people living there, not simply working there, if they are to revive. Extending tax incentives to housing would recognize and support that argument. Furthermore, downtowns are often excellent industrial locations—rail and road transportation is nearby and land is available—and perhaps those resources may be used.

Second, should the incentive be available statewide to all qualifying construction, or should it be limited to downtowns in special need? Several of our cities, for example, have had substantial new downtown development without benefit of any tax incentive. If the incentive is to be limited, how will the qualifying downtowns be defined and who should determine eligibility? If too much discretion in determining eligible projects is given to local officials, the incentive program may be open to constitutional challenge as not being truly statewide in nature.

A recent New York City tax incentive plan should be mentioned here—if for no other reason than to suggest that it would not be feasible in North Carolina. Under this plan, property to be developed is transferred to a government corporation, thereby exempting it from taxation simply because it is government-owned. The corporation then leases the property back to the developer. There is no taxation of this leasehold but rather a negotiated rental that represents a payment in lieu of taxes. The amount of the rental can be geared to the necessary tax subsidy.[3]

This plan appears impossible in North Carolina because the basic first step—tax exemption because of government ownership—could not be taken. In North Carolina, government is entitled to a tax exemption only on property used for *governmental purposes*, and it seems unlikely that our courts could consider the ultimate use of property that is helped in this way to be governmental.

Land and building write-downs

Tax incentives as a form of assistance to downtown development seek to increase investor return by reducing the amount of taxes that would otherwise be charged against income. Another way to do this is to have government bear some of the costs of acquiring land and clearing or rehabilitating buildings. This could be done in addition—or as an alternative—to tax incentives.

This technique was the method of traditional urban renewal, under which government acquired—if necessary through condemnation—and cleared blighted land and then sold the resulting parcels to private developers. The government subsidy came, in part, through selling the land at a price below the acquisition and clearance costs.

But the state urban renewal statute (G.S. Ch. 160A, Art. 22) is probably not broad enough to include all downtown revitalization efforts. It may be used only to acquire, clear or rehabilitate, and sell property that is so blighted or dilapidated that the property itself "substantially impairs the sound growth of the community." A building is not blighted simply because it is empty.

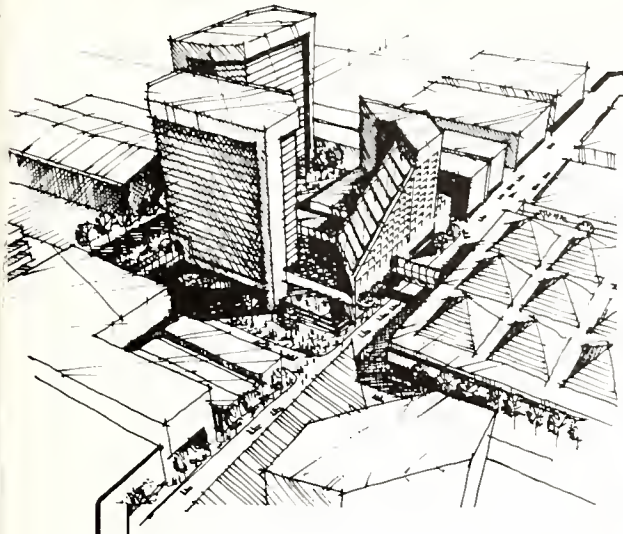
Broader authority, however, exists under G.S. 160A-457. This statute—enacted to facilitate community development projects but not limited to that federal program—permits cities to acquire property that is blighted, undeveloped or inappropriately developed; that is appropriate for rehabilitation or conservation; or that simply is appropriate for economic development. The language is clearly broad enough to authorize cities to purchase downtown properties, clear or rehabilitate them, and sell those properties to private investors. Still, two problems remain with this statute.

First, it does not authorize acquisition by condemnation; a city may acquire property only when its present owner wishes to sell. Thus this statute is of no use to a city that wishes to assemble a large tract of downtown land when one or more owners will not sell voluntarily. Any attempt to authorize condemnation under G.S. 160A-457 might well be held unconstitutional. The Supreme Court upheld the use of condemnation under the urban renewal statute, but in that instance the justifying public use was the clearance of blighted property.[4] The Court has not accepted the use of condemnation when the justifying purpose is simply economic development; in such a case all the Court perceives is the condemnation of one man's land in order to sell it to another.

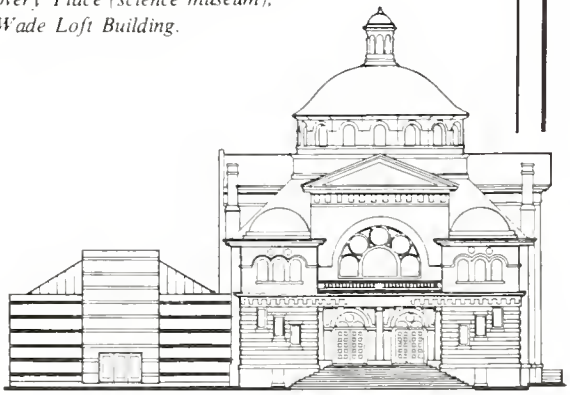
Second, property acquired pursuant to G.S. 160A-457 may not be sold at private sale, unless the city has authority by local act for that method of disposition. Rather, the property must be sold by auction, by sealed bid, or by private offer subject to upset bid. These restrictive methods of sale may be sensible with respect to typical surplus property, when the city is relatively indifferent to how

3. The plan is described and upheld in Wein v. Beame, 372 N.E.2d 300 (N.Y. 1977).

4. Redevelopment Comm'n of Greensboro v. Security National Bank of Greensboro, 252 N.C. 595 (1960).



Clockwise from upper left corner — new and projected development in Charlotte: Charlotte Square, Crow Hotel Development Corporation, First Federal Plaza, Spirit Square (arts complex), Discovery Place (science museum), and Wade Loft Building.



the buyer uses the land, but these limitations make it much more difficult for a city to work closely with a developer in putting together any kind of complicated project. These restrictions on the sale of property do not seem to be based on the Constitution, however, and so it ought to be possible to amend the statute, by general law or by local act, to permit private sale. The urban renewal statute is even more restrictive than G.S. 160A-457 in its sale procedures—permitting sale by sealed bid only—but local acts have granted a number of cities authority to sell redevelopment property at private sale.[5]

Public-private "partnerships"

Undertaking a development project with both public and private participation is another method of increasing investor return, and it is related to and sometimes used in conjunction with the land and building write-downs discussed just above. Such mixed projects may take numerous forms, but several examples should illustrate the possibilities.

1. A city constructs a new public facility — such as an office building or parking garage — somewhat larger than necessary for its own purposes and leases the extra space to commercial clients. Because the city's financing sources are tax exempt and because the city has no profit motive, presumably its rental rates should be lower than comparable privately owned space. This cost difference might entice some businesses downtown.

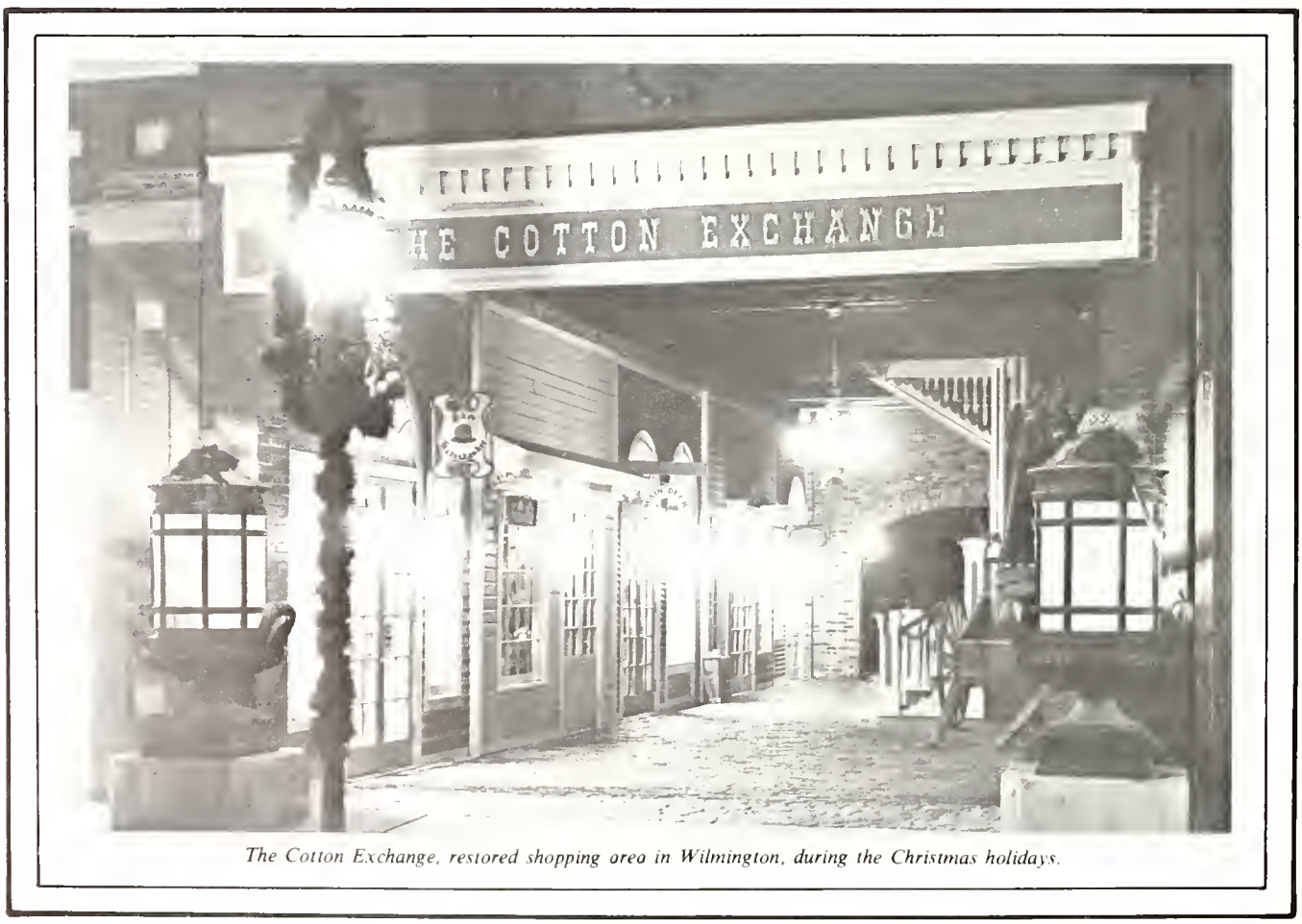
2. A public facility is located so that it will be particularly useful to a new private facility. For example, a parking structure might be placed next door to or across the street from a new apartment house or office building. Or tennis courts may be built next door to a new hotel. If the private facility's patrons may use the public facility, the private developer's capital investment can be reduced.

3. Another arrangement, much like the one above, makes the air space above the public facility available for private development—for example, a hotel placed above a convention facility. Thus the private developer may save on land costs.

4. A variation on numbers 2 and 3 adds a contract between the city and the private developer under which the developer manages the public facility as well as his own. In addition, his patrons may be accorded preferential treatment in the facility—for example, a certain number of vehicle spaces in a parking garage set aside for the residents of the developer's apartment house. The developer's lease payment might be sufficient to retire any indebtedness issued by the city to finance the public facility.

To accomplish many of these arrangements in North Carolina, various statutory authorizations and modifica-

5. *E.g.*, N.C. Sess. Laws 1971, Ch. 1060, which with subsequent amendments applies to at least ten larger cities.



The Cotton Exchange, restored shopping area in Wilmington, during the Christmas holidays.

Attractive landscaping creates a park atmosphere in the Greenville Downtown Mall, constructed in 1975 as one of the city's major downtown revitalization projects.

tions would have to be obtained, and any city contemplating such a project must look closely at the statutory context. However, a more fundamental question is whether this sort of project runs afoul of the Constitution's public purpose limitation because it offers more benefit to private interests than to public interests. Although there have been no North Carolina cases directly in point, the cases from other states suggest a number of common principles that are set out just below. Before looking at those, however, we should note that our Supreme Court has taken a narrow view of government's ability to become actively involved in economic development projects; the Court will probably be relatively conservative in judging the public purpose character of these sorts of projects.[6]

The principles:

1. Most courts have upheld the lease of space in a public facility for private, commercial uses, usually subject to one of two limitations. (1) The commercial leases must be necessary in order to make the entire project self-supporting;[7] or (2) somewhat less restrictively, commercial leases must be "incidental" to the primary public purpose.[8]

2. A possible third limitation to the first principle was established in a recent South Carolina case.[9] The City of Charleston proposed to construct a parking garage but leave standing the existing small shops along the street front of the garage block. The city proposed to condemn the existing storefronts, evict the present tenants, and lease the space to new tenants at a higher rent. The South Carolina Supreme Court overturned this plan on the basis that the city was condemning private property in order to put it to other private uses.

3. Generally, a city may locate a public facility so that it is particularly useful to one or more private developments.[10] After all, it was the private developments that created demand for the public facilities.

4. In addition, a city may normally sell or lease the air rights over a public facility for private use.[11] The air rights are considered a form of surplus property, and the general capacity of a local government to dispose of surplus property would prevail.

5. The city can contract for a private party to operate a public facility, such as a parking garage or civic center, if it retains proper controls.[12] For instance, it seems clear that the city should retain final control of operating policies. Somewhat less clearly, the cases suggest that the city should not allow guaranteed preferential treatment in the facility to private patrons of the private manager.[13]

Financing the city's efforts: Tax-increment bonds

If a city decides to assist downtown revitalization efforts by acquiring and writing-down real estate or by constructing public facilities in conjunction with a private development, how can it raise the necessary funds? In the 1960s, it could look to federal urban renewal moneys for help; but that program has terminated, and its approximate replacements—community development block grants and urban development action grants—do not emphasize or reward downtown revitalization.

Therefore most cities must look to local funding sources; and if the projects are sizeable, they usually must issue bonds. But problems may lurk here also. General obligation bonds—those that are secured by a general tax pledge—normally require voter approval, and that approval is increasingly difficult to obtain. Revenue bonds—whose repayment is secured only by the revenues from the project that is financed with the bond proceeds—do not require voter approval, but in many downtown projects, the revenues alone will be insufficient to retire the bonds. For these reasons, a number of cities have investigated tax-increment financing.

What is tax-increment financing? In brief, it is a method of financing the public portion of a downtown project by a combination of direct public revenues (such as parking-facility revenues) and the additional local tax proceeds—the tax increment—generated from the private portion of the project. Assume a

6. *See* the industrial development bond cases: Mitchell v. Financing Authority, 273 N.C. 137 (1968), and Stanley v. Dep't of Conservation and Development, 284 N.C. 15 (1973).

7. Wilmington Parking Authority v. Ranken, 105 A.2d 614 (Del. 1954).

8. *E.g.*, Courtesy Sandwich Shop, Inc. v. Port of New York Authority, 190 N.E.2d 402 (N.Y. 1963).

9. Karesh v. City Council of City of Charleston, 247 S.E.2d 342 (S.C. 1978).

10. *E.g.*, Seligsohn v. Philadelphia Parking Authority, 194 A.2d 606 (Pa. 1963).

11. *Cf.* Cleveland v. City of Detroit, 33 N.W.2d 747 (Mich. 1948).

12. Thunderbird Hotel, Inc. v. City of Portland, 596 P.2d 944 (Or. App. 1979).

13. *Cf.* Price v. Philadelphia Parking Authority, 221 A.2d 138 (Pa. 1966).

project covering two city blocks and including a hotel, a convention center, an office building, a parking facility, and a small retail mall; the convention center and parking facility are publicly financed, and the city also purchased and cleared some of the land later sold to the private developer of the project. The city financed its share in the project by issuing bonds that are secured by (1) land sale proceeds, (2) operating revenues from the parking facility and the convention center, and (3) taxes levied on the amount that represents the increased value of the privately owned land within the project over the value of that land before redevelopment. This amount is the tax increment. The original appraised valuation remains part of the general tax base, but the taxes levied on the incremental portion are allocated exclusively for debt service on the bonds issued for this project. It is only when the bonds are finally retired that the increment returns to the general tax base. The limited tax pledge connected with these bonds, when coupled with a pledge of revenues, makes the bonds feasible when regular revenue bonds would not be. And most important, in most states that use tax-increment financing, the bonds are not considered general obligations and thus do not require voter approval.

Tax-increment financing is not now authorized for North Carolina cities, and any legislation to provide this authority would have to resolve a number of policy issues—issues that may be complicated by intergovernmental conflict. Most existing tax-increment programs freeze the tax base within the project not only for the city itself but also for other tax-levying governments. Thus the county where the city is located would find itself a partner, perhaps unwilling, in the redevelopment project, for the county's tax increment on that property would also be allocated to retire the project-related bonds. Whether this practice would be used in North Carolina would be a major issue; at the same time, not allocating the county's tax increment to the project bonds might substantially impair the feasibility of many projects.

More fundamental, though, is whether tax-increment bonds could be issued in North Carolina at all without voter approval. If voter approval is necessary, tax-increment financing loses much of its attractiveness. Because the security behind a tax-increment bond is not as strong as is that behind a general obligation bond, tax-increment financing will normally carry a higher interest rate than general obligation financing of the same project. If voter approval is required for both, there would be little reason to issue tax-increment bonds. As noted, tax-increment financing in other states has been held to fall outside the constitutional provisions requiring voter approval of bonds.[14] The reasoning has been that bonds are not general obligations because there is no general and unlimited tax pledge. But there can be no assurance that this result will carry over into North Carolina.

The North Carolina Supreme Court has generally taken a narrow view of exceptions to the constitutional requirement that the voters approve local government indebtedness. For example, it limited the exception for revenue bonds to obligations supported *only* by revenues from the function financed with bond proceeds; airport bonds could not be supported by nonrelated nontax funding sources and still be considered revenue bonds.[15] In addition, Article V, Section 4(2), of the Constitution requires that all debt secured by a "pledge of the taxing power" be generally subject to voter approval. Tax-increment bonds are in fact secured by such a pledge; it is a limited pledge, to be sure, but it may nevertheless cause the North Carolina courts to require voter approval of tax-increment bonds. Only a test case will tell for sure, but such a case is certainly necessary before any tax-increment financing is possible in this state. □

14. *E.g.*, Tribe v. Salt Lake City Corporation, 540 P.2d 499 (Utah 1975).

15. *Cf.* Vance County v. Royster, 271 N.C. 53 (1967).

Greensboro's Pay Plan *(continued from page 5)*

creases. Such a system will require continuous refinement, extensive supervisory training, and systematic participation by employees.

