

# Popular Government

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*Lincoln County Remodels Its  
Courthouse*

*State Documents: Proposed Depository  
System*

*Land Records Management*

*Contributions of the City Manager to  
Effective Governance*

*May a North Carolina Municipality  
Levy Privilege License Taxes on  
Newspapers and Radio and Television  
Stations?*

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Fall 1986

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# Lincoln County Remodels Its Courthouse

## *Result: Three Excellent Courtrooms*

Carol Offen

**W**hen Lincoln County held an Open House in early spring to announce the reopening of its expanded and renovated 1923 courthouse, county residents had to be pleased with the careful planning that went into the project. The outmoded but elegant and structurally sound stone courthouse had undergone a transformation that thriftily (total cost of \$550,000) turned it into an efficient and dignified judicial facility for the 1980s. Without sacrificing the building's dignified exterior, the remodeling yielded three proper, well-appointed courtrooms where there had been two inappropriate rooms—either too large and too noisy or too small.

Since the mid 1960s, North Carolina counties have been responsible for the cost of housing and furnishing the courts, while the state covers all operating expenses. Like other growing counties, particularly those with courthouses built in the prosperous 1920s, Lincoln County has found itself dubiously blessed with a handsome, commodious courtroom that seated more than 500 spectators but lacked adequate space for current ancillary court needs.

The trend in recent years has been toward smaller, modestly furnished courtrooms with better

organized ancillary facilities.<sup>1</sup> Seeking additional courtrooms, some counties—like Surry—built annexes. Others—like Catawba County—constructed separate new buildings, often outside of town. Like Rutherford County, Lincoln chose to convert space within the outer walls of its courthouse, preserving the pedimented Doric columns and porticoes that have long dominated the local scene.

The courthouse, designed by James A. Salter, a Raleigh architect best known for his Georgian Revival houses, stands on a prominent site on the east-west axis of Main Street. The graceful surrounding lawns enhance its position as the focal point of downtown Lincolnton, a county seat of about 5,000 people. Judge John R. Friday, who has served as Lincoln County's resident superior court judge for the past 16 years, grew up in the region and recalls how the courthouse square was the traditional meeting place and courting area for young people from nearby camp meetings. Today, it is a popular gathering place for teenagers. For their elders, the courthouse and its square have a somewhat more subdued meaning. The site of war memorials, it is an

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The author is a free-lance writer who has published articles in both Europe and the United States. She wishes to thank the following people for their help and hospitality as she gathered information for this article: Fred Houser, James L. Beam, Judge John R. Friday, and Nellie L. Bess.

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1. *100 Courthouses: A Report on North Carolina Judicial Facilities* (A Project for the School of Design, North Carolina State University at Raleigh, for the North Carolina Administrative Offices of the Courts), vol. 1, *The Statewide Perspective*, p. 22.

architectural landmark, undoubtedly "an expression of county identity, pride and affluence."<sup>2</sup>

Expressing that local pride has been part of the county courthouse's role for more than 200 years. The first Lincoln County court was actually held in a private residence, nine miles from Lincolnton, in 1783. When Lincolnton was designated the county seat in 1785, a log courthouse was built, followed three years later by a frame building that was used until 1810. That structure was replaced by still another until 1853, when a new courthouse was built of brick and stone. That building endured until 1921, when the commissioners declared that it too was "inadequate."

Recorder's court, as district court was known in Lincoln County before the statewide district court system replaced the myriad local courts in 1968, used to handle most cases. Local lawyers recall finishing recorder's court cases for the week by lunchtime on Monday: superior court held perhaps two trials a year. Even as the number of trials increased, several jury trials could still be accommodated in the course of a week, and one courtroom was sufficient. But when district court began to sit regularly from Monday to Thursday, and superior court began to be in session for one or two weeks a month, the situation became untenable.

In 1978, the School of Design at North Carolina State University undertook the North Carolina Court Study for the Administrative Office of the Courts. In terms of adequacy of physical condition, that study ranked the Lincoln County Courthouse as number 45 among the 100 courthouses studied. Citing general overcrowding and various safety hazards, the study's main recommendations for immediate action were to

expand judicial use of the existing courthouse, relocate to another facility selected non-judicial functions . . . renovate about 7350 sq. ft. of recovered space . . . . From this recovered space, provide . . . a new or expanded and improved district courtroom; extensive court ancillary spaces, expansion of facilities for the clerk of court, magistrates, district attorney, juvenile counselor and probation and parole officers and an office for the public defender. . . .<sup>3</sup>

The courthouse had already undergone renovations in 1962, 1973, and 1982 (when many basement safety hazards were corrected). County Manager Fred M. Houser says that the recent expansion was already on his mind in 1973, when the district courtroom, air conditioning, and an elevator were added. But expansion was not yet justified by courtroom use, which began to increase markedly only in the late seventies, along with county population. The population jumped from 32,682 in 1970 to 42,372 in 1980, largely as a result of construction in the Lake Norman area.

As increased and expanded county functions (e.g., planning for the new water system) began to vie for that limited courthouse space, the county built the Citizens Center to house virtually all of the non-judicial functions mentioned in the North Carolina Courthouse Study. Offices for the county manager, commissioners, and several other county services were moved to the new building across the street. But the county still needed additional courtrooms. Five years ago the county began to plan officially for the recent expansion as part of its long-range program for major buildings.

The plan called for a drastic reorganization of interior space. To do this, the vertical space in the main courtroom was to be divided by constructing a new ceiling that became the floor to another story above the original courtroom. That newly created third-floor area became the new superior courtroom. The second-floor area was divided by a center corridor, with a district courtroom on either side. The remaining 6,000 square feet of space on both floors were to be rearranged to provide badly needed facilities and refurbished as befitted the courthouse.

The courthouse was a high priority in the county's capital budget planning, along with the school building program. Neither issuing bonds nor raising the tax rate was a palatable option. Thus county officials were forced to work within the constraints of the county budget. Their success rests not only on architect James L. Beam's obvious talents and grasp of courthouse functions but also on the ability of the manager, the commissioners, the resident judge, and court personnel to communicate the county's own needs.

Houser first asked Beam (from the architectural firm of Beam and Yeargin in Gastonia) to give them a "rough idea" of what it would cost to install the extra floor. Beam then called in structural engineers to

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2. *Ibid.*, p. 19.

3. *Ibid.*, vol. 2, p. 353.

determine whether the foundation walls would support framing for the floor. The firm of Beam and Yeargin was not new to Lincoln County projects. It had made the earlier courthouse renovations, and over the past 25 years Beam had designed the county's colonial-style library, several schools, and a series of expansions of the county's social services building.

A trim, mild-mannered man who shies from the spotlight, Beam had no legal training but judiciously did his homework on this assignment. In addition to talking with the people directly involved with the courthouse, he consulted with the County Bar Association and visited other courthouses on which alterations or new construction had been made, speaking with personnel at each site. He also reported that "Judge Friday sent us several copies of *Popular Government* [notably the fall 1984 issue, which contained an article on courtroom design]<sup>4</sup> during our planning process. The articles were very helpful."