—The pay plan and the performance-appraisal system must start with and be fully practiced at the top levels in the organization. If this is not done, subordinates will quickly become either more sophisticated at supervising than their superiors or disillusioned to the point of simply "going through the motions." Either condition spells disaster for the plan.

—Long and loyal service to the organization must continue to be recognized through various other forms of compensation such as benefits, service awards, longevity pay, etc. Existing rewards based on length of service are valuable and necessary. Their existence, however, makes administering the basic plan on the basis of performance all the more important.

—Administration of the system must be free from political pressures or interference so that managers and supervisors feel free to make the difficult decisions they will face. Still, a legitimate means for employees to appeal decisions with which they disagree must be provided.

Tying pay to performance is an extremely difficult and time-consuming process. Greensboro's plan indicates that progress toward this goal can be realized. Certainly the 1980s will see more pressures for increased productivity and efficiency in the public sector. Performance-based pay should be one of the tools public managers use to address the challenges. □

Differences in Student Achievement Among the Campuses of The University of North Carolina

Q. Whitfield Ayres

COLLEGES AND UNIVERSITIES are often compared with each other on many characteristics — including facilities, educational emphasis, and type of students enrolled. But rarely are higher education institutions responsibly evaluated on relative student achievement. Many people believe that if a student attends a "better" college, he or she will somehow learn more—but that belief is based more on faith than on evidence. This article uses an unusual data set to compare student achievement at fifteen campuses of The University of North Carolina.

Occasionally student achievement is analyzed by comparing scores on standardized tests taken after college by graduates of different universities.[1] But that procedure is unfair to predominantly black institutions, which traditionally admit many more poorly prepared students than do predominantly white schools; presumably what a student knows on entering college will have an effect on knowledge at graduation. A better approach in assessing relative student achievement is to compare post-college test scores of students who scored similarly on a college entrance test but attended different universities. This article follows that procedure, with particular emphasis on the post-college test performance of: (1) black graduates of predominantly white institutions compared with black graduates with the same college entrance scores who attended predominantly black universities, and (2) white graduates of predominantly black campuses compared with white graduates with the same entrance scores from predominantly white schools.[2]

All the students in this study graduated between 1973 and 1977 from one of fifteen campuses of The University of North Carolina (UNC), of which ten are predominantly white and five are predominantly black in student enrollment.[3] The University contains remarkably diverse institutions that, during the mid-1970s, ranged in size from 1,200 to 20,000 students; in scope from four-year institutions to major research universities; and in orientation from liberal arts to science and agriculture. During the period of this study, the student body on each campus was either over 90 per cent black or over 90 per cent white (or in one instance, white plus Indian). UNC provides an opportunity to assess how students achieve in a variety of higher educational climates.

The pre-college measure of achievement used here is the score on the Scholastic Aptitude Test (SAT) taken during the junior or senior year in high school.[4] The SAT, one of the oldest and most widely used of all standardized tests, is designed to assess verbal and mathematical comprehension of college-bound students. Scores can range from 200 to 800 points on each of two parts. The test results should be interpreted not as a measure of innate ability but rather as an assessment of long-term academic preparation or "aptitude" for college work.

The post-college measure of achievement is the score on one part of the National Teacher Examinations (NTE) taken by many prospective teachers in the United States. The NTE consists of a common section, taken by all teaching candidates, and a Teaching Area Examination in the student's specialty. In the common exam used in this study, scores can range from 300 to 900 points. Since the test is designed to measure

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1. For example, see Pat Stith, "One-Third of Black College Grads Fail Test," Raleigh *News and Observer*, June 26, 1977, pp. 1, 6.

2. This article focuses on the basic conclusions of this research. Thorough statistical justification and the relationship of these findings to existing literature is available in the author's doctoral dissertation deposited in the Louis Round Wilson Library at the University of North Carolina at Chapel Hill, and will be presented in future publications.

3. The North Carolina School of the Arts is omitted because it is a specialized institution for professional training in the performing arts.

4. Students frequently take the SAT more than once. In such a case, a common procedure in university admissions offices is to combine the highest score achieved on the verbal portion of the test with the highest obtained on the math portion, even if received at different times. Although not all institutions included in this study used that method for their own purposes, that combining procedure was consistently followed here in data collection so that SAT scores would be comparable across institutions.

college achievement in the areas of professional education, English expression, science, mathematics, social studies, literature, and fine arts, knowledge necessary to perform well on the NTE common examination would presumably come from courses taken throughout a college curriculum rather than from education courses alone. But the test does not purport to measure teaching effectiveness; it is designed to measure only academic achievement.

The analyst who attempts to measure achievement among graduates of several schools is inevitably drawn to standardized tests, with all their shortcomings. Other measures, such as grade point average or rank in class, are so dependent on the particular campus that comparisons among institutions become almost meaningless. The criticism that standardized tests are biased against minorities is mitigated somewhat by this research design, which focuses on comparisons within, rather than among, races. But even if one is reluctant to accept a standardized test score as a measure of academic achievement, it is nevertheless important to compare graduates of different institutions on the test scores themselves, whatever the test's validity.

On November 1, 1979, the North Carolina State Board of Education substantially increased the minimum NTE scores that are required for certification to teach in the state's public schools. As will be demonstrated below, those new requirements may greatly reduce the number of graduates who will be able to pass the NTE and enter the profession for which they prepared. Therefore the performance of graduates of different campuses on this standardized test is crucially important, even if one believes the NTE to be a less than adequate measure of achievement.

The 3,344 students on which this study is based all met five criteria:

1. Each took both the SAT and the NTE.
2. Each received a bachelor's degree from one of the fifteen UNC institutions between 1973 and 1977.
3. Each applied for certification to teach in North Carolina.
4. Each transferred to the graduating institution not more than one semester's credit from another school. (This criterion is necessary to insure that any university influence comes from the graduating institution.)
5. Each took the NTE in the calendar year before receiving a master's degree or earlier, if graduate work was done. (This criterion is necessary for the study to assess the effect of undergraduate rather than graduate education.)

For each of the fifteen institutions, the data set includes all "opposite race" graduates who meet all five criteria — that is, all black graduates of predominantly white campuses and all white graduates of predominantly black institutions. There are 245 graduates in the first category but only 19 in the second, which restricts the analysis for whites graduating from predominantly black universities. The "majority race" graduates are represented by a computer-generated random sample of 150 students for each of twelve campuses; on the remaining three campuses the entire "majority race" population is included. Since Pembroke State originated as a school for Indians, the total population of 98 Indian graduates who meet the criteria is included for PSU. The data set therefore contains 995 blacks, of whom 245 graduated from predominantly white institutions; 2,251 whites, of whom 19 graduated from predominantly black campuses; and 98 Indian graduates of Pembroke — for a grand total of 3,344 graduates.

Twenty-nine per cent of the graduates in the study majored in elementary or secondary education. When all education-related majors are grouped together (elementary-secondary education plus physical education, art education, music education, etc.), they represent 56 per cent of the total number of graduates studied. The most common majors other than education are English (10%), history (6%), and general social studies (4%); 16 other majors are represented by at least 10 students apiece.

Findings

The first step in this analysis is to determine whether there are *any* consistent differences in NTE scores for students with the same SAT scores who graduate from different UNC campuses. The relationship between SAT and NTE might be so strong that knowing only the SAT score would allow a quite accurate prediction of the NTE score.

For the 3,344 graduates studied, the correlation between SAT and NTE scores is +.88, which is extremely high (a "perfect" correlation would be +1.00). In contrast, the correlation between final college grade point average and NTE scores is only +.34. Therefore it is possible to predict an NTE score far more accurately from the standardized SAT, taken near the end of high school, than from grades received in college.

The powerful SAT-NTE relationship raises serious questions about whether there are any consistent NTE differences for students with similar SAT scores who attend different institutions; conceivably students with comparable SATs perform similarly on the NTE regardless of where they attend college. To determine whether there are any differences in NTE performance, this study relies on a statistical technique, a variation of multiple regression, that compares the NTE scores of graduates with the same SAT scores who attended different campuses. On the basis of the NTE scores actually obtained by the respective institutions' graduates between 1973 and 1977, the procedure develops a formula that estimates NTE scores for students from each campus depending on the SAT score and the institution attended. The results can then be used to rank the campuses, from the one where students from a particular SAT range scored the highest on the NTE to the one where students in the same SAT range scored the lowest on the NTE.

For this procedure, one campus (in this case Appalachian State) was arbitrarily selected as a baseline for comparison, although any other institution could have been selected to obtain the same relative results. The NTE scores of students on another campus are then compared with the NTE scores of Appalachian State graduates with the same SATs. For example, on the basis of the SAT and NTE scores of Appalachian's graduates from 1973 to 1977, the formula for ASU is: NTE = 245 + (.38)x(SAT). In other words, the best NTE estimate for an ASU graduate with a combined SAT score of 800 is 245 + (.38)x(800), which is 549. During the same period, UNC-Asheville graduates averaged 30 points higher on the NTE than Appalachian State's graduates with similar SATs. Therefore the best estimate for an Asheville graduate with a combined SAT score of 800 is 245 + (.38)x(800) + 30, which is 579, and the

results will show UNC-Asheville with a figure of "+30." On the other hand, Elizabeth City State graduates with comparable SATs averaged, during the same period, 43 points below Appalachian State's graduates on the NTE. Therefore the best estimate for an Elizabeth City State graduate with an SAT score of 800 is 245 + (.38)x(800) - 43, or 506, and the results will show Elizabeth City State with a figure of "-43." Table 1 shows the results for all 15 UNC institutions included in this study, ranking the campuses from the highest to the lowest NTE scores for students with similar entering SAT scores.

The estimated difference between the top-ranking and bottom-ranking institutions in NTE scores for students with similar SATs is 73 points (from +30 for UNC-Asheville to -43 for Elizabeth City State) on a test with scores that range from 300 to 900 points. Depending somewhat on the number of graduates from each institution, an eight-point difference between estimates for two institutions in Table 1 is significant at the .05 level, and a 13-point difference is significant at the .01 level. Therefore the difference in NTE estimates between UNC-Chapel Hill and UNC-Greensboro is statistically significant, and the difference between UNC-Chapel Hill and UNC-Asheville is highly statistically significant.

Three groups of institutions are evident from Table 1. UNC-Asheville leads the highest group, with an estimated NTE score 19 points above the estimated score for students with the same SATs from the next highest-ranking campus. UNC-Chapel Hill, Western Carolina, and UNC-Wilmington join UNC-Asheville in the top group in this ranking. UNC-Charlotte, UNC-Greensboro, Appalachian State, North Carolina State, and East Carolina constitute a middle group. Then comes a drop of 16 points to the next campus, North Carolina Central, which places at the top of the lowest-ranking group of institutions. Pembroke State follows North Carolina Central.[5] The final four universities are North Carolina A & T, Fayetteville State, Winston-Salem State, and Elizabeth City State. In other words, *after* the entering students' SATs are taken into account, the predominantly black institutions constitute five of the six lowest-ranking institutions based on the NTE scores of their graduates from 1973 to 1977.

Table 1
Institutional Ranking on Common Portion of National Teacher Examinations (NTE) — Estimated Differences Among Institutions in NTE Scores of Students with Equal SAT Scores, Using Appalachian State Scores As the Baseline
All Graduates in Data Set 1973-77, Total = 3,344

NTE = 245 + .38(SAT) + Institution

Rank	Institution	Cases	Estimate
1	UNC-Asheville	85	+30
2	UNC-Chapel Hill	884	+11
3	Western Carolina	167	+10
4	UNC-Wilmington	267	+9
5	UNC-Charlotte	166	+4
6	UNC-Greensboro	212	+3
7	Appalachian State	178	—
8	N.C. State	154	-2
9	East Carolina	201	-3
10	N.C. Central (B)	154	-19
11	Pembroke State (I/W)	261	-25
12	N.C. A & T (B)	153	-33
13	Fayetteville State (B)	155	-38
14	Winston-Salem State (B)	151	-40
15	Elizabeth City State (B)	156	-43

B = predominantly black institution.
I/W = formerly Indian but now predominantly white institution.

One might argue that Table 1 presents an unfair comparison, since it includes all graduates rather than those of only one race. Table 2 therefore presents the same analysis, ranking the institutions for whites only and for blacks only. To be included in this analysis, an institution had to have at least 10 "opposite race" graduates in the data set; thus no predominantly black institution appears on the whites-only list, and UNC-Asheville and North Carolina State do not appear in the blacks-only ranking.

The whites-only ranking is similar to the ranking for all students: UNC-Greensboro and UNC-Charlotte switch places, as do East Carolina and North Carolina State, but these changes are relatively unimportant since the estimates for each pair were not significantly different in Table 1.

The blacks-only list relies, in some instances, on a small number of cases, which makes the estimates less reliable, and therefore the results must be read with caution. Nevertheless, two important points are evident. First, the rankings are remarkably similar for the eight campuses that appear on both the whites-only and the blacks-only lists. UNC-Chapel Hill is the top-ranking institution for blacks once SAT scores are accounted for. If UNC-Asheville is set aside (because the data does not contain the requisite 10 blacks for that school), UNC-Chapel Hill also tops the whites-only list. Western Carolina follows next on the list for blacks, just as it does for whites. The next three schools that appear on both lists—UNC-Wilmington, UNC-Charlotte, and UNC-Greensboro—are the same, although the order is slightly changed. Appalachian State and East Carolina follow for blacks as well as for whites, while the last of the eight campuses that appear on both lists, Pembroke State, is in the same rank on each.

The ranking of institutions persists regardless of race. White graduates of UNC-Chapel Hill score higher on the NTE than do whites with similar SAT scores who graduate from any other UNC institution except UNC-Asheville; black graduates of UNC-Chapel Hill score higher on the NTE than do blacks

5. In this ranking, the graduates of Pembroke include not only whites and blacks, but 98 Indians as well. If the Indians are eliminated, Pembroke's estimate moves from -25 to -18, which would place it just ahead of N.C. Central.

with similar SAT scores from other schools. Both white and black graduates of Pembroke State score lower on the NTE than do their racial counterparts with similar SATs at other predominantly white universities.

The second point from Table 2 is that, for black students only, predominantly black institutions constitute four of the five lowest-ranking universities. North Carolina Central University is clearly the top-ranking predominantly black institution; its black graduates receive NTE scores similar to those of blacks with comparable SAT scores from Appalachian State and East Carolina. But there is a 14-point drop from N.C. Central to the next predominantly black campus, North Carolina A & T and that is more than the entire range between the first and fifth institutions on the blacks-only list (that is, between UNC-CH and UNC-G). In other words, graduates of only one predominantly black university scored comparably on the NTE with black graduates of historically white institutions, even after taking account of SAT scores.

The range of expected NTE scores between extreme institutions is not as large for members of one race as it is for all students. The maximum difference on the all-students list is 73 points, for whites only it is 49 points, and for blacks only, 47 points. But this reduction can largely be explained by the institutions that were dropped from the single-race lists because of an inadequate number of opposite-race graduates. The lowest-ranking campuses for all students were not included in the whites-only ranking, while the top campus, UNC-Asheville, was eliminated from the blacks-only list.

Because the number of graduates in the ranking for blacks is small for some campuses, great confidence cannot be placed in this ranking *alone*. The importance of the institutions' ranking for blacks comes from the striking similarity of that ranking to the whites-only ranking, which is based on a larger number of graduates. The *comparison* between the rankings is crucially important.

This campus-by-campus analysis makes evident an important point that would be obscured by analyzing only blacks at white institutions and blacks at black institutions by groups: the amount of expected difference in NTE scores depends on the particular institutions involved and not simply on the racial-attendance characteristics of the schools. Black graduates of predominantly black N.C. Central score almost identically with blacks from Appalachian State and East Carolina who have the same SATs, but black graduates with similar SAT scores from Elizabeth City State and from UNC-Chapel Hill quite clearly do not perform equivalently on the NTE.

Table 2
Institutional Ranking on Common Portion of the NTE by Race of Graduates 1973-77

White Graduates Only (Total = 2,232)
NTE = 265 + .36 (SAT) + Institution

Rank	Inst.	Cases*	Estimate
1	UNC-A	85	+27
2	UNC-CH	841	+12
3	WCU	150	+7
4	UNC-W	256	+5
4	UNC-G	150	+5
6	UNC-C	150	+1
7	ASU	150	—
8	ECU	150	-1
9	NCSU	150	-2
10	PSU (I/W)	150	-22
	(ECSU, FSU, NCA&T, NCCU, and WSSU all have fewer than 10 whites in the data set)		

Black Graduates Only (Total = 995)
NTE = 218 + .39 (SAT) + Institution

Rank	Inst.	Cases*	Estimate
1	UNC-CH	43	+23
2	WCU	17	+22
3	UNC-W	11	+18
4	UNC-C	16	+16
5	UNC-G	62	+12
6	NCCU (B)	150	+1
7	ASU	28	—
7	ECU	51	0
9	NCA&T (B)	150	-13
10	PSU (I/W)	13	-14
11	FSU (B)	150	-18
12	WSSU (B)	150	-20
13	ECSU (B)	150	-24
	(UNC-A has no blacks in the data set; NCSU has only four)		

*Ten-case minimum reporting limit

Group comparison

Grouping graduates into four categories by race of student and predominant race of institution attended shows differences in the *average* performance between blacks at predominantly white institutions and blacks at predominantly black institutions. The grouping also allows comparison of white graduates of predominantly white universities with white graduates of predominantly black universities. The analysis reveals that black graduates of predominantly white universities average 25 points *higher* on the NTE than blacks with comparable SATs from predominantly black schools, a difference that statistically is highly significant. On the other hand, white graduates of predominantly black universities score 37 points *lower* than whites with comparable SATs from white institutions and 22 points *lower* than blacks with similar SATs from predominantly white schools; although these results involve only 19 graduates, they are statistically significant.

The results for white graduates of predominantly black campuses could have been anticipated from Table 2. While great confidence cannot be placed in a finding based on only 19 cases, these results are fully consistent with two patterns established earlier. First, the separate rankings of campuses for whites and for blacks shows that the basic ranking persists regardless of race. And second, blacks from predominantly black institutions generally received lower NTE scores than blacks with similar SATs from predominantly white campuses. Extending these patterns leads to the expectation that white graduates of predominantly black institutions would receive lower NTE scores than whites with the same SATs, from predominantly white campuses; these results strongly support that expectation. The analysis confirms that both *whites and blacks* from all predominantly white campuses combined received higher NTE scores than both *whites and blacks* with the same SAT scores from all predominantly black institutions combined.

The importance of institutional differences

As we have just seen, the statistical analysis indicates that there are consistent differences in NTE scores for stu-

dents with similar SATs who graduate from various UNC campuses. Are these differences important?

One way to address this question is to examine the effect of institutional differences on the number of students who can become certified as teachers. As determined by the North Carolina State Board of Education, the minimum required score on the common portion of the NTE will be increased to 529 by 1983.[6] The importance of institutional differences can be assessed by comparing the proportion of an institution's graduates that *actually* scored above the 529 standard with the proportion that *would have scored* that high if they had achieved at the rate of students with the same SAT scores on another campus.[7]

Among the black graduates of predominantly black institutions from 1973 to 1977, only 16 per cent scored 529 or above on the NTE. Table 2 indicates that, among black students only, UNC-Chapel Hill graduates scored higher on the NTE than graduates with comparable SAT scores from all other campuses. If all blacks at predominantly black institutions had scored at the rate of blacks with the same SATs from Chapel Hill, only one-third of them would have scored above 529. This figure reflects the powerful relationship between SAT and NTE; even if they had performed at the highest rate of any blacks in The University of North Carolina, only 33 per cent of blacks from black schools would have achieved the 1983 minimum NTE score of 529. But, from another perspective, that 33 per cent represents over twice the 16 per cent of graduates of predominantly black universities who actually achieved above the 529 minimum. Where 100 blacks from predominantly black schools scored 529 or more, 206 blacks at these schools would have scored that high *if* they all had performed at the rate of blacks with the same SATs from Chapel Hill.

While this analysis assesses the importance of NTE differences not only for students with the same SAT scores but also for graduates of the same race, it remains a "best case" comparison based on the extreme differences noted for blacks on the constituent campuses of The University of North Carolina. A more realistic analysis raises the average performance by blacks at predominantly black universities up to the *average* rate for blacks with similar SATs at predominantly white institutions to see how much effect those differences would have on success in passing the NTE. In the study period, 16 per cent of black graduates of predominantly black universities actually scored above the minimum NTE score (529) that will in the near future be required for certification; if these students had performed at the rate of the average black graduate of predominantly white institutions, 25 per cent would have achieved the minimum score. While an increase from 16 per cent to 25 per cent in achieving the minimum NTE score is modest, it amounts to a 52 per cent increase in the number of blacks passing this portion of the exam. For every 100 blacks from predominantly black institutions who actually achieved above the 529 standard, 152 would have scored that high *if* they had performed at the rate of the average black with the same SAT at a predominantly white school.

Graduates of certain institutions achieve at a higher rate than graduates of other schools who have similar SATs. But even if graduates of all institutions achieved at the Chapel Hill rate, a high percentage of black graduates of predominantly black institutions would not pass the NTE. Evidently some students are so poorly prepared for college that they would have great difficulty passing this post-college test regardless of their achievement rate in higher education. Students with a combined SAT score below 700 would have less than a one in five chance of scoring above 529 on the NTE common exam as indicated by the performance of graduates with such a score from 1973 to 1977. But the institutional differences are such that the number of blacks from predominantly black campuses who could pass would be doubled *if* they performed at the rate for blacks at the top-ranking campus that included blacks (UNC-Chapel Hill) or increased by 52 per cent if they achieved at the average rate for blacks at all predominantly white campuses.

The analysis still has not addressed the crucial question of *why* these NTE differences occur by campus; that question is the subject of the next section.

Explaining institutional differences

Two sets of factors might cause differences in NTE performance for students with the same SAT scores who attend different institutions. The first set consists of personal differences among *students*, evident before they go to college, that are not reflected in SAT scores. Even though this analysis compares graduates with the same SAT scores, students might be different in other ways that affect test performance; motivation is one example.

The second set consists of *institutional* factors, or differences among universities that affect the achievement of their graduates. The quality of teaching, the availability of important learning resources, and the influence of the student body are three examples. If these factors are the major explanation for the variations in NTE scores, then the differences would be caused by the institutions themselves, and a student who might attend institution "A" would be expected, if he went instead to institution "B," to achieve like other students in institution "B" with the same SAT scores.

Data are not available for a conclusive explanation of institutional differences in achievement rates. It is not possible to determine, with complete assurance,

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6. The requirement for most teaching candidates will be a minimum combined score on the common examination and one Teaching Area Examination (TAE), the required score depending on which TAE is selected. Since this article focuses on the common portion, the 529 standard used in this illustration is the 1983 requirement for prospective teachers who take only the common examination.

7. The procedure used for this finding is based on Table 2. Black graduates of other institutions can be brought up to the Chapel Hill achievement rate by adding the appropriate increment in the table to actual NTE scores. For black graduates, the difference between NTE performance for students with the same SAT score at Chapel Hill and at N.C. Central is 22 points, so 22 points were added to the NTE score for each black student at Central. Each black A & T graduate received 36 points; black Fayetteville State graduates received 41 points; and so forth. The actual proportion who score above 529 can then be compared with the proportion who would have scored above the 1983 requirement if they had achieved at the Chapel Hill rate.

that the differences are due to one set of factors or the other — much less identify the particular factors within each set that are most important. To account adequately for motivation, for example, requires comparable psychological data on each individual student — information that is not available. Because of the crucial importance of this question, however, this article will use the limited data available to suggest some plausible explanations.

Student attributes. One of the most likely characteristics on which students with the same SAT scores might differ is motivation, for which there exists no adequate measure. Rank in high school class is widely used as one factor in college admissions, presumably because it captures at least some aspects of motivation. Comparing the NTE performance of students from different campuses who had similar SAT scores *and* similar high school class ranks yields almost exactly the same results as does comparing students with similar SATs alone. Thus motivation — to the extent that it can be measured by high school rank — does not explain NTE differences among institutions for students with the same SAT scores.

Different college attrition rates might also account for NTE differences by institution, especially between black graduates of predominantly white campuses and black graduates of predominantly black campuses. If it is more difficult to graduate from predominantly white than from predominantly black institutions, presumably the weaker black students at predominantly white schools would drop out before taking the NTE in the senior year, while their counterparts at predominantly black colleges would continue and graduate. The available data on attrition rates cover all black students, not just those who applied for teacher certification, and they encompass only the last two years of this study. There is no reason, however, to expect the results to differ markedly for black students who are teaching candidates, or for earlier years. In 1975-76, 17 per cent of black students at predominantly black institutions and 18 per cent of black students at white campuses failed to return the following year; in 1976-77 the figures were 18 per cent and 20 per cent — remarkably similar dropout rates at the two types of universities. If attrition rates for 1973-75 did not vary greatly from those for 1975-77, and if attrition rates for black teacher education candidates were not significantly different from the rates for all black students, then attrition is an unlikely cause of the NTE differences found between black graduates from predominantly black institutions and those with the same SATs from predominantly white schools.

Differences in socioeconomic status (SES) among graduates with similar SAT scores might account for NTE differences by institution. According to this reasoning, students with higher SES would place more importance on education and therefore would outperform students with comparable SATs but lower SES. But two of the top four universities in the ranking attract a large portion of their students from the most depressed areas of North Carolina: Western Carolina draws its students largely from the western mountains, one of the poorest areas of the state, and UNC-Wilmington attracts many of its students from the poor, rural southeast. Differences in socioeconomic status among students with the same SATs are an unlikely explanation for the ranking of these two institutions near the top of the list.

Personality differences between blacks who choose to attend a predominantly white institution and those who choose a predominantly black school might also affect NTE scores. The choice of a white school might indicate ambition, competitiveness, or the desire to demonstrate success in a largely white environment — qualities that could cause black graduates of predominantly white campuses to achieve higher NTE scores than black graduates with similar SATs from predominantly black schools. But this argument does not explain why blacks from N.C. Central perform comparably with blacks from Appalachian State and East Carolina and better than blacks from Pembroke State. Presumably, according to this reasoning, blacks from predominantly black institutions ought to rank behind all blacks from the predominantly white institutions, yet that clearly is not the case with blacks from Central.

Finally, the ranking of institutions on the basis of scores for whites only and for blacks only (see Table 2) indicates that personal differences among students — other than those reflected in SAT scores — are an unlikely explanation for NTE differences. Of the eight universities that appear on both lists, the top three for whites only and the top three for blacks only are the same three campuses and in the same order. It would be an extraordinary coincidence if a set of student attributes, unrelated to the institutions, caused this ranking for whites only, and then another set of student attributes caused the same ranking for blacks. It is far more plausible to assume that the institutions had some effect on their students, both white and black, that created this ranking.

This study cannot, because of inadequate data, determine conclusively that personal differences among students *do not* account for any of the differences in NTE performance by institution. Some of these differences probably are caused by personal characteristics of students that are not reflected in SAT scores. The available evidence, however, casts doubt on whether personal attributes of students can successfully explain most of the differences in scores found among graduates of the several universities. It is far more plausible to conclude that institutions "do something" (or do not do something) for their students to cause them to score higher or lower on the NTE. The evidence examined here suggests that the universities themselves, rather than pre-college differences among students not reflected in SAT scores, are the major cause of differences in NTE achievement for students with similar SATs.

Institutional attributes. A number of factors within institutions might affect student achievement as measured by the NTE, but data on these are limited. This article will examine some institutional resources that are frequently used to compare campuses to see which are most closely related to achievement on the NTE, with the caveat that a finding of "no relationship" could mean that the resource is indeed important but the measure taken of it is inadequate.

The number of books on an institution's library shelves is not highly related to NTE achievement rates, having a correlation of only +.31. The two extreme institutions on the achievement ranking — Elizabeth City State and UNC-Asheville — have two of the smallest libraries in the University.

The age of the institution is also weakly related to graduates' achieve-

ment on the NTE (correlation = +.07); two of the top four campuses on the NTE ranking, UNC-Asheville and UNC-Wilmington, are among the youngest UNC institutions, while one of the top four, UNC-Chapel Hill, is the oldest.

Campuses with low student-faculty ratios rank somewhat higher on the NTE achievement list than those with high ratios (correlation = -.33), but the relationship is still relatively weak. This low correlation probably results from the fact that the institutions have similar ratios (lowest, 14.5; highest, 16.6).

The per capita state appropriation at an institution from 1973 to 1977 is also weakly related to NTE achievement (correlation = +.14). Three predominantly black institutions that are among the four lowest-ranking campuses on the NTE ranking are among the six highest-ranking campuses on the basis of per capita appropriations during this period. But this may be an inadequate measure rather than an unimportant resource; per capita appropriations are inflated on some campuses by expensive graduate and professional programs that may have little direct effect on undergraduate education. A better measure of appropriations for this study would include only those funds directly related to undergraduate education and would cover a number of years before the period under study to account for past neglect; unfortunately, such data are not available.

Since black graduates of predominantly black N.C. Central perform comparably on the NTE with blacks with similar SATs from several predominantly white institutions, the predominant race of the student body is apparently *not* the crucial factor in explaining institutional differences in achievement. This finding suggests that the explanation lies in *other* characteristics that generally favor predominantly white campuses.

Two institutional factors are highly related to NTE achievement rates. The first is the average SAT score of the entire student body on a campus, which has a correlation of +.83 with an institution's achievement ranking. The educational backgrounds of one's fellow students as reflected in their SAT scores could reasonably be expected to affect student achievement, either through classmates' comments and experiences or through the degree of competition they create. The second factor is the proportion of faculty members with the Ph.D., which has a correlation of +.87. UNC-Asheville and UNC-Chapel Hill, the two top campuses in achievement, also rank among the top three in percentage of faculty with Ph.Ds, while the six lowest institutions on the achievement ranking have the six lowest percentages of faculty members with this terminal degree. It is reasonable to assume that the proportion of faculty members with the Ph.D. would affect student achievement, not so much because of the degree itself as because the Ph.D. represents some other characteristic related to general faculty—or institutional—quality.

Sorting out the independent effect of each of these two factors is extremely difficult, just as it is hard to determine what proportion of a student's learning in a particular class results from the professor's lectures and what part is caused by the stimulation of fellow students. But further statistical analysis suggests that the proportion of faculty members with the Ph.D. is—or at least reflects—the more influential factor.

There probably are other unquantified institutional factors that affect student achievement. One of the most likely is the atmosphere of expectation that characterizes an institution—a combination of faculty, administration, and student attitudes. Students are likely to learn more on a campus where expectations of their own work are high and where role models provide examples of excellence.

Since UNC-Asheville is so clearly the top-ranking institution in this study, other characteristics of that campus deserve mention. There is no assurance that *any* of these characteristics affects student learning; they are merely institutional attributes that might conceivably have some effect. UNC-Asheville is the only predominantly white campus with a primary emphasis on undergraduate liberal arts education. (The highest-ranking predominantly black campus, North Carolina Central, is the traditionally black school with the strongest emphasis on liberal arts.) Since a large proportion of the NTE common exam tests general knowledge in a variety of fields, graduates of liberal arts institutions may have an advantage on the NTE. UNC-Asheville does not offer a major in education; therefore, while the students take the requisite number of education courses for certification, they are required to major in another discipline—which may broaden their exposure to fields covered on the NTE common exam. During the period of this study, UNC-Asheville also was the only UNC institution that did not use the normal letter grading scale but instead evaluated students on a variation of a pass/fail system. This does not necessarily mean that students learn more under pass/fail, for UNC-Asheville students might have achieved at an even higher rate with traditional grades; still, this attribute is interesting because of the presumed motivating aspect of grades. Admissions at UNC-Asheville are not "open door," but 11 of the 85 UNC-A students in the data set scored below 800 on the combined SAT. The institution does educate some students with weak academic backgrounds, so the high achievement rate is not set entirely by universally well-prepared students.

We cannot pinpoint precisely which institutional factors affect achievement. Of the quantified institutional variables, those most strongly related are the average SAT score of the student body and the percentage of faculty members with the Ph.D., with the latter apparently the more influential of the two. But an analyst must be cautious in concluding that any one characteristic is the key institutional variable that affects student achievement; the other measures of institutional resources are so inadequate that no factor can be discounted entirely. Indeed, it is possible that differences in student performance result from personal differences among students that are not reflected in SAT scores. But it is far more plausible to conclude that *institutions* have different effects on their students that result in differing rates of achievement.

Policy implications

Drawing policy implications from any study is risky, and several caveats are in order. First, causality can never be established indisputably. Social science cannot "prove" that the institutions cause differences in student achievement; it can only weigh the evidence. Second, policy-makers cannot be certain that students who attend a particular school will achieve like other students

with similar characteristics who preceded them. And third, studies are necessarily limited in scope. This study focuses on one measure of student achievement; it does not consider the presumed benefits of other attributes of predominantly black institutions, such as the emphasis on black culture and identity. With these caveats in mind, several policy implications can be drawn from this study.

First, the study suggests that, in the absence of other institutional change, increased enrollment of blacks on most historically white campuses should lead to higher NTE scores for the blacks so enrolled. The magnitude of the expected advantage depends on which campuses are compared; for some pairs, the advantage would be negligible, while for others it would be significant. The differences among some institutions are clearly sufficient to give marginal black students a better opportunity to pass the test if they graduate from campuses with higher achievement rates.

But the study also suggests a second implication that is related to the first. Apparently a threshold exists beyond which the integration of poorly prepared students would be counter-productive. Predominantly white and predominantly black UNC campuses educate students with remarkably different educational backgrounds. During the period of this study the average combined SAT scores of the student bodies among predominantly white campuses ranged from 855 to 1,123; among predominantly black institutions, the range was 673 to 726. A movement into predominantly white institutions of many students with preparation comparable with that of students at predominantly black universities (as indicated by their SAT scores) would not help most of the new students to pass the NTE because of the strong SAT-NTE relationship. Such an action also would lower the average SAT scores of the student bodies at the predominantly white schools, and average SAT is one of the variables most closely related to differences in student achievement. The enrollment of a large number of students, of whatever race, with very weak educational backgrounds could alter the atmosphere that originally produced the high achievement rates at some predominantly white campuses.

Third, the study suggests that, in the absence of other institutional change, larger enrollment of whites on most predominantly black campuses would lead to lower NTE scores for those whites. This implication follows not only from the NTE performance of the nineteen white graduates of predominantly black institutions but also from the finding that the apparent institutional effect occurs regardless of the graduates' race. If white graduates of a particular institution score high in relation to comparable whites at other schools, then black graduates of that institution also score high in relation to similar blacks elsewhere. The performance of white graduates of predominantly black institutions is consistent with this pattern; campuses that produce blacks who achieve at a lower rate also produce whites who achieve at a lower rate. Increased enrollment of well-prepared white students would raise the SAT average at predominantly black institutions, which might help the achievement rate, but that change still does not address the issue of faculty quality, which apparently is more important than student body characteristics for college achievement. During the period of this study the proportion of faculty members with the Ph.D. at predominantly white campuses ranged from 46 per cent to 72 per cent; at predominantly black institutions the range was 30 per cent to 38 per cent. This study suggests that faculty quality must also be improved if achievement rates are to rise.

Fourth, the research suggests that predominantly black institutions can prepare black students for the NTE as successfully as some predominantly white institutions. Black graduates of N.C. Central perform comparably with similar black graduates of Appalachian State and East Carolina, and better than blacks from Pembroke State. The improvement apparently required for most predominantly black campuses to establish achievement rates comparable with most predominantly white institutions is not likely to occur quickly. Upgrading faculties is a long-term goal, and the efforts of predominantly white institutions to lure better-prepared blacks will make it increasingly difficult to attract well-prepared black students to predominantly black campuses. But N.C. Central demonstrates that a predominantly black campus can establish competitive NTE achievement rates for blacks.

Fifth, the study suggests that, to the extent that increased student achievement is the goal, enhancement should focus on upgrading the quality of the faculty and requiring better preparation on the part of the students who are admitted. Faculty quality and student body characteristics may not be the only important factors, but the available evidence indicates that both are important for student achievement.

Conclusion

This study indicates that, despite a very strong relationship between pre-college and post-college standardized test scores, students with similar SATs who attend different higher education institutions tend to perform differently on the NTE. For students with the same SAT scores who graduated from 1973 to 1977, the maximum expected difference in NTE common examination scores among the 15 UNC campuses is 73 points. Except for N.C. Central and Pembroke State, black graduates of predominantly white institutions score higher on the NTE than do black graduates with similar SAT scores from predominantly black institutions. When the graduates are grouped by race of student and predominant race of institution, both black and white graduates of predominantly white schools receive higher NTE scores than blacks and whites with similar SAT scores who graduated from predominantly black campuses.