**O**n the basis of a preliminary estimate, the county put aside \$250,000 in the 1984-1985 budget—already more than the \$225,000 required to construct the entire current courthouse in 1923. But as bids came in, the commissioners realized that this amount would cover only about half the cost. Already thoroughly committed to the project and nearing the end of a fiscal year, the commissioners asked for a second, more detailed and realistic estimate. When that arrived, they agreed to appropriate an additional \$300,000 in the 1985-1986 budget. By spreading the funding over two years, they were able to accommodate the entire expense: \$500,000 for the original contract and another \$50,000 in assorted costs that have brought the total to \$550,000.

County officials were determined to stay within the appropriations. They set priorities, concentrating on the second and third floors. Work began in August 1985 and was completed in March 1986.

To put in the new floor, "we installed columns on top of these heavy first floor walls," Beam explained. "Then we put in steel girders, used steel bar joist framing and then built a floor that was on the

same level as the existing second floor level of the courthouse; the north wing and south wings we tied together with a corridor."

When the existing ancillary spaces were re-arranged to support the new second-floor courtrooms, a jury room served by only one toilet became a remodeled judge's chambers. The expanded law library, whose three rooms often double as attorney-client conference rooms, occupies the space formerly used as the district attorney's office. That office is now across the hall near a new holding cell. On the third floor, additional public toilets were provided, as well as a counseling room, an employee lounge, a grand jury room that doubles as a jury lounge, a jury assembly room, and five as yet unassigned spaces. Before the renovations, the only public toilets in the building were in the basement.

Space had been so limited that the only "office" for the resident superior court judge was on one side of the second-floor bookkeeping office of the clerk of court. The walls of the handsomely furnished third-floor room that Judge Friday now occupies are ample enough to display his degrees, early courthouse photos, and framed family portraits.

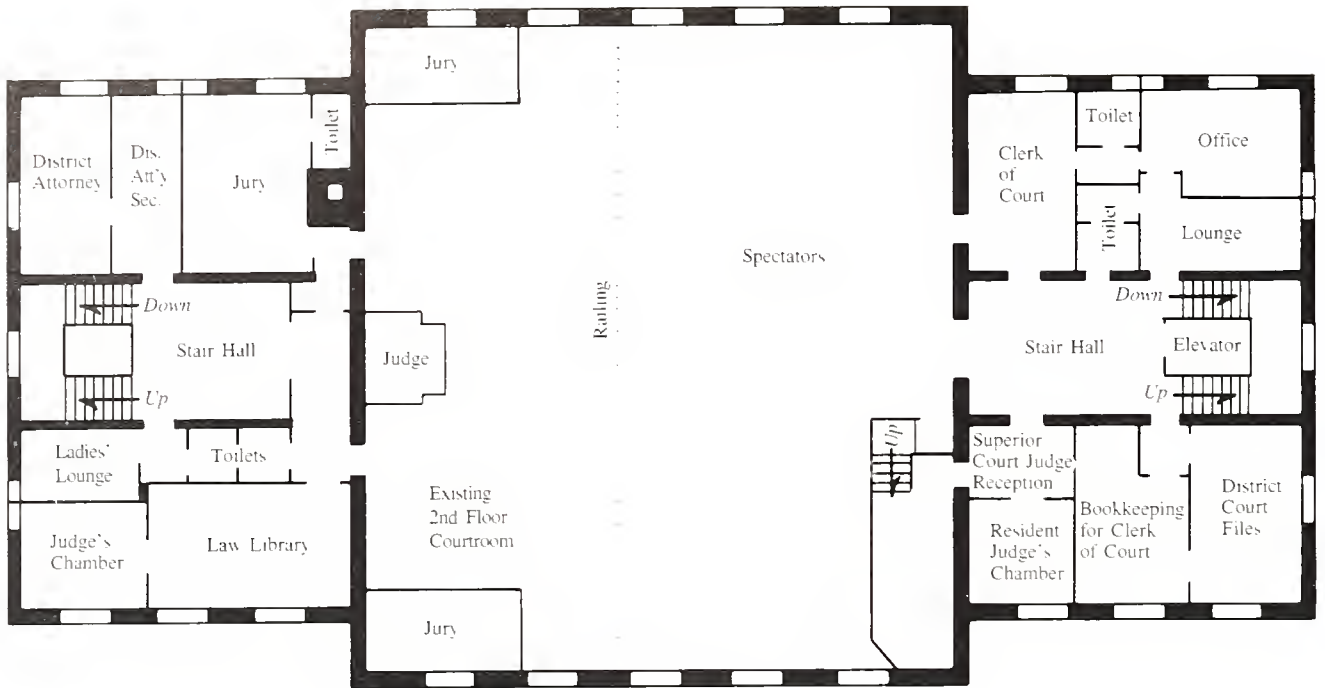
The cramped old district courtroom—which the courthouse study had cited as "extremely inadequate," noting that it did "not contribute to judicial forum and decorum"—was completely replaced. Now, Chief District Court Judge George Hamrick looks out from his curved wooden bench on a well-lighted courtroom furnished with noiseless wooden pews seating about 135 people, set against a background of deep brown carpet and color-coordinated wall coverings. He reports a difference in that judicial decorum. "A more formal courtroom creates respect," he maintains. "The more informal the courtroom, the harder it is to keep order—not just the spectators, but the lawyers too."

The new courtrooms also feature an innovative layout. In both, the judge's bench is on a side wall directly facing the jury box, and the witness stand is in the middle of the back wall. Beam had been largely influenced in that design decision by the Gaston County court administrator, Steven Wheeler, who recommended a placement that would enable a judge to see the witness's face and to be more aware of how well jury members could hear the witness.

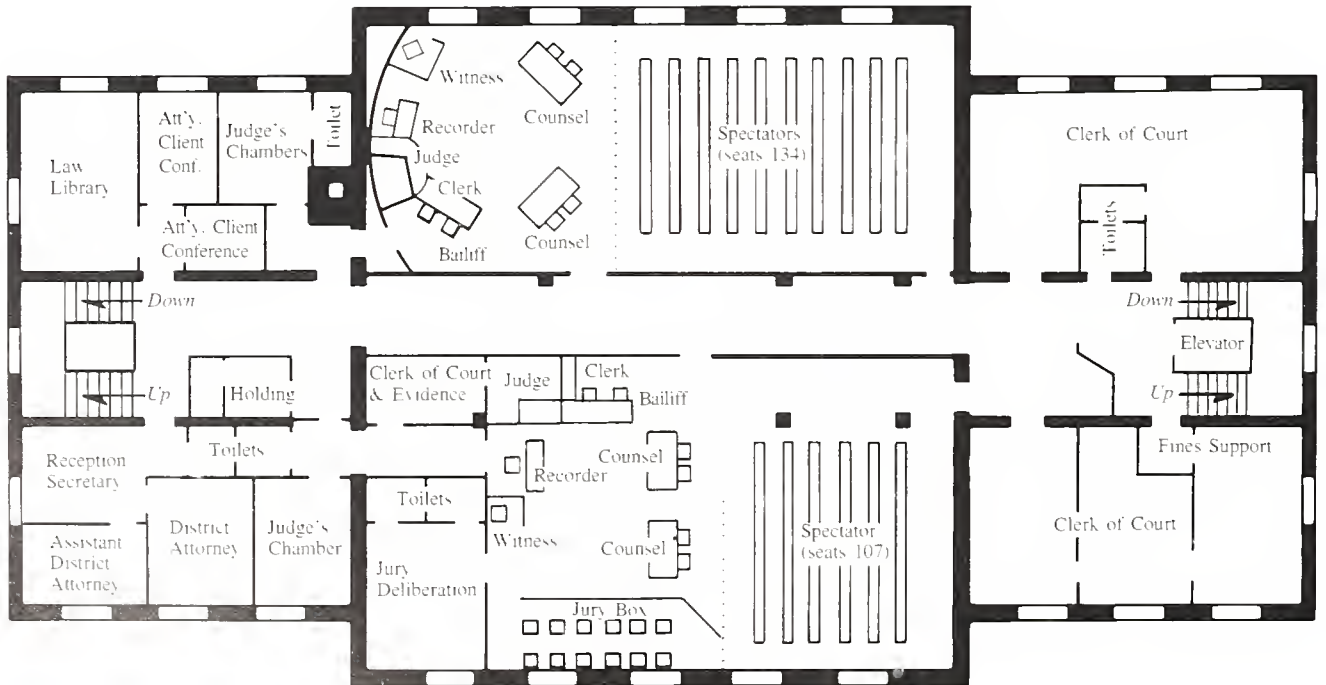
Judge Friday says that the arrangement has generally been well received. He admits that he himself loves it. "It increases the attention span of