It cannot be demonstrated conclusively that the various institutions cause these differences, but it is unlikely that achievement rates reflect differences in student motivation, attrition, or socioeconomic status. The apparent influence of an institution is not so dramatic that it can completely overcome the effect of a student's background, but it does create disparities in the proportion of graduates of different universities with the same SAT scores who can pass the NTE. The weight of the evidence examined here suggests that (a) institutions of higher education *do* affect student achievement as measured by standardized tests, and (b) predominantly white UNC institutions in general have a more positive influence on the achievement of both blacks and whites than do predominantly black campuses of the University. □

Charlotte's Governmental Productivity *(continued from page 9)*

constant vigilance, opportunities for guilt-free experimentation, and personnel with the wisdom to evaluate results adequately.

Moreover, a municipality should not go looking for the "one best way" or "across the board" approach. It should be flexible and adaptive and keep its expectations open during problems, delays, and resistance.

Many Charlotte administrators believe that some of the productivity proposals would have eventually been implemented because of MBO considerations or other management directives. They feel that these changes are coming sooner, however, because of the increased attention and activity drawn by the Task Force study. Other proposals would probably not have received attention without the Task Force. But the Task Force alone could not have accomplished the proposed reforms. Perhaps the fundamental improvement for achieving greater productivity was organization for productive action.

As the mayor pro tempore indicated during a final briefing session with the Task Force a year after the report was released, "while we continue to move toward the realization of a $6 million savings, the city's approach is to study very carefully, implement partially, and evaluate before full implementation. It is a dynamic process . . . we want to 'know' results before we act, not after." □

First Endowed Chair at the Institute of Government

Philip Green Appointed to the Albert Coates Professorship

PHILIP P. GREEN, JR., the Institute of Government's specialist in the law of land use planning, has been named the first Albert Coates Professor of Public Law and Government. Mr. and Mrs. Paul A. Johnston of Chapel Hill endowed the Coates Professorship in the Institute of Government to honor their friend, Albert Coates, founder and first Director (1931-62) of the Institute and Professor of Law Emeritus. The appointment of Green was made by the Chancellor and Board of Trustees of The University of North Carolina at Chapel Hill on recommendation of the Institute.

Professor Green, a Phi Beta Kappa graduate of Princeton University, joined the Institute of Government faculty in 1949 after graduation from the Harvard Law School. In 1957 he was promoted to Professor of Public Law and Government. He was a Fulbright Senior Research Scholar at the London School of Economics and Political Science in 1963-64, studying British planning law and practice.

In recommending Green for this recognition, Institute Director John Sanders said in part:

> It is . . . appropriate that the criteria for the award of this Professorship . . . include especially the kinds and qualities of service and commitment to the Institute, the University, and the State of North Carolina that Professor Coates has to an uncommon degree evoked from those who have known him as teacher, colleague, and leader. . . .
>
> Mr. Green joined the Institute when its faculty was small but growing and when the Institute was extending and defining its role in North Carolina. At that time, a new faculty member did not simply move into or expand an existing Institute program. Rather, it was a time of vigorous expansion and new faculty members created new fields of work in the Institute and new ties to the officials of the State and its local governments. This Mr. Green did with great effectiveness and distinction.
>
> He took as his central responsibility the law of land use planning, of zoning and subdivision regulation, of building inspections and code enforcement, and of urban renewal. In all these areas of the law and administration, his influence has been great. He has drafted most of the state legislation that now authorizes North Carolina local governments to plan for and regulate land development . . . . He has developed and directed training programs for local officials charged with administering these laws . . . . His writings have been addressed to the needs of local planning and regulatory officials.

Green was instrumental in establishing the North Carolina chapter of the American Institute of Certified Planners and the North Carolina Planning Association. He served as staff member to a state legislative study commission that resulted in legislation requiring local governments to provide building inspection services and creating a training and certification program for local inspectors. He has also assisted in the implementation of North Carolina's Coastal Area Management Act. For several years, Professor Green served as a member of the American Law Institute's advisory board for development of new model legislation for land-use regulation.

From the 1950s through the mid-1970s, Professor Green taught the local government law course in the University Law School and the graduate planning law course in the Department of City and Regional Planning.

Green has served on community boards in Chapel Hill, on numerous University faculty committees, and in several administrative capacities at the Institute — as editor of *Popular Government*, director of the Legislative Reporting Service, and as an assistant to Professor Coates when he was director.

John Sanders summarized the feeling of his Institute associates by saying, "Professor Green's steadfastness in the service of the Institute of Government and the University, his high standards of quality in all that he undertakes, his willingness to yield his own priorities to those of the Institute, his modesty, and his example to his colleagues ... commend him for this designation."

The donors of the Albert Coates Professorship,

Margaret and Paul Johnston, have been generous contributors to the University at Chapel Hill. In addition to endowing a chair at the Law School — the Henry Brandis Professorship, established concurrently with the Coates Professorship —they were major contributors to the Luther Hodges Chair in the School of Business Administration and established a special fund for the College of Arts and Sciences.

Paul Johnston received his undergraduate and law degrees from the University after army service in World War II. As the academic leader of his law school class, he was editor-in-chief of the *North Carolina Law Review*. After brief experience in private law practice, Johnston joined the staff of the Institute of Government late in 1952. Here he worked chiefly in the fields of state government reorganization and administrative law. When Luther H. Hodges became Governor in November 1954, he asked Director Coates to lend him an Institute staff member to serve as his assistant for legal affairs. Paul Johnston was the man Coates chose. Two and a half years as Governor Hodges' administrative assistant led to Johnston's appointment as the first director of the Department of Administration in 1957.

Leaving the state's service in 1960, Johnston began his business career as assistant to the comptroller of Burlington Industries. He joined Martin Marietta Corporation in 1961 and became its vice-president two years later. From 1965 to 1972, he was president of Glen Alden Corporation. He formed his own company, Johnston Industries, Inc., in 1972, and serves as its chairman of the board and president. He is also chairman of the board of directors of Whitehead and Kales, Inc., of Detroit, a subsidiary of Johnston Industries, Inc.

Margaret McGirt Johnston, also a Carolina graduate, is a Chapel Hill native. She worked for the Institute of Government during its early years, the campus YMCA, and the University Department of Physical Education.

Albert Coates was the founder and first Director of the Institute of Government, which he organized in 1931 and directed until his retirement in 1962. He and his wife, Gladys Hall Coates, gave generously of themselves and their financial resources to build the Institute, which is now known throughout the state and nation for its manifold services to local and state officials. The Albert Coates Professorship is but the latest of many recognitions that have come to Mr. Coates for his pioneering work in creating and developing the Institute of Government.

In commenting on the Johnston's generous endowment of the Coates Professorship for the Institute, Sanders said:

> This is not the first act of giving by Paul and Margaret Johnston for the benefit of the Institute of Government. The first was the gift of the most precious thing that one has — time. That gift Margaret made as a secretary in the formative years of the Institute. That gift Paul also made when he worked diligently and productively here as a faculty member from 1952 to 1954. I got to observe Paul then from my perspective as a student research assistant, and I came to appreciate his admirable qualities of mind and spirit and industry.
>
> The second gift that Margaret and Paul made to the Institute is the handsome double portrait of Albert and Gladys Coates, which they commissioned from Sarah Blakeslee in 1977. It hangs in the Institute as their personal mark of friendship for the Coateses.
>
> And now we have this special tribute by Paul and Margaret to a unique individual, Albert Coates, who has meant so much to them as teacher, colleague, and friend. For all of us in the Institute of Government, I thank the Johnstons for this splendid gift, the Albert Coates Professorship. It will be a continuing memorial to him whose name it bears and to those whose thoughtfulness made it possible.
>
> — *Pauly M. Dodd*

Margaret Johnston and Albert Coates, seated; Paul Johnston (left) and Philip Green, standing.

Land-Use Planning in Rural Areas

Richard D. Ducker

NORTH CAROLINA'S rural areas are diverse. They range from Currituck Sound to the Nantahala National Forest, from the productive farms of Wayne County to the family beaches of Brunswick County, and from the large rural industrial establishments of the Piedmont to the golfing resorts of Moore County.

For many years, most of these rural areas shared the common characteristic that they were losing population and jobs to urban areas. The past decade, however, has shown indications that some remarkable shifts have occurred in population and economic activities in rural areas that are reversing some of the trends of the past. During the 1970s North Carolina's rural population seems to have been growing almost as rapidly as its urban population.[1] A very rough population equilibrium between urban and rural areas appears to be near despite the fact that North Carolina municipalities have added substantial territory to their corporate areas in those ten years. Increasing population growth in the state's rural areas has also been reflected in the growth patterns of employment there.[2]

The implications for the use, management, and ownership of land in the state's rural areas are substantial. There are clear signs that more attention is being given to land-use planning and regulation. According to a recent survey by the State Department of Natural Resources and Community Development, 45 counties currently employ a planning director or planner as a part of their staff (see Table 1). A number of other counties have either used the planning services offered by some other unit of local, regional, or state government or have employed a private planning consultant. By late 1979, 25 counties had enacted county-wide zoning ordinances and 19 others had enacted ordinances that apply to some portion of the county's jurisdiction.[3] In addition, 53 counties had enacted county-wide subdivision ordinances and eight more had enacted ordinances that apply to portions of the county.[4] Nevertheless, many planning programs seem to be ineffective and have been only slowly accepted as appropriate activities for local governments, especially in rural areas. This article reviews some of the problems and issues affecting a land-use planning program in rural areas (particularly at the county level) and some of the differences between planning in rural areas and planning in urban areas. It suggests some possibilities for making planning more effective and offers a few predictions for the future.

Attitudes toward planning

In the past decade opposition to federal and state land-use and environmental programs in North Carolina has been strong. Some of the resistance to federal Environmental Protection Agency regulations, the State Coastal Zone Management Program, and the planning activities of the multi-county regional organizations may be explained as opposition to "big government" and

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The author is an Institute faculty member whose fields include planning law.

1. The percentage of the total state population classified as rural by the U.S. Bureau of the Census has declined throughout the century. In the period 1940-70 the rural portion of the population decreased about 5-7 per cent per decade. U.S. Bureau of the Census, *Characteristics of the Population: North Carolina,* U.S. Census of the Population, 1970, vol. 1, pt. 35 (Washington: GPO, 1973). However, since 1970 the decrease appears to have been much less. According to Census Bureau estimates, during the period 1970-76, the rural share of North Carolina's population declined only from 55.1 per cent to 54.6 per cent. U.S. Bureau of the Census, "Estimates of the Population of North Carolina Counties and Metropolitan Areas: July 1, 1975 (revised) and 1976 (provisional)," Series P-26, No. 76-33 (Washington: GPO, 1977). If this trend continues into 1980, the proportion of the population that is rural may have stopped declining. In other words, rural population as defined by the Census Bureau may now be increasing as fast as urban population for the first time this century.

2. Approximately 92 per cent of the jobs in manufacturing establishments that have relocated in this state since 1970 are in nonmetropolitan areas. [North Carolina State Goals and Policy Board, *A Balanced Growth Policy for North Carolina* (Raleigh: June 1978) p. 30.] Although nonmetropolitan areas are not necessarily rural, a substantial portion of these new industries are locating in rural areas.

3. See Table 1.

4. *Ibid.*

Table 1

North Carolina Counties That Employ a Staff Planner and Enforce a Zoning Ordinance and a Subdivision Ordinance (Fall 1979)[1]

Region	Staff Planner	Subdiv. Regs.	Zoning Regs.
Region A			
Cherokee	—	C[2]	—
Clay	—	—	—
Graham	—	—	—
Haywood	S[3]	—	—
Jackson	S	—	—
Macon	S	—	—
Swain	—	—	—
Region B			
Buncombe	S	—	—
Henderson	—	—	P[4]
Madison	—	C	C
Transylvania	—	—	—
Region C			
Cleveland	—	C	P
McDowell	—	—	—
Polk	—	P	P
Rutherford	—	C	—
Region D			
Alleghany	—	—	—
Ashe	—	—	—
Avery	—	—	—
Mitchell	—	—	—
Watauga	—	C	—
Wilkes	S	C	C
Yancey	—	—	—
Region E			
Alexander	—	—	—
Burke	S	—	—
Caldwell	S	C	—
Catawba	S	C	C
Region F			
Cabarrus	S	P	—
Gaston	S	C	C
Iredell	S	P	P
Lincoln	—	—	—
Mecklenburg	S	C	C
Rowan	S	—	—
Stanly	—	P	C
Union	S	C	C
Region G			
Alamance	S	C	—
Caswell	—	C	P
Davidson	S	P	P
Guilford	S	C	C
Randolph	—	C	P
Rockingham	—	—	—
Region H			
Anson	—	C	P
Montgomery	—	C	P
Moore	S	C	P
Richmond	S	—	—
Region I			
Davie	S	C	C
Forsyth	S	C	C
Stokes	—	—	—
Surry	S	C	P
Yadkin	—	—	—
Region J			
Chatham	S	C	P
Durham	S	C	C
Johnston	S	C	—
Lee	—	C	—
Orange	S	C	P
Wake	S	C	C
Region K			
Franklin	—	—	—
Granville	—	—	—
Person	—	—	P
Vance	—	—	P
Warren	—	C	P
Region L			
Edgecombe	S	C	C
Halifax	—	P	P
Nash	S	C	C
Northampton	—	C	—
Wilson	S	C	C
Region M			
Cumberland	S	C	P
Harnett	S	C	—
Sampson	S	—	—
Region N			
Bladen	S	—	—
Hoke	S	C	C
Robeson	—	—	—
Scotland	—	C	C
Region O			
Brunswick	S	C	—
Columbus	—	P	C
New Hanover	S	C	C
Pender	S	—	—
Region P			
Carteret	S	C	C
Craven	S	C	—
Duplin	—	—	—
Green	—	—	—
Jones	—	C	—
Lenoir	—	—	—
Onslow	S	P	C
Pamlico	—	C	C
Wayne	S	C	C
Region Q			
Beaufort	S	—	—
Bertie	—	—	—
Hertford	—	C	C
Martin	—	—	—
Pitt	S	C	—
Region R			
Camden	—	C	P
Chowan	—	C	—
Currituck	—	—	C
Dare	—	C	—
Gates	—	C	—
Hyde	—	—	—
Pasquotank	—	C	—
Perquimans	—	C	—
Tyrrell	—	C	—
Washington	S	C	—

1. Prepublication figures from the updated edition of *North Carolina County and Municipal Planning Profiles*. This reference guide to planning organizations, personnel, and documents is being prepared by the Division of Land Resources of the North Carolina Department of Natural Resources and Community Development from data supplied by the Lead Regional Organizations (regional councils of government, regional planning commissions, and regional planning and economic development commissions). Publication date for this edition is July 1980.
2. "C" = When the survey was conducted in the fall of 1979 the ordinance indicated in that column was in effect county-wide.
3. "S" = The county listed employed a staff planner when the survey was conducted in the fall of 1979.
4. "P" = When the survey was conducted in the fall of 1979 the ordinance indicated in that column was in effect in only a part of the county.

Rural residents are usually not eager to permit their diversified countryside to be transformed into the monotony of some large urban residential subdivisions or commercial areas that are associated, correctly or incorrectly, with urban zoning.

the loss of local government autonomy. But the limited acceptance of planning in the counties shows that there are some local-level concerns and problems that remain unresolved.

Rural values have traditionally been thought of as different from urban values. The rural ethic has emphasized self-sufficiency, independence, privacy, and a relationship to the land. In contrast, interdependence, mobility, change, and rules for the collective good seem to characterize urban life. Rural people have always had a special feeling for the land. It gives people "roots" and often has provided a direct source of livelihood. Furthermore, land ownership traditionally has bestowed a special status in rural communities because it is such a tangible and visible asset. The notion that a man ought to be able to do what he wishes with his land has always been pervasive.

It is also widely believed that land-use planning programs will require ultimately that a rural landowner give up some of his rights in the land. Large landowners fear that land-use regulation will require them to pay the cost of providing benefits for the general public. Since many rural residents have never lived in a jurisdiction where a land-use planning program is in operation, they perhaps naturally question the need for it. Furthermore, some people feel a fundamental mistrust of government at any level. When these feelings are added to some citizens' genuine conservative interest in limiting the social and economic role of government, the reluctance of rural residents to embrace planning programs and land-use regulations comes as no surprise.

But this general opposition does not tell the whole story. Although some counties are faced with relatively rapid growth and change, other counties are relatively untouched by growth and urbanization. The problem for them is not how to control growth but how to attract it. Industrial development is one of their priorities, and they may believe that planning and land-use regulation programs may scare away needed jobs. Planners, in turn, often have not demonstrated to these counties that their skills in ascertaining the economic and environmental impact of new industry may be useful.

Another obstacle to an effective planning program is that, like Cassandra in Greek mythology, the planner has the ability to foresee the future but cannot convince anyone that what he says is true. Many rural residents simply refuse to believe that urban growth may spread into a rural area or that permitting certain development practices may damage the environment. Many communities believe that "it can't happen here." As a result, some North Carolina towns and counties, particularly in the mountains or on the coast, have delayed action until development-related problems have reached crisis proportions.

On the other hand, rural residents may feel that they are being pushed to take action even though they are content with the present situation. The mixing of land uses that traditionally has been discouraged in municipal zoning ordinances may be a common pattern in rural areas. Many rural residents may prefer to live in a low-density dispersed pattern of development rather than in the concentrated land-use patterns characteristic of many urban areas. More important, they may be willing to pay the additional costs of capital facilities and public services that such patterns require, or do without them. In short, rural residents may not see existing development patterns and practices as a public problem. As one county board member put it, "This planning tries to give us more solutions than we got problems."

Once a problem is identified, however, there is a tendency for some local governments to want to act quickly and often on an ad hoc basis. When a controversy suddenly arises over the proper location of a county landfill, the local unit may be impatient with long-term plans that have not been completed or are obsolete. If a planner is to establish his usefulness, he must be able to help to solve current problems and offer tangible results.

Planning techniques

The substantive planning techniques, methods, and forms of analysis that may be useful in rural areas are, of course, likely to be different from those most often applied in urban areas. It is said that urban planning is concerned with the uses *on* land — such as relationship and design of structures — while rural planning is more concerned with the uses *of* land — such as natural resources and features and agrarian uses.

The major difference between urban and rural planning, however, may be the matter of scale. If a county chooses to establish planning and land-use regulation on a county-wide basis, the land area within the planning jurisdiction is probably many times larger than the areas included within municipal planning jurisdictions even though some cities' planning jurisdictions extend beyond their municipal limits. Any county-wide planning may have to proceed on a relatively large, coarse scale. In contrast, farmers and rural residents are likely to know the vicinity in which they live in much more detail. Rural residents are observant of their natural setting and usually know about soil qualities, ownership and development patterns, and wildlife habitats near where they live. Because of this intimate knowledge, it is not surprising that rural residents may find a zoning ordinance unsatisfactory that has a tendency to lump areas together that they know to be different, or that they make distinctions among areas that exhibit no obvious differences. Rural residents are usually not eager to permit their diversified countryside to be transformed into the monotony of some large urban residential subdivisions or commercial areas that are associated, correctly or incor-

rectly, with urban zoning. Any successful planning program should make extensive use of the rural residents' collective knowledge about where they live.

Is land regulation needed?

Most communities find it difficult enough to agree on what the growth and development problems of a community are, and choosing the best means of dealing with these problems is no easier. Whatever the community is concerned about — the control of industrial nuisances in rural areas, development in areas that are prone to flooding, the conversion of prime farm land into rural residential subdivisions — some planners tend to assume that a zoning ordinance is the obvious answer. Local governments do not have many devices in their tool chests for dealing with growth — if all you have is a hammer, everything begins to look like a nail.

But many rural residents are not ready to accept regulations and sanctions as the answer. Many farmers are familiar with the variety of land-use and crop-production incentive programs that are sponsored by agencies of the U.S. Department of Agriculture (USDA). One appeal of these programs is that the farmer may decide whether he wishes to take advantage of the program on the basis of whether he will benefit financially from it. In contrast, most development regulations rely on the coercive force of public regulation without offering any important incentives; as a result, they may seem punitive rather than attractive.

Also, some rural residents may believe that land-use regulations are not needed because they feel that land-use nuisance problems can be resolved informally. In the old days, if the location of feed lots or the use of pesticides caused problems for adjacent property owners, a group of neighbors would pay a visit to the farmer who seemed to be causing the problem and try to work things out. If a sawmilling operation created a nuisance for the neighbors, informal social pressure might be brought to bear on the owner to change his operations in order to avoid the nuisance. Indeed informal social pressure in rural communities has sometimes forced nuisance-causing activities out of business without use of legal sanctions.

Still, this approach is not always effective. As a rural area grows, it is likely to lose its social cohesion. The industrial corporation may be more concerned with its balance sheet than with a slight tarnishing of its reputation among a few neighbors, and newcomers, not feeling a part of the social community, may be less inclined to bow to its pressure. On the other hand, for reasons of friendship residents may be reluctant to deal directly with their offending neighbors. As a result, zoning may look attractive because the burden of dealing with the nuisance-causing party will be borne by the zoning enforcement officer.

If rural residents are ever to establish an effective land-use planning program, they must also come to grips with their ambivalent feelings about the growth and development of their county or community. A farmer may wish to farm his land without being subjected to nuisance suits from nearby residential subdivisions, to special assessments for utility extensions, and to increased property taxes — byproducts of urbanization and increased land values. Yet this same farmer may also feel that he should be able to sell the farm (at a high price) to a developer or convert the farm to urban use whenever he wishes. To expect public policy to make it possible for him to have both prerogatives is probably asking too much.

As one county board member put it, "This planning tries to give us more solutions than we got problems."

Citizen participation

If a local land-use program is to influence or regulate the private use of land effectively, it must be understood and supported by the governing body, appointed officials (especially the county manager), and a substantial segment of the population. Many counties have found it advisable to provide opportunities for citizen participation in ways that go beyond the traditional public hearing. Affected citizens need to be able to present their views and learn about planning proposals at informal meetings rather than at formal countywide public meetings. A continuing forum is often needed for staying in touch with the concerns of residents as they develop. Some counties have established township advisory councils to fill this need. Some of these councils, established by the county board of commissioners, may have existed before the planning program was contemplated; but many of the newer ones, though appointed by the commissioners, are organized and directed by the county planning board. Appointed advisory councils may consist of ex officio members of existing community groups or of individuals who may or may not have group affiliations. Guilford, Buncombe, Orange, and Cherokee are among those counties that have experimented with township or local advisory groups that meet regularly.

Farmers are an influential group that has often opposed county planning programs, even though in 1970[5] only about 16 per cent (perhaps only 10 per cent today) of the state's rural population worked on farms. Furthermore, a substantial portion of the land in most rural counties is in woodland or agricultural use, and agriculture and related business play a very important role in their economies. Agricultural interests therefore still exert great political influence at the county level in land planning and development, and planning issues should be presented to and discussed by existing farm-related agencies and organizations. Farmers are accustomed to dealing with the local USDA Soil Conservation Service representative or the County Agricultural Extension Service when land-use questions arise. The technical advice, help, and funds that the representatives of these two services provide have often helped them gain the confidence of the local agricultural community. Although district conservationists and agricultural extension agents traditionally have not taken strong stands on these matters, the Extension Service and Soil and Water Conservation Districts have often encouraged the discussion of local land-use problems and issues. The Farm Bureau and the Grange may also provide forums for discussing land-use planning.

5. U.S. Census Bureau, *Characteristics of the 1970 Population.*

Chambers of commerce, business leaders, and developers in some rural communities are also likely to have substantial interests at stake and may offer important suggestions. Their support is important to overcome the suggestion that land-use programs are conceived by outsiders who have little practical knowledge of the local county scene. Occasionally some discussions about land-use planning in North Carolina have been acrimonious, especially where planners have assumed that they know what is best for others or residents have not bothered to find out for themselves what possibilities a planning program may offer. There is some danger that public discussions of planning-related issues may polarize a rural community, but trying to establish an effective planning program that local citizens do not understand and support and that is to be administered by a planner they neither know nor trust can be disastrous.

The planner and his skills

Because planning is controversial, the success of rural planning will depend on those who administer the planning program or offer planning services. Planners will need leadership, patience, intelligence, and the ability to communicate and get along with their rural constituencies. A small but growing number of North Carolina counties have employed resident planners, whose role varies widely from county to county. Some county planners simply administer development regulations; others serve as a county economic development director or administer federal grant programs; and a relatively small number spend most of their time in developing plans, in planning studies, and in planning policies. Planners may increasingly find that they need technical skills, particularly in design and engineering. Outside assistance (although not necessarily in the specialized areas mentioned above) is now widely available through state agencies, particularly the Division of Community Assistance, and the regional organizations. As a result, even the most rural jurisdiction in North Carolina has access to some help in land-use planning.

Technical information

Land-use planning also benefits from better technical information, such as the soil surveys that will be completed in the 1980s. The Soil Conservation Service has now surveyed approximately one-third of the 100 counties. The Soil and Water Conservation Districts are likely to undertake studies to determine and classify prime agricultural lands in a number of counties. This soil information is useful in evaluating subdivision design proposals, in determining which undeveloped areas are most suited for septic tank use, in determining alignments for roads and utilities, and in pinpointing areas of environmental significance. More counties are participating in the Federal Flood Insurance Program, and the engineering information obtained for purposes of constructing Insurance Rate Maps is becoming more refined and more readily available. Those counties that are a part of the Coastal Area Management Program are benefiting from information from federal agencies about coastal waterways and shorelands, the Coastal Commission's environmental analyses, and the plans prepared as a condition to local administration of the CAMA permit program. Programs for improving local land records systems — now in their infancy — are expanding, and property records and maps are helping counties and rural communities improve the administration of their planning programs substantially.

Local governments do not have many devices in their toolboxes for dealing with growth — if all you have is a hammer, everything begins to look like a nail.

City-county cooperation

Some North Carolina local governments have found that more effective planning results from better cooperation among municipalities and counties. A handful of cities and counties have formed city-county planning boards or planning commissions. The Winston-Salem/Forsyth County Joint Planning Board, the Wilmington-New Hanover Planning Commission, the Charlotte-Mecklenburg Planning Commission, and the Cumberland County Joint Planning Board are examples. Cooperating units of government benefit not only from a single advisory agency representing both municipal and county interests, but also from the economies of planning scale and specialization that a joint staff provides. Those jurisdictions that wish to retain separate planning boards may share planning staff—as Salisbury and several other municipalities do with Rowan County. Many planning and land-use conflicts occur at the edge of municipal and county-planning jurisdiction boundaries. We may see more ad hoc cooperation between cities and counties, such as the recent attempts by Chapel Hill and Orange County to plan for the urban transition areas that extend from one jurisdiction into the other. Cooperation and staff-sharing may reflect the coming scarcity of funds for planning and other public services or the increasing perception that planning-related problems transcend local boundaries.

The Coastal Act

The future of land-use planning in North Carolina's rural areas will be significantly affected by the future of the Coastal Area Management Act, which expires in 1983 unless the General Assembly re-enacts it. Failure to re-enact this coastal legislation would suggest to state and local officials that endorsing land-use programs is politically dangerous, and popular support for planning around the state would thereby be damaged. But if the coastal program continues, the experience gained from its administration at both the state and local level will likely offer lessons for rural planning programs in all North Carolina counties.

Federal programs and balanced growth

Today a number of federal and state programs have more influence on North Carolina land-use and development pat-

Thus far the land-use problem for agriculture has been seen as urban encroachment and the solution as special agricultural protection.

terns than county policy. That situation will not change markedly. A number of important federal rural development programs that have been prominent in North Carolina are likely to continue in one form or another and may well increase in funding and importance. Among them are (1) Farmers' Home Administration (FmHA) programs for new water and sewer lines, industrial site improvements, and other public facilities and services and the loan and loan-guarantee programs for rural housing development; (2) Economic Development Administration (EDA) programs for utilities, industrial building construction, and other public facilities and services; (3) Environmental Protection Agency water and sewer moneys; and (4) the rural programs of the departments of Transportation, Labor, and Housing and Urban Development. Together these programs have greatly affected patterns of utility service, the type and location of rural housing, and the development of industrial sites.

The Governor's Balanced Growth Policy promises to direct available funds from FmHA, EDA, and perhaps several other federal agencies toward state economic development objectives. These federal funds will be channeled into urban clusters designated as "growth centers" located across the state. Thus far the Balanced Growth Policy has exhibited no significant land-use planning component. Many of the projects that may be funded through it are likely to be located near the urban-rural fringe — some within a municipality's planning and land-use jurisdiction; others within a county's jurisdiction. Whether the Balanced Growth Policy will set off a competitive scramble between municipalities and counties for the funds is not yet clear. And whether land-use planning will guide spending or vice versa in these areas remains to be seen.

Development regulations

Planning tends to be associated with development regulation such as subdivision regulations, zoning ordinances, and local soil erosion and sedimentation control ordinances. The new statutory requirement that municipalities and counties provide for the enforcement of the State Building Code by 1985 may encourage jurisdictions with smaller populations to establish inspections offices or to enter into joint agreements with other local governments that provide inspection services. Once inspection services are established, it may be rather simple to use these arrangements to administer zoning, subdivision, and soil erosion and sedimentation control regulations as well.

The tension between the desire for simpler, shorter ordinances and the desire for more thorough, refined regulation does not seem to be reconciled. Rural communities continue to demand ordinances that are easy to understand. At the same time, planners are expected to develop standards for protecting shorelands, performance standards for industrial establishments, suitable criteria for locating hazardous waste storage and processing, open space and density tradeoffs for evaluating group housing developments, and even standards for controlling junkyards.

Zoning techniques need to change if zoning is to be effective in rural areas. One problem is the potential for arbitrariness in the rezoning procedure. County zoning ordinances tend to precommit as little land on the zoning map as possible to the districts that permit development, and the county commissioners tend to await rezoning petitions by property owners who wish to develop their land. Typically county board members do not rely on explicit standards or policies to guide them in their decision. The arbitrary nature of rezoning decisions made in such instances raises fundamental legal and administrative questions. One needed improvement is for planners who serve rural communities to help develop detailed, specific, practical guidelines that can be of direct assistance to the local planning board and governing body as they consider rezoning proposals. Other changes may show up in the zoning ordinance itself. In order to reduce the uncertainty that surrounds the rezoning process, some counties may find it useful to reduce the number of zoning districts. In order to permit the governing body the opportunity to examine certain development proposals on their own merits, more ordinances may rely on the special- or conditional-use permit process. Emphasizing the special-use permit process may reduce a county's ability to prevent a particular development from locating at a particular site, but it may enhance the commissioners' ability to exercise their discretion in reviewing the details of a site plan.

Subdivision regulation and street maintenance

One emerging issue in county subdivision regulation deals with the appropriate standards for road construction and maintenance in the unincorporated areas of the state. A county's ability to control the subdivision of land within its jurisdiction is limited because the county does not finance, construct, accept dedication of, or maintain roads. Few county commissioners in North Carolina seem interested in having the counties once more become responsible for financing, building, and maintaining county road systems. A small but growing number (8-10) of counties are now requiring that new subdivision streets be publicly dedicated and built to Division of Highway Secondary Road System standards so that they may become eligible for acceptance onto the State Maintenance System. Many more counties, however, still permit private roads to be built to lesser standards, and in virtually all counties there are private roads that have existed for some time. In some areas of the state, purchasers of lots in subdivisions with private streets for which no provision has been made for maintenance have complained to county officials. Under G.S. 153A-205 a county is authorized to finance by special assessment the local share of the cost of improving a subdivision street to state standards if 75 per cent of the affected property owners petition them to do so. Twelve counties thus far have improved

subdivision streets pursuant to this statute, and others may follow suit.

Agriculture

In the next few decades increasing attention will be given to protecting the state's prime agricultural lands from urban encroachment. Nationally, agricultural experts are pointing out a possible world-wide food shortage by the end of this century and suggesting that land that produces food and fiber should be protected as a part of a national policy. Agricultural land protection has attracted environmentalists' support because such a policy might also make it possible to preserve the open space, environmental, and aesthetic features that rural countrysides have traditionally offered. In some areas of North Carolina, farmers have been concerned about the threat of nuisance suits from nearby residential property owners and about whether farm land will be taken for highways, water supplies, utility easements, and other urban development-related purposes but many farmers' overriding concern is the high property tax assessments that accompany the increasing value of farm land as it becomes increasingly suitable for development.

In the past decade the state's agricultural interests have secured passage of several legislative proposals that are designed to protect agricultural interests from urban encroachment. The first was a provision in the county enabling legislation that exempted "bona fide farms" from regulation under county zoning ordinances.[6] Agricultural interests have traditionally maintained that agriculture does not need the type of protection that zoning may have to offer and that farmers are victims of zoning rather than beneficiaries of it. However, as county zoning is refined and becomes more broadly applied and as the state's farm land is submitted to increasing urban pressure, the desirability of this exemption may be questioned. Certainly the extent of the exemption under the law is receiving more attention. May county zoning legitimately be applied to farm properties whose owners receive most of their income from nonfarm activities? Is the processing and packaging of farm produce an industrial rather than an agricultural operation? These questions are assuming added importance as urban-rural land-use conflicts increase.

The North Carolina Farmland Taxation Act,[7] enacted in 1973, represents another important benefit to agricultural interests. This legislation permits qualifying agricultural, horticultural, and forestry lands to be assessed for local property tax purposes on the basis of their value in their current uses if the owner so chooses. If the land is ever converted to a nonqualifying use, taxes based on assessed market value immediately become due for the preceding three years.

Finally, the 1979 General Assembly enacted legislation[8] to protect agricultural operations from nuisance actions brought by adjacent property owners or units of government. No agricultural operation that has been active for at least one year may be held liable in a nuisance suit for damage to other properties unless the activity is operated in a negligent manner. This legislation also invalidates any local ordinance making such an operation a nuisance.

Thus far the land-use problem for agriculture has been seen as urban encroachment and the solution as special agricultural protection. The preferential-assessment statutes relieve the participating farmer of tax liability without demanding any guarantee that the land be held in agricultural use for a given time period. Preferential tax treatment is available to the owners of agricultural land without reference to the location of the land, the suitability of the land for farming, or the treatment of the affected land in local land-use plans and ordinances. Likewise, the agricultural-nuisance legislation does not speak to the interests of land uses and activities that may conflict with agricultural activities. An important question in the years ahead may be whether we continue to view the problem in terms of protecting agriculture and providing it with tax benefits, or whether we view the problem in terms of reconciling land-use conflicts and converting land to urban use by means of a broad-based rural planning effort that accommodates a range of interests.

Summary

In the past local land-use planning programs in rural jurisdictions have encountered substantial opposition. Some opposition has been political and ideological. Problems have resulted because of inadequate communication and lack of understanding between those who support planning and those who oppose it and because urban planning approaches and methods have not been suitable for rural problems, attitudes, and institutions.

Nevertheless rural areas will continue to grow, and the problems associated with growth will become more prominent. Rural communities will probably be more willing to experiment with planning policies and ideas. At the same time existing planning programs need to be made more effective. Those who support planning will be strongly pressed by agricultural interests and the interest of other levels of government to become influential in the life of rural areas. The ideas and planning tools of the past need to be refined and adjusted to the problems ahead so that planning will make an effective contribution to the wise use of land in rural areas. □

6. N.C. GEN. STAT. 153A-340.

7. N.C. GEN. STAT. §§ 105-277.2 through -277.7.

8. N.C. GEN. STAT. §§ 106-700, -701.

Report on the New Science and Math School

Anne M. Dellinger

WHEN THE NORTH CAROLINA School of Science and Mathematics opens in Durham this fall, one of the state's dreams will be two-thirds realized. The first part of the dream took form fifteen years ago when the General Assembly, under the urging of Governor Terry Sanford, established the North Carolina School of the Arts in Winston-Salem. Even then the Governor's advisers envisioned three special schools: one for the arts, one for science and mathematics, and one for humanities,but political tides flowed other ways. Although the arts school flourished, the others did not follow.

As fully as Governor Sanford was the leader in creating the arts school, Governor Hunt was the leader in establishing the school of science and mathematics. Through his persuasion the 1977 General Assembly appropriated funds for planning, and the 1979 Assembly made a permanent commitment to the school and provided sufficient funds to open its doors. Governor Hunt's assistance continues in his personal efforts to raise money from private sources and in the great interest taken in the school by his science adviser, Dr. Quentin W. Lindsey.

Hopes for the school

The school is viewed by its supporters as a spire of excellence — an investment in some of our best and brightest students that will reward not only the state but the nation as well. They cite as indications of the need for special opportunity for these students the stagnation in this country's gross national product — both absolute and relative to other industrialized nations — and the decline in the number of new companies founded annually on technological advances. Thus at least part of the impetus for the school springs from a nationalistic fervor for science akin to the post-Sputnik period in American education.

A second justification is the expected benefits for the state's public school system. The school should pioneer in developing better techniques for teaching that can be used in all schools. Public school teachers will be brought to the campus for summer training programs, and a few will be participant-observers during regular instruction terms. Public school students may enroll in summer science camps or courses that the school will conduct for them as well as for its own current or prospective students.