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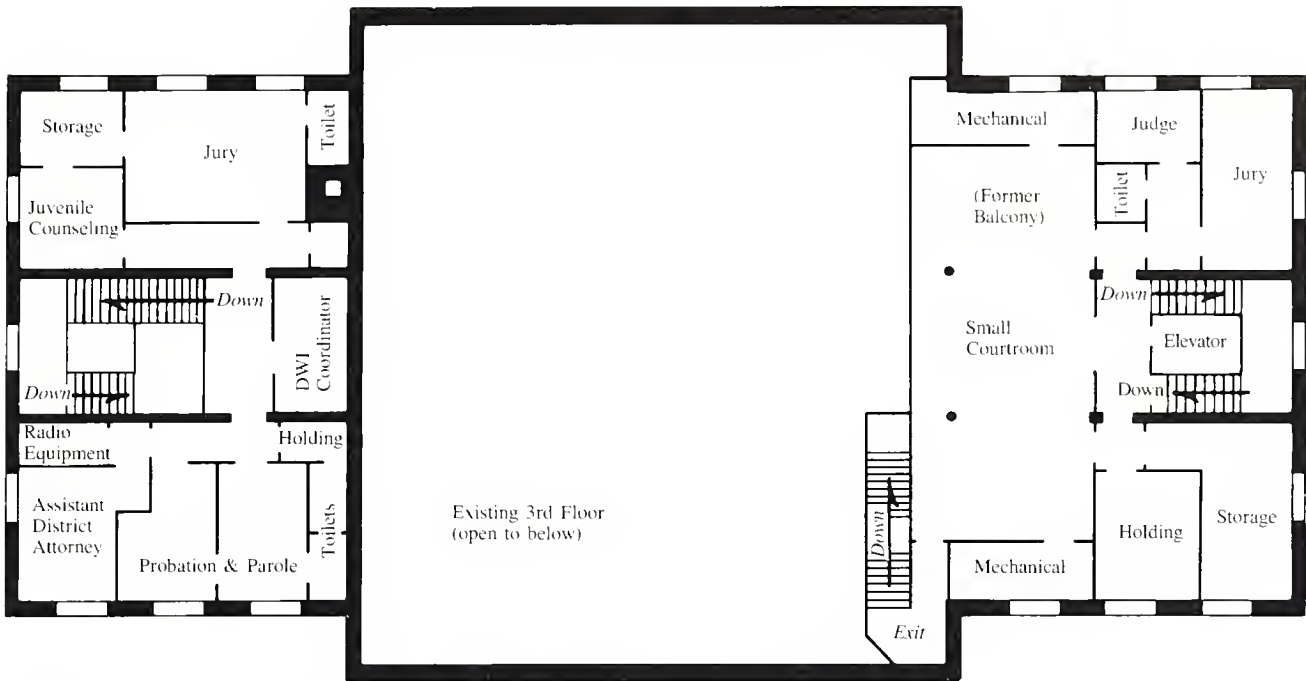
4. Robert P. Burns, "Designing the Good Courtroom," *Popular Government* 50 (Fall 1984), 1-10.



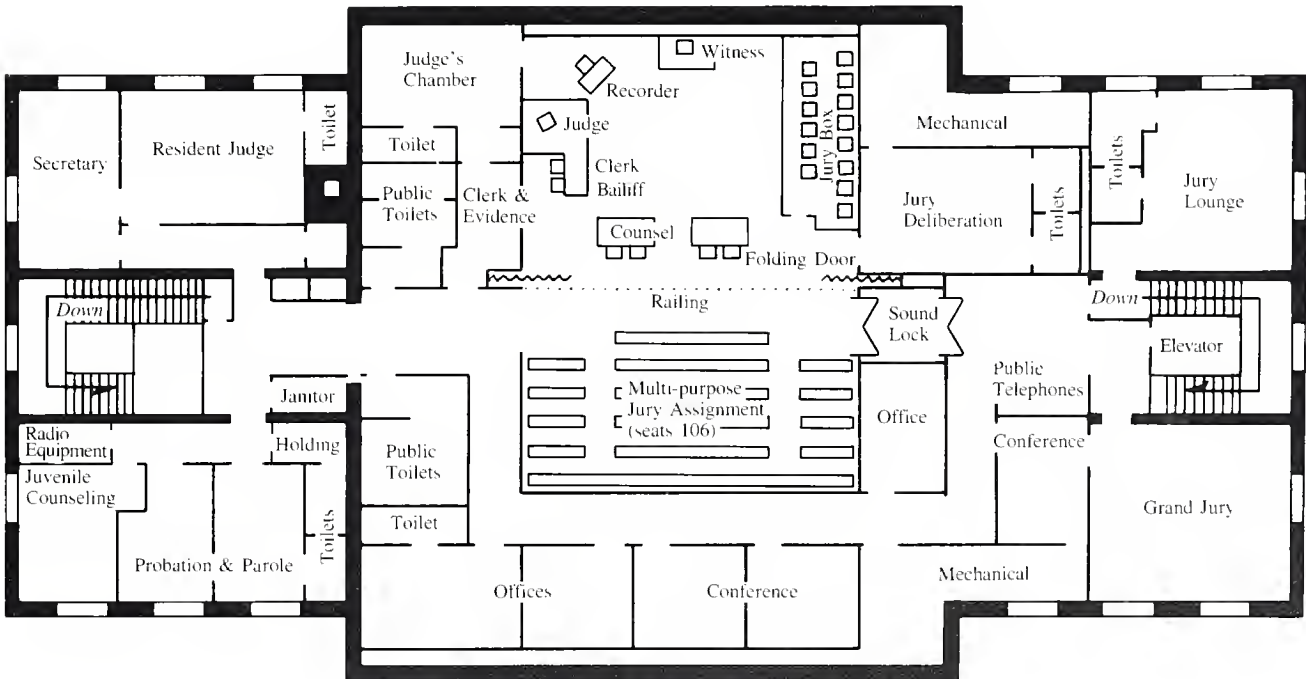
Lincoln County Courthouse Floor Plans — second floor before renovation.