But the primary thrust behind the project is development of individual intellectual capacity. By establishing the school, state officials acknowledge that the regular educational system does not serve all students equally well. Many people maintain that the gifted child is as needy as the handicapped child but is largely ignored. Now that state (as well as federal and local) resources are heavily invested in the education of children with many other kinds of special need, some say that it is time to invest in these children — for the children's own sake, as well as for possible social benefit. Many educators who are interested in gifted children believe that if these children are neglected they quickly become bored—and suffer consequent adverse effects. Those educators feel that any thorough talent search will uncover students who are disruptive in school because their talent is unrecognized or unchanneled. At a minimum, such students spend unhappy school years. Most likely, the quality of their entire lives falls far short of what it might have been.

. . . and fears

By no means everyone has been enthusiastic about a select science and mathematics school. The concept's

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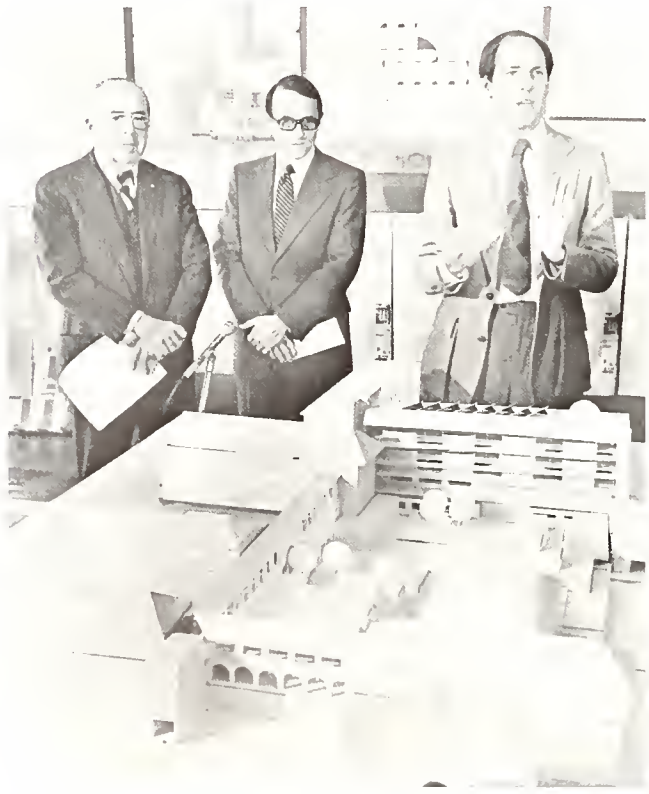
Editor's Note. This article was written in spring 1980. The description of the school's functioning is based on plans for the school's first year as described by Dr. Charles Eilber, the director, in an interview with Anne Dellinger in February 1980. The author is an Institute faculty member who specializes in school law.

detractors are vocal: The North Carolina School Boards Association opposed it publicly; certain superintendents and other school officials say privately that they hope or expect that it will fail.

Some of the arguments against the school, like the principal argument for it, are rested on the welfare of the children who would study there. One parent, also a local school board chairman, put the arguments in this way in a letter to Governor Hunt:

> The concept is unfair to the kids themselves. They will soon enough be presented with regimentation, academic challenge, responsibility to live up to expectations, and separation from family and community ties. A kid deserves to have the fun of being a senior in the school he has grown with, and the kids he has grown with. The state-wide acquaintances will be made in college. Academic acceleration will come in college. As a junior and senior in high school, the student is still receiving parental training. He is possibly getting his first experience at holding a job. The outstanding students for whom the School is designed are learning to cope with limited facilities and overworked teachers, problems symptomatic of those they will face the rest of their lives. They have really just learned to live with other citizens of every strata, every level of intellect, different races. On graduation day, these varied students hug each other and lifelong bonds are formed. Though the student may be outstanding and be a great success in future education and work, the people with whom he graduated are the type people he lives with the rest of his life.



Dean W. Colvard (left) chairman of the board of trustees, Charles R. Eilber, director, and Ron Howard, architect, check plans for the North Carolina School of Science and Mathematics.

Many people also fear that the educational experience will be narrow. They deplore specialization in technical areas at so young an age, and they predict that the students will be so homogeneous as to retard social growth in one another. The entire group, they say, will be extraordinarily bright—but in much the same ways: They begin with similar intellectual interests and the school will intensify this similarity rather than including disparate but broadening factors.

Furthermore, other critics expect that the student body, compared with the state's population, will be disproportionately wealthy, urban, white, and male. They fear that the school will be an undemocratic, elitist institution.

Governor Hunt's reply to this criticism is that "[m]ediocrity is not a goal of a democratic society and the new School of Science and Mathematics can be one model, as well as a symbol, of the excellence we seek for all of our schools. The best our society can offer is easier to strive for on a large scale if we can first behold it in microcosm." The Governor's principal adviser on the school, Dr. Lindsey, and its director, Dr. Charles R. Eilber, both take seriously the charge that the school will not reflect the demographic patterns of the state. They deny that this will occur. They emphasize that the school will enroll students with high *potential* for achievement in science and mathematics and believe that identifiable potential is evenly divided among all segments of society. It is encouraging that of the 900 applicants for the first class, nearly 50 per cent were female and nearly 20 per cent were members of racial minorities. The enrollment of the School of the Arts lends further support to their prediction. Thirteen per cent of its students belong to racial minorities and over 50 per cent are female.

Some opponents agree with the writer of the letter above that high school students belong with their families. They resent being required to choose between having the child at home and developing his intellectual gifts to the fullest. For most young people these years serve to develop and refine values that will be held throughout life. Parents are understandably reluctant to give up the opportunity to influence that process heavily. To the criticism of a student's separation from home, Dr. Eilber, the school's director, says that he is committed to having the school provide much of the support the family does. Residential staff members as well as faculty will undertake to help with all aspects of students' growth. To this same criticism the Governor's planning committee made one retort that is startling: For many students, leaving home would be no loss. In the committee's words, "[We] cannot overlook the fact

that a surprising percentage of our homes are not ideal in the sense that family friction exists, sometimes divorce has occurred, and other adverse circumstances inhibit rather than enhance the development of youth."

Other criticisms of the institution focus on those who will be excluded, rather than on the school's potential students. Some object to the fact that the school will drain bright students from the public school system. To the extent that students learn from one another (and a well-known report on student achievement — the Coleman report — found this to be a highly significant factor in student achievement), every other member of a class suffers if the most talented and inquisitive member is withdrawn. While in absolute numbers the absence of 900 students from the state school population of 1,156,000 seems insignificant, each of those students is likely to be someone who exerts far more than ordinary influence on his schoolmates and whose loss will be felt correspondingly. Such critics feel that the benefit to the one is not worth the loss to the many. They claim that very bright students are fortunate enough by virtue of being talented; why should the state compound their good fortune by maintaining them in splendid isolation at a cost approximately five times the average per-pupil expenditure? Science and math education is a good place to spend money, they argue, but the cost-effective way of doing so is to spread funds among the 144 public school units, not to concentrate them in a single elite institution. A similar protest is heard that the school will draw the best teachers away from the public schools.

Initial stage of planning

Site selection. Several North Carolina cities competed for selection as the school site; Raleigh, Charlotte, and Durham were among the final contenders. In the end, Durham was chosen because it was centrally located within the state, was close to four major universities and the Research Triangle, and could offer help and support from those institutions and the community. The school will occupy the 27 acres and 15 buildings that were formerly Watts Hospital (given to the state by Durham County). The location is close to the east campus of Duke University. Substantial renovation was necessary to convert the facility from hospital to school, but the cost was considerably less than new construction would have been. Watts Hospital was a venerable Durham landmark, and the aim has been to preserve its architectural integrity while adapting it to new uses.

Selecting students. On September 2, 1980, the first students will arrive. These 150 young women and men entering the eleventh grade will have survived a selection process begun in January. Every high school in the state—public and private—was asked to nominate students, but nominees were also sought through less traditional channels. Parents were invited to nominate their children, and tenth-grade students were encouraged to nominate themselves. On the theory that some youngsters with excellent potential might be performing and behaving badly at school, community leaders outside the school were canvassed for possible candidates. The deadline for receipt of nominations was February 22, 1980, by which time over 900 applications were received.

Entrance to the Science and Math School — formerly Watts Hospital — in Durham.

In March each nominee took the Scholastic Aptitude Test (SAT) given by the College Entrance Examination Board; on another Saturday later in the spring nominees attended a testing and counseling session conducted by the school's representatives in each of the state's eight education regions. Interviews during these eight regional sessions and the SAT results provided the basis for selecting 225 finalists. The finalists and their parents visited Durham on May 17—a final opportunity for school and applicant to scrutinize each other. Following the weekend 150 students were offered the chance to enroll; a number of designated alternates were also selected.

Cost. North Carolina residents will pay nothing. Out-of-state students will be charged for tuition, room, and board. School officials decline at this time to state an annual per-pupil cost figure because of the heavy start-up expenses. (For possible comparison, the School of the Arts annual per-pupil expenditure is currently $6,350, of which $5,107 is paid by the state.) In 1978 the Governor's planning committee estimated the state's annual share of the math and science school's expenses at $5 million. It has always been anticipated that while the school would be entirely free to its students, private donations and foundation support would supplement the state appropriation. To insure the success of that ef-

fort, the school retains a firm to advise its development officer on fund-raising.

But students will be expected to make some contribution to their education: Each will do several (up to eight) hours of work each week for the school in routine service chores such as cafeteria duty, cleaning, or yard maintenance. In addition, each student must volunteer some time to community service.

Programs. The school will try to meet all student needs — not just the academic ones. Every faculty member will serve as an adviser to a small number of students; he or she will meet with them regularly and share meals, weekend trips, and other social events. The residence halls (there are no day students) will be staffed full time by adults selected for their skill in working with young people. The school sponsors a "host family" program through which students, with their parents' approval, will be assigned to a local family who will entertain them from time to time. As in most families, the school's support will include discipline. Students must adhere to study hours and dormitory closing hours with sign-in procedures. They may not have cars or use alcohol, and could be expelled for violating these or other regulations. Students may go home for a visit as frequently as they like unless the visits interfere with academic progress, and parents will be encouraged to visit the school. The school has limited facilities for physical activities but will also use the facilities of nearby public schools and the Durham universities. Students and faculty will hike and camp for both recreation and scientific research purposes. There will be a standard school health program directed by a physician.

But the academic program, naturally, will come first. The director sees mathematics and English as the heart of the curriculum, though more electives and a broader range of courses will be offered in the sciences and mathematics than in the humanities. He states the school's goals in order of importance: (1) to teach the skills that are prerequisite to all learning—especially, logical thinking, reading, and writing; (2) to teach content, or the present state of knowledge in particular areas; and (3) to encourage interdisciplinary thought and application of current knowledge. In addition to traditional classes, there will be heavy emphasis on independent work and small groups. Many students will be engaged in one-to-one tutorial relationships with scientists and mathematicians who are associated with the Triangle universities or industrial research. This kind of independent study, which most schools cannot offer the gifted student, will be the hallmark of the science and math school.

The process of selecting the faculty was even more rigorous than selection of students. More than 500 applications were received for the 15 to 20 faculty positions, even though little advertising was done outside the state. Minimum requirements for the openings were a master's degree and three years' teaching experience. A North Carolina teaching certificate was not required, but seven of the nine persons hired by May 1 did come from North Carolina public schools. Several had higher education experience as well.

The future

In September of 1981, when this year's class of 150 eleventh graders begins the twelfth grade, another eleventh-grade class of similar size will enter. Thereafter, class size will expand rapidly until the two-year program enrolls between 500 and 600 students. Original plans presented to the General Assembly called for an enrollment of 900, but the present campus cannot accommodate that number. No final decision has been made on where to freeze enrollment.

The first class will consist entirely of North Carolinians, but that will change. Some percentage of out-of-state students must be enrolled if the school is to attract funds from the federal government and private foundations. The figure recommended by the Governor's planning committee was 15 per cent, and that has been accepted as a firm commitment by the school's administration. (Out-of-state enrollment at the School of the Arts by contrast is now 50 per cent.)

Decisions must be made on how far to extend the program beyond the eleventh- and twelfth-grade levels. The possibility of adding a tenth-grade year, which would serve as a preparation for the other two, has been talked of since the early planning for the school. Pressure to do so will increase if it proves difficult to find enough talented students representing both sexes, racial minorities, and all geographic regions. In that case, the tenth-grade year will be needed to develop potential in students not academically prepared to enter the eleventh grade. Even if an entire year's work is not added, the school will soon offer summer courses for its own prospective students and other students. □

Off-Street Parking Programs in North Carolina Municipalities

Richard D. Ducker

IN RECENT YEARS many North Carolina municipalities have become concerned about the adequacy of parking facilities in their downtown or central business areas. The relative decline of the downtown areas of many communities has caused merchants and municipal officials to wonder whether a lack of convenient, inexpensive parking space has not contributed to the problem. (See the related article on downtown revitalization by David Lawrence in this issue.) Some municipalities have assumed an active role in providing parking in or near central business areas by obtaining property and then operating off-street parking lots or parking garages constructed on this property as public enterprises. To obtain current information about municipal off-street parking in this state, the Institute of Government last fall conducted an off-street parking survey of those North Carolina municipalities with either a town manager or a town administrator. This survey was sent to the traffic engineer or city engineer if the city had one or to the town manager or administrator if it did not. This article will summarize some of the survey results and briefly describe municipal off-street parking programs in the state.

North Carolina municipalities appear to be relatively active in providing off-street parking facilities as a public enterprise. The survey, mailed to 196 towns and cities, elicited 135 responses. Of the 135 responding municipalities, 47 reported that they operated off-street parking facilities. Thirty-two of the 47 reported that they charged for parking in at least one off-street lot or garage. However, most of the off-street parking programs seem to be confined to the operation of surface parking lots. Of the 32 municipalities with revenue-producing operations, only eight had parking decks or garages. In contrast, 15 towns and cities provide free off-street parking in or near the central business district. These free programs all make use of surface lots.

Some of the cities with the most active off-street parking programs (Durham, Greensboro, Winston-Salem, and High Point) are among the largest in the state. For that matter, 29 of the 34 largest municipalities operate off-street parking programs of some description. Raleigh and Charlotte are notable exceptions. Raleigh currently operates no off-street parking facility, although the city is a party to a management agreement for the operation of the parking lot at the Raleigh Civic Center. It is also one of only three North Carolina cities that have leased city-owned properties to private parking entrepreneurs. Charlotte operates no off-street parking facility in its downtown area but leases city-owned land to private parking enterprises.

North Carolina statutes[1] permit municipalities to establish parking authorities. Parking authorities may be established as quasi-autonomous agencies with power to own, operate, and finance both on-street and off-street parking facilities. Since parking authorities are often established in order to finance parking projects, they have power to issue revenue bonds but not general obligation bonds for such projects. However, the authority ceases its legal existence when liabilities and bonds associated with financing a project have been discharged. Few North Carolina municipalities (only eight of those who responded to the survey) have extant parking authorities.

ONE OF THE MOST IMPORTANT parking-related trends in recent years has been the removal of on-street parking meters from the streets in central business areas.[2] Many smaller municipalities have replaced metered on-street parking with free on-street parking subject to a time limit ranging from twelve minutes to two hours. Some of the largest cities have eliminated on-street spaces entirely to provide extra traffic capacity for downtown streets. The Institute's survey revealed that on-street meters were operating in or near downtown areas in only 19 of the 135 reporting municipalities. Even in the

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1. The "Parking Authority Law" is codified as N.C. GEN. STAT. § 160-475 et seq.

2. This phenomenon is documented in a parking survey conducted by the North Carolina League of Municipalities in July 1978: "Survey of Downtown Parking Meter Operations in North Carolina Towns and Cities." A summary of that survey is available from the League's Raleigh office.

larger cities that still have retained some downtown on-street meters (Raleigh, Greensboro, Winston-Salem, Asheville), the number of meters has dramatically decreased in recent years.

The survey reveals that the off-street parking program in many municipalities does not cater merely to the short-term parking needs of shoppers and business clients. More and more off-street facilities are being made available to business employees and others on a long-term basis. Twenty-two of the 32 towns and cities with revenue-producing facilities lease space in a municipal lot or parking garage on a weekly, monthly, or yearly basis. Seventeen of these municipalities report that they lease between 25 and 50 per cent of their total off-street parking spaces in this manner.

The most flexible arrangements for regulating the time period during which the auto is parked do not rely on meters. For example, a parker may be required to present a time card and pay an attendant as he leaves the parking facility. Such an arrangement offers several advantages over metered lots: No time limits need be established as long as the checkout barrier is manned, variable hourly rates can be charged to encourage shorter- or longer-term parking, and enforcement costs are minimized. On the other hand, the use of attendants increases the operating costs of the facility substantially and can generally be justified only when parking rates are relatively high and the volume of parked automobiles great. Only 12 of the 32 North Carolina cities and towns with revenue-producing off-street facilities operated lots or garages where parking fees were collected by a gate attendant.

More and more attention will be focused on the off-street parking balance sheet.

THE SURVEY did not yield comprehensive statistics concerning the financial status of municipal off-street and on-street parking programs. It did inquire whether each municipality received enough operating revenue from *both* on-street and off-street parking facilities (including penalties collected from parking regulation violators) to recover the operating expenses of both types of parking programs (including annual debt service costs, if any).[3] Twelve municipalities do, ten do not, and the respondents in ten municipalities were not sure enough of their local parking program's financial status to give a definitive answer. One revealing statistic concerns those six responding North Carolina cities (Asheville, Greensboro, Wilmington, Durham, High Point, and Winston-Salem) that operate both parking decks or garages and surface lots. Only two cities of this group (Durham and Greensboro) report that operating revenues from off-street parking decks and garages have covered the annual debt service and operating expenses for these facilities during the last two years. The survey also reveals that those mid-size cities that operate revenue-producing off-street surface lots rather than parking garages are most likely to show a surplus from overall parking operations.

Financing problems have been the major stumbling block to a handful of recent efforts by North Carolina cities to develop new parking facilities. Proposals for off-street parking garages have been considered but withdrawn because of financing problems in the last several years in Greenville, Winston-Salem, and Greensboro. Municipalities that have expanded their off-street parking programs gradually or relied on surface lots have fared somewhat better. Some municipalities have managed to acquire land for off-street parking on a pay-as-you-go basis by using moneys from their general funds. Others have acquired land through the owner's financing or purchase-money mortgages. Expenditures for site development, equipment, and meters are often made from the general fund or financed through short-term borrowing.

In addition, several sources of federal funds are sometimes important. Parking meters and certain related parking equipment and signs are eligible for funding under several programs of the U.S. Department of Transportation. Parking facilities may also be funded through the federal revenue-sharing. In particular circumstances, Community Development funds may be used for parking purposes. Hickory, for example, has used CD funds to acquire sites for several off-street surface lots. Finally, the Urban Development Action Grant Program (UDAG) is designed to provide federal moneys for downtown revitalization projects with substantial economic impact. Although a number of UDAG grant recipients in other states have used funds to finance off-street parking projects, no North Carolina city has used those funds for this purpose.

One special financing tool that may have some promise in financing off-street parking facilities is the special tax levy that may be assessed on property located in a municipal service district. A municipal service district may be established in a downtown area for the sole purpose of helping to finance and operate off-street parking facilities. Alternatively, a service district may be established for the purpose of revitalizing the downtown, and the revenues from the special tax may be used to fund either on-street parking programs or off-street programs. Special tax revenues from such a district could be used to purchase parking meters and equipment, to buy land for an off-street facility, or to finance some of the expenses of enforcing on-street or off-street parking regulations within the special service district. Regardless of which approach is used, few municipalities are likely to impose a service district tax of more than 20 cents/$100 assessed valuation, and the funds generated by such a levy are

3. Commingling revenues from both on-street and off-street parking funds may present legal problems. G.S. 160A-301(b) provides that revenues "realized from off-street parking facilities may be pledged to amortize bonds issued to finance such facilities, or used for any other public purpose . . . ." In contrast G.S. 160A-301(a) provides that "[t]he proceeds from the use of parking meters on public streets must be used to defray the cost of enforcing and administering traffic and parking ordinances and regulations." Interpreted in its historical context, Section 301(a) apparently does not permit proceeds from on-street meters to be used to defray expenses associated with off-street parking. As a practical matter, however, relatively few municipalities seem to enjoy any surplus from on-street meters after the administrative expenses associated with enforcement are recovered.

not sufficient generally to finance the land acquisition and capital construction costs associated with major off-street parking facilities. The towns of Oxford and Mount Airy, however, have used the municipal service district arrangement to finance portions of an off-street parking program.

The issuance of tax-exempt municipal bonds constitutes the major financing tool available to a municipality that wishes to develop major off-street parking facilities. All municipalities that have constructed parking garages or decks have used either general-obligation or revenue bonds to finance construction; however, not all municipalities that have issued bonds to finance off-street parking projects have built garages or decks. For example, Fayetteville and Greenville have both issued revenue bonds that were used to finance land acquisition, site development, and parking equipment for surface lots. According to recent Local Government Commission figures, nine North Carolina municipalities with general obligation or revenue bonds outstanding have used them to finance parking projects. Thirteen such issues are outstanding – seven revenue bond issues and seven general-obligation bond issues. (See Table 1.)

The relatively even distribution of outstanding bonds tends to reflect the fact that no single type of bond clearly predominates in the financing of off-street parking projects; cities use both general-obligation and revenue bonds. General-obligation bonds offer substantially lower borrowing costs than do revenue bonds but are limited by the fact that voter approval is needed for them. No municipality in North Carolina has approved and issued general-obligation bonds for a parking project since Durham did so in 1976. The most recent referendum held to obtain voter support for general-obligation parking bonds was defeated in Chapel Hill in November 1979. On the other hand, the higher interest rates associated with revenue bonds, the costs of the more rigid legal scrutiny that a proposed revenue bond issue requires, and the difficulty that a municipality may have in demonstrating the economic feasibility of the project so financed have limited the attractiveness of revenue bonds.

Table 1
Municipal Bonds Issued for Parking Projects* Outstanding on June 30, 1979

Issuing Municipality	Type of Bond	Date of Issuance	Principal Outstanding on June 30, 1979
Asheville	G.O.	Mar. 1, 1975	$ 600,000
Durham	G.O.	Dec. 1, 1967	$ 105,000
Durham	G.O.	Mar. 1, 1976	$ 975,000
Durham	Rev.	July 1, 1968	$ 575,000
Fayetteville	Rev.	June 1, 1967	$ 73,000
Greensboro	G.O.	Oct. 1, 1962	$ 410,000
Greensboro	Rev.	July 1, 1971	$1,436,000
Greensboro	Rev.	July 1, 1966	$ 570,000
Greenville	G.O.	Oct. 7, 1975	$ 125,000
High Point	Rev.	Oct. 16, 1972	$ 589,000
Kinston	Rev.	Dec. 12, 1964	$ 45,000
Wilmington	Rev.	Jan. 1, 1964	$ 550,000
Winston-Salem	G.O.	June 1, 1973	$5,050,000
Winston-Salem	G.O	May 1, 1973	$ 640,000**

*Information compiled by the Division of State and Local Government Finance, Office of the State Treasurer, in December 1979. Certain outstanding bond issues designated for general public improvements or other purposes that include an allocation for off-street parking facilities may not be shown.

**This amount represents that portion of the outstanding principal of a general public improvements bond that was allocated for parking projects. The total outstanding principal for the entire bond issue as of June 30, 1979, was $2,560,000.

ONE MAJOR OBSTACLE to the issuance of either type of municipal bond in today's market seems to be the need to document the proposed project's economic feasibility. Those larger cities that began off-street parking programs some time ago seem to enjoy a special advantage in this regard. Durham and Greensboro, for example, have in some years enjoyed surpluses from parking decks and garages built five, ten, or fifteen years ago when both construction costs and interest rates were a fraction of what they are currently. In some circumstances the surplus revenues from these decks may now be pledged for the construction of new facilities and may be used to reduce the deficits that many new parking facilities show in their earlier years. The ability to "plow back" earlier off-street parking surpluses into new projects has helped the programs in these cities to expand.

But for those cities that have never financed the construction of off-street parking facilities through bonds, it is questionable whether a project is feasible. The construction and operating costs of a parking garage or deck have skyrocketed in the past decade. During the same period many municipalities have raised parking rates very little. The result is that the rates required to break even often cannot compete with those of existing facilities.

Rapidly increasing gasoline prices may affect the feasibility of further downtown off-street parking projects. Preliminary indications are that carpooling and general reductions in travel have already resulted in very slight declines in the demand for downtown off-street parking spaces in some smaller and mid-size municipalities. Switches to public transit may also affect the demand for downtown parking in those 17 cities with urban transit systems. For example, during the period July 1979 to November 1979, bus ridership in these cities increased an average of 9.9 per cent over the same period in 1978.[4]

Of the 135 responding municipalities, 47 reported that they operated off-street parking facilities.

4. *Public Transportation: Current Status and Short-Term Needs*, prepared for North Carolina Blue Ribbon Commission on Transportation Needs and Financing by the Public Transportation Division of the North Carolina Department of Transportation (Raleigh, January 1980), p. 52.

Financing problems have been the major stumbling block to a handful of recent efforts by North Carolina cities to develop new parking facilities.

FOR ALL OF THESE REASONS, city officials and lenders are likely to be cautious about embarking on new off-street parking ventures. Fewer units are likely to begin new parking projects involving the issuance of municipal bonds. Those that do expand their off-street parking programs will rely more and more on small surface lots. The survey reveals that 18 of the 32 municipalities that operate revenue-producing off-street facilities lease the land upon which the parking operation is located from some other party. Municipalities may use more leasehold and contractual arrangements with private parking operators in order to avoid the financial and long-term commitments that land purchase entails.

Those municipalities that do undertake additional off-street parking projects probably will do so in the context of downtown revitalization. In some towns and cities, parking may be an important component of a revitalization program. For example, developers of an $18 million hotel proposed for downtown Raleigh have indicated that the hotel will be built only if a major parking garage is constructed near the site. On the other hand, lack of suitable parking is not likely to be a primary cause of declining activity in a downtown area. The availability of off-street parking facilities alone will not overcome the problems associated with competition from other shopping areas, deteriorating buildings, inadequate transportation facilities, and a general lack of private interest in the downtown that is characteristic of some municipalities.

More and more attention will be focused on the off-street parking balance sheet. Municipalities increasingly will have to decide whether to subsidize parking programs in behalf of the downtown. Many will demand that off-street parking facilities, considered either individually or collectively, be financially self-sufficient. Others will tolerate a deficit because they feel that subsidizing an off-street parking program often amounts to a subsidy for downtown revitalization. How the subsidy issue is viewed is likely to determine the future of many off-street parking programs in North Carolina. □

Because state regulatory programs so greatly affect local governments, local officials need to know how the regulatory process operates, how they can participate in administrative rule-making, and how challenges can be made to administrative regulations.

What Local Governments Need to Know About the State Administrative Process

Ann L. Sawyer

ACTIONS BY STATE AGENCIES spread throughout almost every activity of local government. For example: State environmental protection directives govern a number of local land-use activities, including strip-mining and actions that affect coastal area lands, and state law requires that all local ordinances conform to state guidelines in these areas. If local governments are to have any input into these state-mandated standards, they need to know how to participate in state agency rule-making.

State regulations governing a particular activity, such as construction of a wastewater treatment plant, may change between the time the plant is designed and the time construction is complete and all necessary permits have been issued. Such midstream changes in standards obviously delay projects and escalate the final cost to the local taxpayers.

State agencies have the power to overrule many local or regional decisions. For example, a regional health systems agency recently denied a hospital's application to relocate. The State Department of Human Resources, however, overruled that local decision and allowed the hospital to buy the land for the new facility.

State regulations occasionally prevent local governments from implementing programs that would benefit the community. Many cities have abandoned summer high school youth-employment programs because OSHA (Occupational Safety and Health Act) regulations prevent young people from doing many of the things that would be part of their work assignment. Moreover, the paperwork for other programs, such as CETA (Comprehensive Employment and Training Act), makes participation in these programs more trouble for local governments than it is worth.

Finally, it is not always clear whether state or local regulations govern a particular activity. The State Department of Transportation, for instance, has issued regulations governing billboards along primary and secondary roads. Local zoning regulations have also addressed restrictions on billboards for years. A conflict between some state and local billboard regulations exists, and it has not been decided which set of regulations should prevail in such cases.

These examples illustrate how important it is that local governments know the content of state regulations and understand how to participate in the state's decision-making process. This article will discuss the state's administrative mechanism, how one may participate in it, and some existing and proposed reforms to streamline the state administrative process and make it more responsible to the general public.

Federal regulatory programs

Since the first federal regulatory agency was created in 1887, regulatory programs have gradually become a major part of government at all levels. This growth has resulted because mounting economic and social problems have outdistanced legislators' abilities to evaluate each issue and address it with appropriate legislation. Instead, federal and state lawmakers have created expert agencies and delegated policy-making and enforcement responsibilities to these agencies.

Until recently, there were few complaints about the growth—both in number and in power—of these separate agencies. But the past few years have seen a sharp increase in the amount of grumbling over gallop-

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ing bureaucracy and rampant red tape. Suddenly, congressional oversight of federal agencies has become a popular cause. It may be that congressmen have been influenced by the "taxpayers' revolt," or perhaps they are listening to the business argument that overregulation is a major catalyst of inflation.[1] Or perhaps the excitement and political rewards of adopting new social and economic programs have worn off. By the end of 1979, more than 150 bills had been introduced in Congress to revise the federal rule-making machinery.[2]

North Carolina's regulatory legislation

North Carolina's experience with regulatory agencies has more or less paralleled the federal track. After a steady increase in the number and power of these agencies, several major legislative efforts have been made to gain some measure of control over that power. In 1973 the Executive Organization Act and the North Carolina Administrative Procedure Act (APA) were passed to establish procedural safeguards for major agency actions and to make agencies more accountable to the people and their elected representatives.

The **North Carolina Administrative Procedure Act**, enacted as Chapter 150A of the General Statutes, is a comprehensive law that governs the procedures of over 250 state agencies and programs.[3] With several exceptions,[4] the APA applies to state executive agencies, boards, departments, and commissions — including such diverse groups as the Savings and Loan Commission, Council on the Status of Women, Tax Review Board, Commissioner of Insurance, Pesticide Board, Social Services Commission, Zoological Park Council, and State Board of Barber Examiners. However, local governments do not come under the APA.

The APA regulates two major kinds of agency action, rule-making and administrative hearings, and also the form of judicial review of such actions. *Rule-making* is a legislative activity by which an agency implements or prescribes law or policy through regulations, standards, or statements of general applicability. It also encompasses general regulations that describe the agency's organization, procedure, or practice requirements. Rule-making decisions rest on findings of a general nature—that is, they apply to a *class of people* rather than to a single individual. In contrast, *administrative hearing* procedures apply to contested cases—those proceedings that determine an *individual's* legal rights, duties, or privileges and which the law requires to be determined after a judicial type of hearing. Contested cases include rate-making and licensing decisions. The APA establishes minimum procedural requirements for both kinds of activities, intended to ensure fairness, efficiency, and participant satisfaction.

The **Executive Organization Act of 1973** established standards for rule-making activities of all commissions located within certain state government departments that are headed by a Secretary who is appointed by the Governor.[5] Although state law already required agencies to file their rules and regulations with the Secretary of State, the 1973 act specifically made this requirement applicable to all commissions within the act's coverage and further required that all agency rules and regulations bear an effective date. More important, the act imposed certain "sunshine" procedures on regulatory commissions. For the first time they were required to hold a public hearing before adopting a rule or regulation and give at least ten days' notice (the notice to appear in at least three newspapers of general circulation) before holding the hearing.

Although the Administrative Procedure Act now places essentially the same requirements as the Executive Organization Act on *all* state government agencies (except that rules are now filed with the Attorney General), certain differences in the notice requirements of the two acts must be reconciled by commissions subject to both Executive Organization Act and APA requirements. Moreover, since the APA did not take effect until February 1976, in the interim between July 1, 1973, and February 1, 1976, the Executive Organization Act did impose some rule-making requirements like those in the APA on selected commissions.

1. In 1979 the Business Roundtable and Arthur Andersen & Co. assessed the cost of government regulation on forty-eight large corporations. The direct cost of activity that was caused by government regulation in 1977 was over $2.6 billion for those corporations. A. Andersen & Co., Cost of Government Regulation Study (March 1979).

2. *See* Light, *Increasing Attention Focused on Regulatory Reform Plans*, Cong. Q. 560-63 (1979).

3. N.C. Gen. Stat. Ch. 150A. The law became effective February 1, 1976.

4. Specifically exempted from the APA are the Employment Security Commission, Industrial Commission, Occupational Safety and Health Review Board, Department of Correction, Commission of Youth Services, and Utilities Commission. In addition, the Division of Motor Vehicles, the Department of Revenue, and the University System are exempt from the rule-making and contested-case sections of the statute. Also, the statute does not apply "to the extent and in the particulars" that any statute makes specific provisions to the contrary.

A recent case, James v. Hunt, 43 N.C. App. 109, __S.E.2d ___(1979), *cert. denied* __N.C. __, __S.E.2d __(1980), held that the Governor is not subject to APA requirements when he is in the process of removing a commission appointee for cause. The plaintiff, a member of the North Carolina Cemetery Commission, challenged his suspension from that commission by the Governor pending a hearing and final gubernatorial decision on his removal. The court based its decision on the separation-of-powers doctrine and stated that courts should not bind the Governor to any statutory procedure unless the State Constitution or statutory provisions governing the removal power specify a certain procedure. This decision thereby makes an exception to the literal requirement of the APA that it apply to every "officer of the State government."

5. N.C. Gen. Stat. Ch. 143B. For initial coverage of the act, *see* N.C. Sess. Laws 1973, Ch. 476.

TODAY THE ADMINISTRATIVE PROCEDURE ACT remains the primary law regulating agency activities. Although the APA exempts counties, municipalities, county and city boards of education, and other local bodies from its requirements, local officials need to be generally familiar with its procedures for several reasons.

First, many state agencies make decisions that affect local government directly. State regulations concerning social services, pollution standards, building codes, education, and a wealth of other issues are administered by county or municipal employees. Also, a decision made at the state level, such as the location of a new nuclear power plant or a highway, can have an enormous effect on local activities. Second, the purpose of the Administrative Procedure Act is to codify minimum procedural standards for governmental action. If a local government undertakes to follow these standards, it can make decisions with some assurance that its actions will not later be invalidated for defective procedure. Third, it is still an open question whether local enforcement of state rules and regulations makes the local agent also subject to APA standards, especially in the area of judicial review. Arguments have been made on both sides of the issue, and there has not yet been a dispositive judicial decision on the question. Finally, some authorities suggest that in order to establish universal principles of common sense, justice, and fairness, actions by local government agencies also should be subject to a uniform set of procedural standards. It may be that the General Assembly will eventually enact such requirements for local governmental actions.

A number of reforms in administrative procedure have been suggested, especially at the federal level. A number of these reforms, if adopted, will have an impact on North Carolina, partly because they will affect the content of many federal rules and regulations. More important, North Carolina's APA shares many characteristics of the federal APA, and any changes in the federal law are likely to prompt similar changes in North Carolina. To assess the significance of proposed federal reforms, major provisions of North Carolina's APA should be reviewed.

Rule-making

Rule-making is a legislative activity that rests on findings of a general nature. Agency rules and regulations implement or prescribe law or policy. Often they are used by an agency to *explain* a law in more detailed terms.[6] Rules also may *describe* an agency's organization or procedure. Experts do not always agree on whether a particular directive is a rule.[7] If an action is found not to be a rule, the agency can then implement it without the procedural requirements that must accompany rule-making.[8]

What agency actions constitute rules? The APA's broad definition of a rule[9] clearly encompasses certain kinds of agency quasi-legislative activity. For example, the statute governing savings and loan associations in North Carolina authorizes the Administrator of the Savings and Loan Division of the Department of Commerce to issue rules and regulations that are necessary (1) to discharge his supervisory and regulatory duties properly, and (2) to protect the public investment in such associations.[10] The Administrator has used this general rule-making authority to establish criteria, including financial and management standards, for approval of a branch savings and loan association.[11] Therefore standards for approval of branch associations have been established solely by rule-making, even though the governing statute itself does not directly authorize savings and loan associations to establish branches.

Conversely, other agency decisions clearly do not come within the definition of a rule. For example, statements concerning the internal management of an agency, such as sick-leave policies, are not rules if they do not affect private rights or procedures available to the public. Other agency directives may be classified as rules though the APA does not require a rule-making hearing for their adoption, amendment, or repeal. For instance, no rule-making hearing is required for an

6. North Carolina courts tend to construe an agency's rule-making power broadly so as to allow that agency to adopt reasonably necessary rules for implementing the law. For a recent example of this judicial attitude, *see In re* Palmer, 37 N.C. App. 302, 246 S.E.2d 519 (1978).

7. Two recent Attorney General's opinions address particular cases in which there was disagreement over whether the rule-making procedure was required. One opinion concluded that the budget manual of the Division of State Budget and Management is subject to APA rule-making requirements [Opinion of the Attorney General to Administrative Rules Review Committee, ___N.C.A.G. ___(1979)], while another ruled that specifications established by the North Carolina Standardization Committee, the agency that sets standards for articles bought or leased by the state, are "rules" under the APA [Opinion of the Attorney General to William T. Biggers, 42 N.C.A.G. 286 (1975)]. A number of state departments and agencies incorporate administrative directives in manuals of one kind or another. The *extent* to which items contained in these manuals are subject to APA rule-making requirements is a matter of current and unresolved controversy.