Lincoln County Courthouse Floor Plans — second floor after renovation.

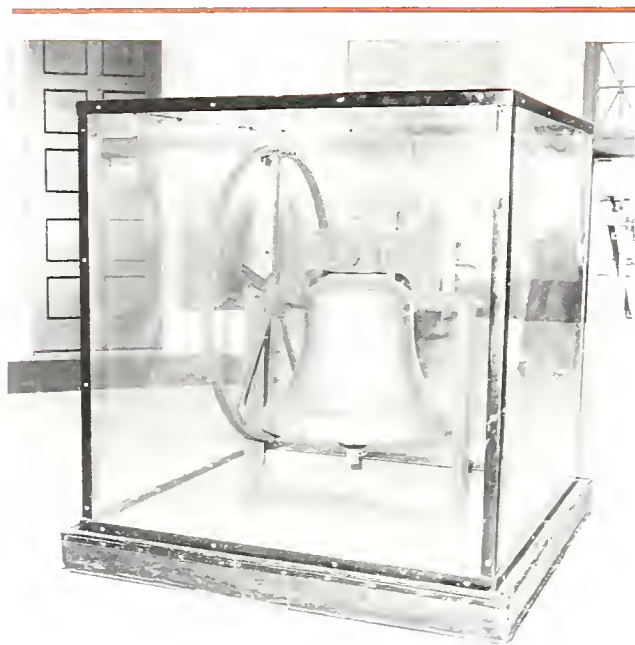


*Lincoln County Courthouse Floor Plans — third floor before renovation.*



*Lincoln County Courthouse Floor Plans — third floor after renovation.*

the jury, for one thing, by facilitating eye contact.” he noted. But Judge Robert A. Collier, who held superior court there for the first time in early April, says that he personally prefers a corner position, so that he can see the audience without sacrificing his view of the jury.



Earlier in the century, the town butcher used to ring the massive cast-iron bell atop the courthouse to announce when he had fresh meat. The bell, now encased in glass, stands in the center of the courthouse lobby.

Renovation costs were often kept down by preserving elements of the building that would have been expensive to replace. Where possible, features in new rooms—like door trim and base moldings—were scaled to the original work.

Only when all essential work was completed and funds were still available, was additional work—mostly cosmetic—done on the elegant main floor: repainting, improved lighting in the clerk of court’s and register of deeds’ offices, and carpeting in the work areas. The lobby’s lovely white marble floors, in excellent condition, needed only cleaning. The wall paneling, a durable marlite wood veneer, had been done in 1953. About \$16,000 was earmarked for recaulking exterior walls and projections where limestone joints had blackened from moisture.

But the first priority was always the most practical one: functional courtrooms.

Even though the courtroom’s original 30-foot vaulted ceilings had been lowered by seven feet in 1962 and acoustical tiles added, it was still impossible to hear in the old courtroom. Longtime court reporter Sandra Arnold remembered,

If it got hot in there—it was stuffy in winter—and anybody opened a window, you heard every car that went by, everybody that hollered to his friend on the court square. . . . And the venetian blinds would flap . . . . The counsels’ chairs squeaked something awful. There was one that sounded like somebody had the hiccups . . . . If someone sneezed—if I sneezed—it was terrible. That just blew your whole train of thought.

Armed with the findings of the bar association and that well-circulated article on courtroom design, Beam had focused much of his attention on courtroom acoustics. Besides lowering the ceiling to put in the extra floor, he took other measures:

—**Ceilings.** “We picked up a comment in *Popular Government* about using a hard ceiling over the court area and absorbent ceiling over the spectator area, so we absorb sound there and project sound over the arena area.” Beam said. The author of that article, Robert P. Burns, had noted a common mistake in renovations—installation of acoustical tile ceilings *throughout* the courtroom.

—**Floors.** To eliminate obtrusive sounds like scraping chair legs or heavy footsteps on hard floors, all the courtrooms are now carpeted throughout.

—**Walls.** Because of carpeted floors, the walls were made a hard surface for sound projection. They are paneled halfway and have textured vinyl wall coverings, which give a softer look, on the upper portion.

—**Seating.** The original courtroom had old-fashioned auditorium-style seats that “made a racket” as they snapped back when someone got up. To avoid squeaky hinges and moving chairs, fixed wooden pews provide seating in every courtroom. The pews and all movable furniture were not part of the architect’s contract and had to be provided at additional county expense (about \$30,000). The furniture was constructed by the Department of Correction.

—**General Circulation.** In an effort to separate traffic, the south end of the courthouse was designated for court personnel and the north end for public accommodations. Before the alterations, peo-



ple had to walk through the courtroom in order to cross the courthouse, so that there was a continuous distracting flow of traffic. The new superior courtroom has an outer hallway around it; the two second-floor district courtrooms are off a central corridor.

—**Temperature Control.** New heating and air-conditioning ducts were installed in the new superior court ceiling, and the existing ones on the second floor were adjusted to modify the airflow.

The lighting, which had not come under as much criticism as the acoustics, was also improved. There is a higher foot-candle of light over the court area and reduced light over the spectator area. All lighting in the building meets the new energy code in that it can be lighted fully or lighted with only half the lamps in each fixture.

“Lighting in all the courtrooms is superb,” says Judge Hamrick. “In some courthouses you get a glare—you can’t see the DA or you can’t see the paper. But here the lighting is soft and very effective.”

To cut down on glare, fabric-backed vinyl wall coverings have been substituted for glossy paint. Beam considers that, though twice as expensive as paint, the wall coverings are cost-effective for practical as well as aesthetic reasons: they disguise wall imperfections and are fully washable. The Glidden Paint Company created the attractive color scheme throughout the courthouse. The superior courtroom, for example, has a handsome pale blue and gray striped wall covering that sets off the dark blue carpet.

“It’s been said that we have the most tastefully decorated courtrooms in the state,” Judge Friday reports enthusiastically.

Judging by early reaction, the renovations have been a great success, and county officials are effusively proud. All were eager to show the results off

to a visitor. “One of the judges from across the state who came to the Open House told us he’d seen buildings that cost eight or ten million dollars that didn’t have facilities as good as we have,” declared Harry R. Ritchie, chairman of the board of commissioners.

**A**lthough it is still too early for all potential problem areas to have surfaced, a few “bugs” have been noted:

—A ¾-inch space under the oak door of the jury room directly adjoining the superior courtroom that allowed jury members to overhear what was being said in the courtroom. Beam plans to put a floor sweep under the door to reduce sound transmission.

—The fact that the opening in the barrier between the superior courtroom’s trial area and the spectators is in middle of the railing, makes it necessary for jury members called out of the audience to file past the defendant en route to their places. The second-floor courtrooms have an opening at each end of the jury box, which avoids that problem.