8. *See, e.g.*, Opinion of the Attorney General to A. C. Davis, 45 N.C.A.G. 244 (1976). (The North Carolina Department of Public Instruction was not required to conduct a rule-making proceeding to implement new rates of reimbursement adopted by U.S. Department of Agriculture; rates were mandatory and not the product of active decision-making on the part of the state agency.)

9. Article 2 of the APA defines a rule to be "each agency regulation, standard or statement of general applicability that implements or prescribes law or policy, or describes the organization, procedure or practice requirements of any agency."

10. N.C. GEN. STAT. §§ 54-24, -33.2.

11. Title 4, Ch. 9C N.C.A.C. §§ .0201-.0202.

[I]t is [important] that local governments know the content of state regulations and understand how to participate in the state's decision-making process.

agency to adopt or change a rule that describes solely its own forms or instructions.

Between the examples mentioned above, various categories of agency quasi-legislative activity come within a gray area, and whether they should be subject to APA rule-making procedures is controversial. One of the most difficult areas concerns "interpretative rules," which are not subject to rule-making requirements. The North Carolina APA does not define an "interpretative" rule; this lapse leaves the agencies uncertain about which rules come within this category. The federal courts have defined an interpretative rule as a clarification or explanation of existing laws or regulations. Unlike substantive legislative rules, they do not create law; rather, they are the agency's legal *opinion* of what a law requires.[12] Nevertheless, agencies are bound by these rules,[13] just as they are bound by substantive rules, and courts do pay them great deference.[14] The draft revision of the Revised Model State APA, prepared by the National Conference of Commissioners on Uniform State Laws, defines an interpretative rule as one that purports only to define the meaning of a statute or other provision of law *and* was issued by an agency that did not possess delegated authority to bind the courts with its definition.[15] Given the ambiguity in this area, North Carolina lawmakers may want to consider defining "interpretative rule" in our APA.

The North Carolina APA states that no rule is valid unless it has been adopted in "substantial compliance" with APA requirements. This means that before it adopts, amends, or repeals a rule, an agency must give notice of a public hearing and offer *any* person[16] an opportunity to present information, views, and arguments. The notice of rule-making must include the time and place of the public hearing, a statement of how data may be submitted to the agency, and a summary of the proposed rule. This notice must be sent to all persons who have asked the agency in writing for advance notice of proposed actions that may affect them. Furthermore the agency must publish the notice in any of several accepted means of publication. It must fully consider all written and oral submissions regarding a proposed rule. The rule-making procedure is informal and does not use procedures like those used in trials unless the particular law under which the rule is being adopted so requires. All rules must be filed with the Attorney General.

Emergency rules. Emergency rules may be adopted without prior notice and hearing, but they are effective for only a limited amount of time. The agency must make a written finding—with reasons that support the finding—that an imminent peril to the public health, safety, or welfare exists. Emergency rules are effective for not longer than 120 days. Agencies may later adopt an identical rule through regular notice and comment procedures.

Complaints with the process. Over the past four years agencies have become accustomed to the rule-making procedures they must follow. One of their major complaints with the process is that few, if any, members of the public attend the hearings or submit their views to the agencies. Another agency complaint is that the APA delays implementation of policy: Unless emergency procedures are used, at least fifty days elapse between the date when the public hearing notice appears and the date when a new or amended rule takes effect. Finally, the APA has generated increased agency paperwork and staff time, partly because of the uncertainty created by the APA's ambiguous definition of a rule.

Challenging a rule. How is a rule to be challenged after its adoption? This question has brought about much litigation. In two cases decided by the North Carolina court of appeals in 1979, the plaintiffs sought to overturn an agency rule by court action.[17] In both cases, the suits were dismissed because the plaintiffs had failed to "exhaust their administrative remedies"—that is, to observe all proper agency appeal mechanisms first. The APA allows two administrative methods for challenging agency rule-making. Any person may petition an agency to adopt, amend, or repeal a rule; if the agency denies the request, the party may then seek judicial review of this denial. A person who is "aggrieved"[18] may request an agency to issue a declaratory ruling on the validity of a rule or its application to him; this ruling or an agency decision to deny such a ruling is also subject to judicial review.

12. *See* Continental Oil Co. v. Burns, 317 F. Supp. 194 (D. Del. 1970).

13. *See* Vitarelli v. Seaton, 359 U.S. 535, 547 (1959).

14. *See* Skidmore v. Swift & Co., 323 U.S. 134 (1944).

15. Draft of Revised Model State Administrative Procedure Act § 1-102(7) (April 3, 1980).

16. "Person" is defined by the APA to include partnerships, corporations, bodies politic, and any unincorporated groups that may sue or be sued under a common name.

17. Porter v. Dept. of Insurance, 40 N.C. App. 376, 253 S.E.2d 44 (1979). High Rock Lake Association v. Environmental Management Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979). Both plaintiffs sought declaratory judgments. One ground on which the court rejected these attempts was that the controversy was not yet fully clarified. The court added that by enacting provisions for administrative review of rules, the legislature wisely determined that the agency itself should have the first opportunity to review the propriety and application of its own rules.

18. The APA defines "aggrieved" to mean any person directly or indirectly affected substantially in his person, property, or public office or employment by an agency decision.

Administrative hearings

Administrative hearings, which use procedures characteristic of trials, are required for contested cases. "Contested cases" is the term applied to those agency proceedings that determine legal rights, duties, or privileges. Examples of contested cases are rate-making and licensing of businesses and individuals. Over a hundred state regulatory programs that issue licenses or permits are subject to APA requirements. It is not always clear whether a particular proceeding comes within the contested-case category. For contested-case provisions to apply, the law must require an agency decision to be made "after an opportunity for an adjudicatory hearing." Agency information-gathering meetings, which are held to decide whether to initiate proceedings, are not contested cases from which a party is entitled to seek judicial review.[19]

Although administrative hearings are usually informal, they require more procedural protections than the simple notice and comment components of rule-making. Parties must be given the chance for a hearing without "undue delay" and must be sent notice of the hearing (including its time, place, and nature) and a short, plain statement of the factual allegations. All hearings must be open to the public, and other persons may petition to intervene in the proceedings. If the hearing is conducted by a majority of agency members, it will be held in the county where the agency maintains its principal office (usually Wake County). But if it is conducted by a hearing officer or a minority of agency members, it must be held in the county of residence of any person whose property or rights are the subject matter of the hearing.

Although the parties have a number of protections like those afforded in trials, the degree of formality of contested-case hearings varies with the agency and issue involved. Administrative hearings conducted before the Banking, Savings and Loan, and Utilities commissions are highly sophisticated, whereas a person faced with disciplinary proceedings before an occupational licensing board may choose to appear in his own behalf and informally tell his side of the story.

Judicial review

Any person who is aggrieved by a final agency decision and has exhausted all administrative remedies may seek judicial review under the APA, unless another statute provides a scope of review at least equal to that afforded in the APA.[20] The North Carolina Supreme Court has held that the statute's primary purpose is to confer the right of review and it should be liberally construed to effectuate that right.[21] Moreover, the APA judicial review procedures may be used in situations in which the applicable statute does not specify the procedure and scope of review that is contemplated.[22]

The petitioner must file his appeal in the Wake County Superior Court within thirty days after he receives the agency decision. (If the original decision was made by a local agency or board and appealed to the state board, the petition may be filed in the superior court of the county where the original decision was made.)

The APA (Administrative Procedure Act) regulates two major kinds of agency action, rule-making and administrative hearings, and also the form of judicial review of such actions.

The reviewing court is authorized to affirm the decision, remand the case to the agency for further proceedings, or reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced. The most common reason for a court to overturn an agency decision is that the decision is unsupported by substantial evidence on the whole record.[23] On review, the court is not allowed to second-guess agency judgment as between two reasonably conflicting views, and it must uphold the agency if its findings are supported by competent, material, and substantial evidence. This relatively permissive standard of review results largely from deference to administrative expertise.

Administrative reforms in North Carolina

Since the General Assembly passed the APA, it has enacted several other laws affecting administrative procedure. These statutes allow for legislative oversight of agency rule-making, a special commission to study several significant administrative law issues, and a performance review of over 100 state regulatory programs.

Review of administrative rules. In 1977 the legislature established an Administrative Rules Review Committee

19. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979); High Rock Lake Association v. Environmental Management Comm'n, 39 N.C. App. 699, 252 S.E.2d 109 (1979).

20. *See, e.g.*, Occidental Life Insurance Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

21. *See, e.g., In re* Harris, 273 N.C. 20, 159 S.E.2d 539 (1968); James v. Wayne County Board of Education, 15 N.C. App. 531, 190 S.E.2d 224 (1972).

22. *Id.* Two procedures to provide interim relief to petitioners have recently been clarified by the North Carolina Court of Appeals. If the agency has not made its final decision, the petitioner may seek a court order compelling the agency to act—a remedy that can be used when the agency has exercised unreasonable delay. Davis v. Dept. of Transportation, 39 N.C. App. 190, 250 S.E.2d 64 (1978); Stevenson v. Dept. of Insurance, 31 N.C. App. 299, 229 S.E.2d 209 (1976). After the agency has made a final decision, the appealing party may apply to the reviewing court for an order to stay operation of the agency decision until the outcome of the review.

23. For a discussion of the whole record test, *see* Boehm v. Board of Podiatry Examiners, 41 N.C. App. 567, 255 S.E.2d 328 (1979).

composed of seven legislators.[24] All agency rules must be filed with the Committee before they are filed with the Attorney General. The Review Committee, which scrutinizes as many as 600 state rules and regulations per month, is empowered to determine whether an agency has acted within its statutory authority in promulgating a rule. If it finds that an agency has exceeded its authority, it lets the agency know of this objection. Then, if the agency refuses to amend the rule, the Legislative Research Commission undertakes a similar review-and-objection procedure. If the agency still refuses to revise the rule, neither the Committee nor the Commission can veto it, but they may recommend appropriate legislative action to the legislature for the next regular session.[25]

The Committee is now considering proposals for increasing its oversight powers. Fifteen states—including Georgia, South Carolina, and Tennessee—allow legislative committees to veto agency rules, suspend rules between legislative sessions, or veto rules, subject to reversal by the legislature or the governor.

Legislative veto. Experts disagree on the constitutionality of a legislative veto.[26] The principal opposition argument is that the legislative veto contradicts the separation-of-powers doctrine by interfering with the chief executive's constitutional role as exclusive executor of the laws passed by the legislature. Proponents contend that the separation-of-powers doctrine has greater utility as an abstract ideal than as a strict operational standard. Moreover, they say, the delegation of *any* legislative power to an administrative agency violates the pure separation-of-powers principle, and courts have found such delegations constitutional so long as the legislature makes the delegation subject to sufficient standards for its exercise. Thus, the argument goes, the legislature can retain some control over agency behavior. Lower courts have ruled both ways on the constitutionality of a legislative veto, and the experts generally agree that the United States Supreme Court ultimately will resolve the controversy. Court decisions so far suggest that slight modifications in the context of veto legislation could change the constitutional picture drastically.

A legislative veto, even if constitutional, may not achieve its intended purposes. Unlike the normal process of legislative amendment, legislative vetoes totally destroy the rules as promulgated and leave nothing in their place; perhaps no rule is worse than a bad rule. Other authorities have suggested that legislators eventually may become hesitant to exercise legislative vetoes for fear that the public may hold them partly accountable for actions of the bureaucracy.

Administrative Law Study Commission. In 1979 the General Assembly established the Administrative Law Study Commission to examine a number of current administrative law issues.[27] One issue the commission will study is: How should the Attorney General's office fulfill its statutory duty to publish all rules that are filed in that office? The only complete copy of all state rules and regulations directly accessible to the public is on file with the Attorney General in Raleigh, which makes it difficult for people throughout the state to obtain a copy of particular agency rules. Although the APA requires the Attorney General to publish all rules with periodic updates, money has never been appropriated for this purpose. Another issue the Commission will address is whether the Administrative Rules Review Committee, discussed above, should have additional powers. Third, the Commission will study how to reduce the total number of agency rules. Finally, it will investigate whether a single pool of hearing officers should be created to conduct administrative hearings for all state agencies. Currently, hearing officers are employed by various state agencies, or are commission or board members, or are furnished by the Department of Justice.

The Commission was not organized in time to meet its reporting deadline of January 1, 1980, but it continues to operate on an informal basis. Legislation passed this year to extend the Commission's life and broaden its mission.

Possible future reforms

The American Bar Association report of September 1979 contains a number of recommendations based on an ABA comprehensive study of the growth and operation of regulatory agencies.[28] Although the report addresses federal agencies, the recommendations are relevant to North Carolina administrative procedure, and some of them may indicate future trends in the state laws that govern agency actions. Some ABA recommendations follow.

1. *When possible, less intrusive regulatory measures should replace traditional governmental intervention in the economy.* These measures include profit incentives, recourse to taxation, disclosure of information, and increased reliance on the free market.

2. *A means must be developed to balance competing and conflicting economic and social goals.* Because regulatory agencies are numerous and each is oriented

24. N.C. GEN. STAT. §§ 120-30.24 through -30.35.

25. One practice that the Committee expressed particular concern about was the agencies' use of general rule-making authority to establish service fees or charges to the public. On Committee initiative in 1979, the legislature forbade such charges unless provided for by statute.

26. *See generally* McGowan, *Congress, Court, and Control of Delegated Power*, 77 COLUM. L. REV. 1119 (1977).

27. N.C. Sess. Laws 1979, Res. 77.

28. American Bar Association, Federal Regulation: Roads to Reform (Sept. 1979 draft report).

to a single mission, their actions should be coordinated with those of other agencies and departments. One example of conflict in regulatory goals in North Carolina is the dilemma that OSHA regulations present for local governments trying to provide job corps opportunities. Although both programs have laudable goals, the effect of some OSHA restrictions is to limit job corps positions to menial kinds of work. The ABA has proposed several methods to achieve necessary balancing of societal goals: (a) Authorize the chief executive limited authority to issue an order that would modify or require significant agency actions either before the agency gives a notice of proposed rule-making or after a rule is issued. (b) Authorize the chief executive to require agencies to prepare regulatory analyses examining the impact of major regulatory decisions on other national goals; such an analysis could include a cost/benefit analysis. (c) Permit the legislature to review the major grants of power delegated to the executive or to agencies. (This suggestion confronts the constitutional issue described in the discussion of legislative vetoes on page 48.[29])

3. *Agency procedures and management practices need to be improved.* Many agency procedures are too slow, expensive, and cumbersome. The ABA suggests (a) providing a modified procedure to decide whether there are specific factual disputes or questions of expert opinion for which a formal trial type of hearing is necessary, (b) encouraging hearing officers to exercise greater control over agency proceedings, and (c) allowing agencies to delegate final decision-making authority to presiding officers or staff appeal boards.

4. *The legislature should appropriate money to pay attorney's fees and other expenses for participation in administrative proceedings* when such action is necessary to assure the presentation of positions that deserve full and fair consideration in the public interest and would not otherwise be presented.

5. *Agencies should establish policy consultation boards* to give agency members a broad spectrum of practical policy advice.

6. *Agencies should be required to establish management procedures to identify and eliminate wasteful or duplicative procedural steps and to establish deadlines for classes of proceedings.* An outside audit of agency actions is essential to the success of this effort. North Carolina has a one-time review like this in the Sunset provisions for regulatory agencies.[30]

Conclusion

Although everyone agrees that changes are needed in the administrative process, the form of these changes is yet to be decided. The ABA suggests several reforms.[31] Some—like the legislative veto and taxpayer funding of public participation—are controversial. Others—like greater control of administrative hearings by presiding officers through the more vigorous exercise of powers already given them by statute—are not. Although the ABA reforms are intended for federal agency activities, most of them can be used in North Carolina. The only ABA-suggested reform now under consideration in North Carolina is some kind of a legislative veto over agency rules and regulations.

Although North Carolina's regulatory structure is less complex, more closely in touch with citizen attitudes, and in general, more informal than the federal process, it is subject to some of the same criticisms as the federal system. Furthermore, the trend has been for government at all levels to continue to grow, and administrative functions and delegations of legislative authority to expert agencies probably will increase. Therefore some ABA proposals may be appropriate here in the near future.

Whatever reforms are adopted, several ideas need to be kept in mind. The purpose of regulation is to preserve incentives for growth and increased productivity while still protecting important social values and objectives that totally free market operations cannot always assure. The balance is not simple to attain. □

29. An American Bar Association study suggests that a constitutional form of veto can be achieved in a statute that delegates a particular power by providing (a) that the delegation of power be limited to a specific length of time, and (b) that for a brief time before the rule takes effect the agency may withdraw or modify the action on resolution of either legislative house.

30. The 1979 General Assembly saw the first test of the new Sunset Law. The law, which was passed in 1977 to curb the growth of bureaucracy, requires a formal, periodic performance evaluation of approximately 130 state regulatory programs. It set deadlines—the first was July 1, 1979—for specified agencies or programs to expire unless the General Assembly votes to re-establish them. In 1979 the Governmental Evaluation Commission (the Sunset Commission) and its staff scrutinized 17 programs. Of these, 12 were continued—some with extensive changes—and five were allowed to die, despite opposition from some groups that were about to lose the benefits of regulation. Changes consistently advocated by the Commission included strengthening board enforcement powers, adding public members, and limiting the number of terms served by board members.

The Commission is now evaluating a number of programs in the health care and environmental fields. Reports on some of these agencies — including those governing accountants, hearing-aid dealers and fitters, and speech and language pathologists and audiologists — were filed in the 1980 legislative session. It will also examine broader topics in the regulatory field, including whether an overall umbrella agency should be responsible for supervising individual boards' enforcement, licensing, and rule-making activities. In addition, the Sunset process has sparked a number of agency bills designed to clean up constitutional problems and obsolete language in licensing statutes that are not yet up for review.

Although Congress is still struggling over the enactment of a federal Sunset process, the concept has caught on more quickly throughout the nation than any other kind of regulatory reform, and at least 30 states have legislation similar to North Carolina's.

31. The reforms were criticized because the ABA Commission that proposed them appeared to be dominated by members of the regulated industries. Thus the Commission make-up and its funding sources might appear to have a preconceived tendency toward deregulation. Remarks of Chief Judge Curtis L. Wagner, Jr., to ABA National Conference on Federal Regulation (Sept. 28, 1979).

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