—The court reporter says that she can hear background sounds from the judge’s chambers of the superior courtroom. Solid masonry walls could not be used there because of weight considerations, Beam noted, but said the situation could probably still be improved.

The architect will continue to work closely with the county manager to iron out any structural problems as they arise, just as he did in earlier stages of the courthouse work.

“Either it’s functional or it fails to function. That’s where your test goes,” declares Beam. For a courthouse, particularly, that is surely the ultimate verdict. **P**

# State Documents: Proposed Statewide Depository System

Marjorie W. Lindsey

A recent survey of North Carolina State agencies (including state-supported universities and community colleges)<sup>1</sup> revealed that during the 1983/84 fiscal year, the agencies printed over 56.5 million copies of some 4,029 titles. Just what are these "state documents," who uses them, and how are they distributed?

## State documents and their users

Publications of state agencies include annual reports, statistical analyses, special studies, budgets, laws and regulations, directories, magazines, and bulletins. Information in these publications is frequently of critical interest to North Carolina government officials, business people, professionals, and the general public—from the student preparing a term paper to the family planning a summer vacation. *Popular Government*,<sup>2</sup> published by the Institute of Government, and *The Wildlife Resources Com-*

mission's *Wildlife in North Carolina*<sup>3</sup> are two examples of widely-read periodicals. Vacationers in the state enhance their travels with information found in the *North Carolina Camping and Outdoors Directory*, the *North Carolina Accommodations Directory*, and the *North Carolina Calendar of Events*, all published by the North Carolina Travel and Tourism Division in the Department of Commerce.<sup>4</sup>

Businesses, investors, and corporate officials find the *Directory of North Carolina Manufacturing Firms*,<sup>5</sup> the *North Carolina Profile*,<sup>6</sup> and *North Carolina Labor Force Estimates*<sup>7</sup> pertinent to their marketing and location needs.

Researchers and government officials use a host of publications, including such documents as *Profile*,

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The author is a former consultant, Division of State Library (retired 1985).

1. North Carolina State Documents Survey Project Final Report, compiled by Marion Shepherd (Raleigh: N.C. North Carolina Department of Cultural Resources, Division of State Library, 1985).

2. *Popular Government*, published quarterly by the Institute of Government, University of North Carolina, Chapel Hill, N.C. 27514

3. *Wildlife in North Carolina*, published monthly by the North Carolina Wildlife Resources Commission, Archdale Building, Raleigh, N.C. 27611.

4. Annual publications of the North Carolina Travel and Tourism Division, Department of Commerce, Raleigh, N.C. 27611.

5. *Directory of North Carolina Manufacturing Firms* (biennial), Industrial Development Division, North Carolina Department of Commerce, Dept. D., P.O. Box 25249, Raleigh, N.C. 27611.

6. *North Carolina Profile*, North Carolina Dept. of Commerce, Industrial Development Division, 430 N. Salisbury St., Raleigh, N.C. 27611. (Each issue of the Profile features a single North Carolina city or town.)

7. *North Carolina Labor Force Estimates by County, Area, and State*, prepared by the Labor Market Information Division, Employment Security Commission of North Carolina, P.O. Box 25903, Raleigh, N.C. 27611, 1984.

*North Carolina Counties; North Carolina State Government Statistical Abstracts*, and various technical reports, all published by the North Carolina State Data Center;<sup>8</sup> the annual *Crime in North Carolina (Uniform Crime Reports)*;<sup>9</sup> and the *North Carolina Administrative Code*, published semi-annually on microfiche and updated monthly in the *North Carolina Register*.<sup>10</sup>

Special one-time reports are also of interest to many: *Hazardous Substances Labelling and Identification and Report of the Property Tax System Study Committee* are examples of studies commissioned by the General Assembly. The *Review of the Department of Commerce's Industrial Development Announcement Series (Executive Summary)*, prepared for the Office of Policy and Planning, North Carolina Department of Administration, by the Center for Urban Affairs and Community Services at North Carolina State University, is another special report that is of interest to the business community.

College catalogs; historical publications; and studies on the environment, day care, the aging, and drug abuse are typical of the various publications generated by state agencies. How can the person interested in finding information on a topic that may be included in a state publication find out whether the information exists and then obtain a copy of the publication?

## Access and distribution

The most reliable and comprehensive source of information on state government documents is the *Checklist of Official North Carolina State Publications* issued bimonthly by the North Carolina Division of State Library, and sent without charge to all requesting libraries in the state, but only items received by or brought to the attention of the State Library are on the list. The State Library, by law (G.S. 147-50.1), is designated as the complete depository of *all* state documents; unfortunately, however, it receives less than half of those materials.

In 1983-84, for example, the State Library received less than one-third of the more than 4,000 titles published.<sup>11</sup>

Individuals can obtain personal copies of items that are included in the checklist by contacting the issuing agency. Many state publications are free; others have a cost-recovery charge. When a title is no longer available for distribution, perhaps because the printing is exhausted, a local library may request a copy on interlibrary loan from the Documents Branch of the Division of State Library. Local libraries have a direct WATS line to the State Library for making loan requests. One may, however, have to wait for a popular item since the State Library has only two copies of each title available for circulation.

A person who is searching for information on a particular topic but has no specific title in mind may ask his or her local library to send the request to the State Library, where specially trained librarians will select the appropriate materials and lend them to the local library. Local libraries also have access to the Online Union Catalog of the North Carolina Library Network, which shows locations of selected state document collections in nearby libraries (usually at colleges and universities).

These time-consuming and haphazard methods of locating and retrieving state publications are ineffective because (1) the State Library does not receive all publications; (2) there is no information about the existence of some publications; (3) only a few copies of each document are sent to the State Library; and (4) the lack of any system of balanced regional distribution impedes user access to publications. An improved acquisition and statewide depository system is clearly needed.

## Proposed depository system

In 1984, the Documents Section of the North Carolina Library Association formed a North Carolina Documents Depository System Committee<sup>12</sup>

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8. Office of State Budget and Management, Research and Planning Services, 116 West Jones Street, Raleigh, N.C. 27611

9. Police Information Network, North Carolina Department of Justice, P.O. Box 27047, Raleigh, N.C., 27611.

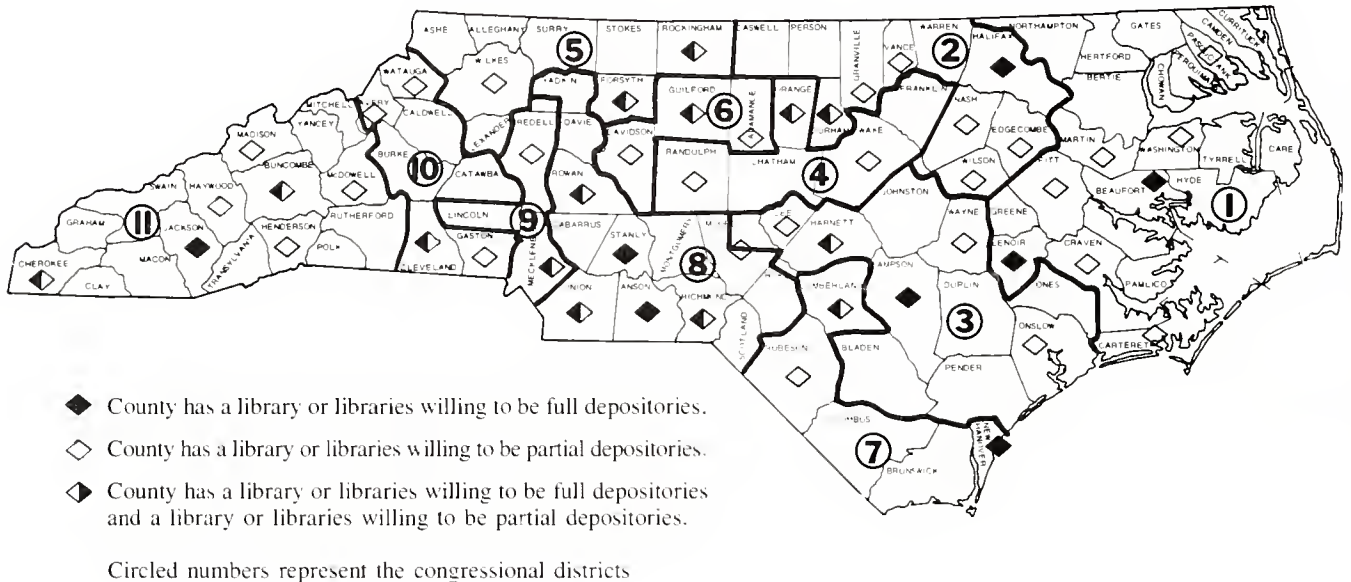
10. North Carolina Office of Administrative Hearings, Raleigh, N.C. 27611.

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11. *Op cit.*, *supra* note 1.

12. For further information, contact Pat Langelier, Chairman, North Carolina Documents Depository Committee, Davis Library 080-A, UNC-CH, Chapel Hill, N.C. 27514; or Cheryl McLean, State Documents Librarian, Documents Branch, Division of State Library, 109 East Jones St., Raleigh, N.C. 27611.

## Proposed Statewide Depository System



to develop eligibility criteria and operational guidelines for depository libraries and to design a depository system for the entire state.

As noted, the State Library is designated by law as the complete depository library for state government publications. It maintains archival and circulating collections and provides full public access to the collection in the library or through interlibrary loan services. Since no other official depositories for state documents currently exist, agencies, libraries, and individuals must apply directly to the publishing agency for a copy of a document, or use the State Library's limited depository collection.

In the April 1986 *North Carolina State Documents Depository System Survey Final Report*,<sup>13</sup> 27 of the 145 libraries surveyed expressed definite in-

terest in becoming full depository libraries, with 69 libraries willing to be partial depositories. This would provide each of the state's congressional districts with at least one full depository library and several partial depository libraries. Citizens in counties without depository libraries would be able to use interlibrary loan services from nearby depositories, or from the State Library. According to legislation that is being considered, each full depository library would receive and maintain a collection of all state documents available for deposit. Each partial depository library would receive copies of publications selected according to the needs of the communities served.

To facilitate distribution of copies to depository libraries, it is proposed that a state publications clearinghouse be established in the State Library. The clearinghouse would advise state agencies about the number of copies needed for distribution, receive these from the agencies, and serve as a central distribution point for all depository libraries. In addition, it is proposed that the clearinghouse prepare one or more microfiche copies of each publication

13. *North Carolina State Documents Depository System Survey Final Report*, compiled by Amanda Jones Chambers. North Carolina Department of Cultural Resources, Division of State Library, 1986).

for reference and interlibrary loan use and for depository libraries that prefer fiche copies.

Establishing a depository system with a clearinghouse for central acquisition and distribution of

Statewide, regional and national availability of state documents and the efficient transfer of state information are fundamental to state government today. Modern library legislation for state documents focuses on making government information available to everyone. Creation of state depository libraries, pursuant to such legislation, benefits all involved--state agencies, libraries, and the general public. In the 41 states that have state documents depository and document distribution systems, state agencies receive wider exposure for their publications, libraries provide more service to their readers, and the public has better access to current information about state government and public affairs.

*Margaret T. Lane*, author of *State Publications and Depository Libraries: A Reference Handbook*. Greenwood Press, 1981.

libraries would agree to supply space; to service their collections; to bear the expense of housing, maintenance, and staffing; and to be open to the public at least 45 hours per week for reference and interlibrary loan services.

Costs to the State Library would include funds for hiring additional staff to handle acquisition and distribution; for additional technology to handle the inventory efficiently; for increased expenses of packaging, postage, and equipment; and for contracting for microfiche reproduction. First year costs to the State Library are estimated at \$120,000, annual costs thereafter at about \$90,000. While these amounts appear relatively small, the lean budget of the State Library will require this additional funding to implement the system.

A library cannot achieve a good, representative collection of documents overnight; it must build slowly. Storage and work space and staff trained in the use and management of these special materials are requisites of a system that is effective enough to win the confidence of government officials, business and professional people, and the general public. By improving efficiency of access, delivery, acquisition, and management of government publications, the proposed clearinghouse and depository system can provide a cost-effective, geographically balanced, statewide distribution of state documents. At the same time, the proposed system would build on current services, provide a vigorous acquisition program, and make state document collections more accessible by providing additional locations with trained staff to assist users quickly and effectively. **P**

documents would not circumscribe an agency's direct service to any individual, other agency, or nondepository library. It would ensure an efficient system for supplying informative, useful, and popular public documents to all citizens through a balanced geographic distribution of depository libraries across the state. Indeed, such an arrangement should make it much easier for agencies to determine the number of copies needed, to send them to a single point, and to be relieved of the sorting and handling required for distribution to the various depository libraries.

## Costs

Yes, there are costs, but building on the services already in place, the costs are modest. Depository

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# Land Records Management in North Carolina

Donald P. Holloway

## Introduction

Legislation adopted in 1977 established the North Carolina Land Records Management Program to provide counties with technical and financial assistance in the modernization of land records. Participation in this program is voluntary. Counties choosing to participate are eligible to receive state funding of up to 50 per cent of the cost of county land-records-improvement projects.

The North Carolina State Plane Coordinate System, which the North Carolina Geodetic Survey is extending to densify the control network statewide, provides vital support for the North Carolina Land Records Management Program. This system supplies the basic structure for uniform large-scale maps, coordinated property surveys, and geo-coded parcel identifiers.<sup>1</sup> Each of these elements in the Land Records Management Program is

designed to: (1) coordinate improved recordkeeping among county offices, (2) establish a uniform means of permanently indexing land-related documents so that a chain of title may be readily traced, and (3) centralize reference material that will greatly expedite access to all records in one computerized index.

## Overview

Over two hundred years' accumulation of land records is stored in some of North Carolina's county courthouses. The population of the state is approximately 6.5 million people, and the county governments collectively maintain records on over three million parcels of land. Almost all of North Carolina's counties are rural. The smallest county has slightly fewer than 3,000 land parcels, and a substantial number of counties have in the neighborhood of 30,000 parcels. Only five counties exceed 100,000 listings. While the larger counties have adopted new technology in their recordkeeping, many smaller ones still follow procedures and techniques that were current many years ago. Until recently, obsolete procedures and a low level of security were common throughout

the state. A significant improvement was realized, however, when a statewide microfilm program was made applicable in all counties. This program was designed primarily to insure against catastrophic loss of valuable permanent records.

A 1977 legislative directive created the Land Records Management Program to assist county governments in "Improvement of Land Records." Each county is eligible to apply for assistance in making incremental improvements to its land-records operations. The financial support from state funds may not exceed 50 per cent of the total cost, and, of course, all assistance must fall within the limits of available staff and funding resources. As a general rule, this assistance applies to the processing and filing of all land-related documents under the jurisdiction of the offices of register of deeds, clerk of court, and tax supervisor. Other offices that may have substantial files on land-related documents, such as a building inspection department, tax collection office, or planning department, should also be included.

The first year of the Land Records Management Program was devoted to research, design, and

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<sup>1</sup> See the discussion *infra*, p. 15.

documentation of specifications and procedures necessary to carry out the mandate of the legislation. The response to this new opportunity has been exciting, to say the least, and has kept program staff working very hard to satisfy all the requests for help.

### **Historical development**

The North Carolina Land Records Management Program has been in existence for nearly nine years, but its roots reach back more than 40 years. The earliest legislation that makes this program possible dates from 1939, when the North Carolina State Plane Coordinate System was written into the General Statutes as the "Official Survey Base." Responsibilities were defined, and precise surveys to densify coordinated monuments<sup>2</sup> throughout the state were undertaken with financial aid from the Federal Works Progress Administration. This early effort was feeble in relation to the total task of providing adequate monumentation, but it served to keep the idea alive.

In 1959, state appropriations on a larger scale provided equipment and staff for the permanent operation of the North Carolina Geodetic Survey. This agency is working closely with state, county, and private organizations to encourage the establishment and use of the "Official Survey Base" of North Carolina. Surveyors and mappers throughout the state have learned to rely on a constantly increasing densification of coordinated survey monuments. Field crews are usually available to respond to special needs

such as large-scale mapping projects or major construction work. Production over the years has resulted in the establishment and calculation of coordinates for more than 14,000 new monuments since 1960, which, when added to the work of the National Geodetic Survey (in existence about 175 years), provides the state's approximately 50,000 square miles with 20,000 positions on the State Plane Coordinate System. This averages one horizontal position per three square miles.

We anticipate a more rapid increase in the density of monuments as more counties assisted by the Land Records Management Program begin to develop large-scale mapping. The increasing availability and use of the Official Survey Base that has resulted from the work of the North Carolina Geodetic Survey now provides tools for large-scale mapping projects and thus creates a favorable climate for two major components of the Land Records Management Program—the state-wide mapping specifications and the uniform parcel identifier. These would not be possible without a well-established coordinate system.

The most recent state legislation, adopted in 1977, finally made specific provisions for initiating the Land Records Management Program. This was accomplished, however, only after many unsuccessful legislative efforts. Proposals for funding large-scale tax map projects launched in previous legislative sessions failed to gain the necessary support. Another proposal, initiated by the North Carolina Bar Association and supported by the registers of deeds, requested funding for research and demonstration activities leading to modernization of land records. This resulted in some research, but no demonstration projects. Still another proposal for the mapping program made by the North Carolina Land Policy Council received less than adequate support.

Fortunately, during the 1977 Legislative Session, these separate interests combined their support for a comprehensive land records project—the Land Records Management Program.

Significantly, the program, adopted and funded by the Legislature, includes features and elements advocated by each of the supporting groups (Tax Assessors Association, Register of Deeds Association, the North Carolina Bar Association). The program gives careful attention to all aspects of modern recordkeeping. Coordination of map preparation, parcel identifiers, the indexing system, and other procedural matters among the three principal county recordkeeping offices (register of deeds, clerk of court, tax supervisor) is stressed. The large-scale cadastral maps (showing property boundary lines; subdivision lines; city, county, and state boundary lines; special district lines; and related details essential to accurate records) will be updated constantly to serve as many users as possible. The unique (and permanent) parcel identifier will be assigned to each unit of ownership and will, therefore, be available for a permanent index of all ownerships.

During committee deliberations over this 1977 legislation, a number of important aspects of legislative intent were considered. Prominent among these was the choice between making the records-improvement program mandatory or optional for counties. I believe the Legislature made the right choice by leaving the decisions up to the local officials. Participation in the program does, however, require adherence to prescribed state specifications and standards that are designed to achieve a certain degree of uniformity, but the staging and timing of improvement projects are local decisions. Although voluntary participation or compliance by

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2. For land survey purposes, monuments are concrete columns sunk into the ground. Metal disks embedded in the tops of the columns provide information for determining the monument's exact location on the earth's surface.

counties has not always worked well, it appears to be effective in the case of our Land Records Management Program.

### **Program design concepts**

The almost overwhelming surge of interest in a vast array of land data that has arisen during the past several decades cannot be ignored. Likewise, the tremendous technological advances in our ability to capture and process virtually unlimited amounts of information compels us to realize that this is an entirely new and different endeavor. The recordkeeping systems that now operate somewhat independently in each of the county offices not only need to be coordinated and fully interrelated, but also need to be structured to have the capability of interfacing with numerous other land-related data sets.

Further, insofar as possible, system design should not preclude higher order computerization, including complete conversion to interactive-graphics<sup>3</sup> technology. Because county land records deal entirely with parcels that represent ownership or similar interests, essentially all the data are parcel specific. A geographic position for each parcel is necessary for some analytical procedures and is particularly valuable for interfacing with other data that are geo-coded, but are not related to parcel boundaries. As a practical matter, a single coordinate locator for each parcel can serve most analytical purposes and simultaneously provide the basis for a unique parcel identifier.

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3. Interactive graphics include all maps and map-related data encoded into a computer and maintained on the system. Interactive graphics thus provide current information that users request.

Planning for the most appropriate design for a modernized land records system obviously requires the consideration of extensive detail in the use of the most appropriate technology. Micrographs (micro-filming cameras, computer-output microfilm systems); microphotography (16 or 35 millimeter microfilm, microfiche, computer output microfilm); a computerized index, either grantor/grantee (by names) or parcel identifier indexing (by numbers); document reproduction (bond paper copiers, microfilm/microfiche reader/printers, blue line [ozalid] print machines, vacuum frames); microfilm viewing instruments; interactive graphics (computers used to store graphical data and their annotations); and many other pieces of equipment (laser scan and video disc systems, for example) are available. Most of these need to be considered in one way or the other, depending on the situation in any particular county. It is obviously not feasible to suggest that a single combination of equipment and procedures would be appropriate for all counties in the state. Probably no two counties will ever adopt identical systems. Nevertheless, within this array of possibilities, there are certain new elements that are applicable statewide, either because they are most effective or efficient, or because statewide uniformity may have overriding value.

### **Key elements of the North Carolina system**

**Statewide modular map sheet format.** We have learned from long experience that large-scale cartographic (features are depicted by lines) or orthophoto (features are depicted by photographic imagery) base maps are essential to an adequate and reliable land-records system. At the time this program was initiated, only ten of the 100

counties in North Carolina had accurate planimetric maps of a sufficiently large scale to represent individual parcel ownerships. Under these circumstances, it was feasible to institute a uniform statewide modular map sheet format that would serve all aspects of the new system. The basic unit in this mapping system is a 1 inch = 400 feet scale, with the map boundaries determined by the grid lines of the State Plane Coordinate System in which coordinate values are evenly divisible by 10,000 feet.

This format creates a square map image that is 25 inches on each side. The system includes specific patterns for subdividing the basic map scale (1" = 400') to produce larger map scales of 1 inch = 200 feet; 1 inch = 100 feet; and in some cases, 1 inch = 50 feet. Each set of maps will have uniform prescribed sheet numbering methods. All basic scale map sheets are numbered according to their position in the State Plane Coordinate System. This arrangement assures that each county mapping system will match and be consistent with the maps of all adjoining counties. Statewide uniformity will be a major convenience to any map user who operates in more than one county.

**Cadastral maps.** An accurate large-scale map has many useful applications and should be prepared with multiple uses in mind. For the purposes of the Land Records Program, a cadastral map that includes boundary lines and related details is prepared as an overlay to the base map. This will show essentially the same information as is customarily put on a tax map. It is called a *cadastral map* to emphasize that it will serve a broader purpose and will be kept up-to-date throughout the year. Customarily, most North Carolina counties have annually updated their tax maps as of January 1st in order to use them in the preparation of the annual tax scroll.



The cadastral map will also serve this purpose, and in addition will be updated daily to show changes in boundaries and to indicate new parcel identifiers that are applicable.

**Geo-coded parcel identifiers.**

The geo-coded parcel identifier is one of the most important new elements in the Land Records Management Program. Tax map parcel numbers have been in common use for many years. They are, in fact, a form of parcel identifier and have served with great effectiveness in administration of the tax program. The new parcel identifier is intended as a unique, permanent assignment of a number to a property of a given size and shape. When changes in property boundaries occur, new numbers are assigned to the new property thus created, and the old number continues in the file for permanent reference to the original parcel. Once assigned, the same parcel identifier is never re-used for any other piece of property, and therefore it remains a unique, permanent reference to the parcel for which it was originally designed.

The parcel identifier used in our Land Records Management Program is constructed from the state plane coordinates of a visual centroid of the property and is not only a unique parcel identifier for that property, but is also a unique number that locates the property in the State Plane System. By extension, through the national geodetic control net, the number can also become a unique location on the surface of the earth. This parcel identifier fully serves the needs of the tax program and is the common device by which all land records may be permanently indexed. The accompanying graphic display (Figure 1) explains the method by which the unique parcel identifier is created for each piece of property. It also shows how the parcel identifier

**Figure 1. Construction of the Geo-Coded Parcel Identifier**

**E(x) — coordinate 2,715,569**  
**N(y) — coordinate 0,756,737**

The coordinate value digits are paired by taking each digit separately from the x-coordinate and matching it with the corresponding digit of the y-coordinate:

**20 77 15 56 57 63 97**

With this arrangement, the above example of a parcel identifier may be sorted as follows:

<b>20</b>	<b>7715</b>	<b>56</b>	<b>5763</b>	<b>97</b>
Redundant lead number for any one county	Number of basic map module	Block number	Lot or parcel number	Utilized only to extend the capacity of the system

Normal usage of the parcel identifier in any one county would involve these ten digits.

**7715 56 5763**

1. The system of paired digits used above as a generator of a unique parcel identifier has some decided advantages over the simple statement of the x and y coordinate values. Each pair of digits relates graphically to a successively smaller square cell of the coordinate system. Thus, the first pair of digits on the left identifies a huge square area bounded west and east by x = 2,000,000 feet and x = 3,000,000 feet respectively and bounded south and north by y = zero feet and y = 1,000,000 feet. The second pair of digits identifies a square cell bounded by x = 2,700,000 and x = 2,800,000; y = 700,000 and y = 800,000. Next the third pair of digits identifies a square cell that is 10,000 feet on each side, and it is, in fact, the area covered by a single map sheet in the statewide map series at the 1" = 400' scale. The fourth pair of digits relates to a 1,000 foot square that is called a "block." Succeeding pairs of digits work right down to a grid cell of one foot square. In this way the parcel identifier provides a systematic sequence of successively smaller windows that leads the inquiry to an exact location without resort to maps or other irregular, arbitrary patterns.

relates to the sheet numbering system of a mapping series so that the parcel identifier may be expressed in a map-number, block-number sequence that is similar to the typical tax parcel numbering system.

Every piece of property is known to have numerous important documents that affect its ownership status filed in at least three county offices and possibly in other locations as well. In each of these offices there may be several different indexes that must also be considered in an inquiry into the status

of any particular parcel. This arrangement has evolved for many good and sufficient reasons, but it is clumsy and causes great frustration for public record users.

**Comprehensive central index.**

The North Carolina Land Records Program seeks to expedite access to all the records through a comprehensive central index, structured with the help of the unique parcel identifier. Under the new system, all documents will be filed in their customary offices, utilizing the most up-to-date technology in file construction. Appropriate refer-

ences to all such records will be merged in one convenient central index. This index can then provide the necessary pointers to the location and nature of every instrument that may have some effect on the status of the property in question. The parcel identifier is an indexing number and a clue to the exact location. The central index will also include names and dates of participating parties as well as notation of the type of action involved in each reference. The construction and maintenance of this centralized index can best be handled by computerization. Sophisticated equipment now available will permit entry of a variety of clues into the index. This will greatly expedite searches.

Each of these new elements in the Land Records Management Program is designed to coordinate recordkeeping among the several county offices, to establish a uniform means of permanently indexing land-related documents so that a chain of title may be readily traced, and to centralize (in one computerized index) reference material that will expedite access to all records. These features do not alter to any significant degree any of the basic responsibilities that have traditionally been assigned to the register of deeds, the tax supervisor, and the clerk of court. In general, they constitute a restructuring of the institutional arrangements that already exist, or alternatively, they may be additions to fill in some missing links needed to create a thoroughly adequate land-records system.

Finally, to achieve the benefits inherent in this new approach to land records, there are several new responsibilities that must be assigned to achieve the proper degree of coordination among these three more or less autonomous offices. Larger counties will need a land records management office to

oversee the construction and maintenance of the central index and the construction and maintenance of the cadastral maps. This office will also supervise the routine flow of information among the several offices, so that all procedural steps are not only completed, but thoroughly verified for accuracy. Ideally, the maintenance of the cadastral maps and the assignment of the parcel identifiers should be the responsibility of the land records office. Since a substantial initial cost is attached to an accurate base map, it will be particularly important that the subsequent maintenance of the base map and the cadastral map be carried out by well-trained personnel under competent supervision.

With proper attention to all details of map construction and maintenance, central files management, and meticulous coordination of recordkeeping activities, the land records manager can assure the public of a fully adequate and much higher level of service than now exists in many of our counties. A fully modernized land-records system constructed in accordance with the guidelines of the North Carolina Land Records Management Program can be by far the most accurate and the most detailed of any land-information system in existence. It is a system that all counties can attain. It will have the inherent flexibility to interface with other land-data systems that may develop in the future.

### **Mapping status**

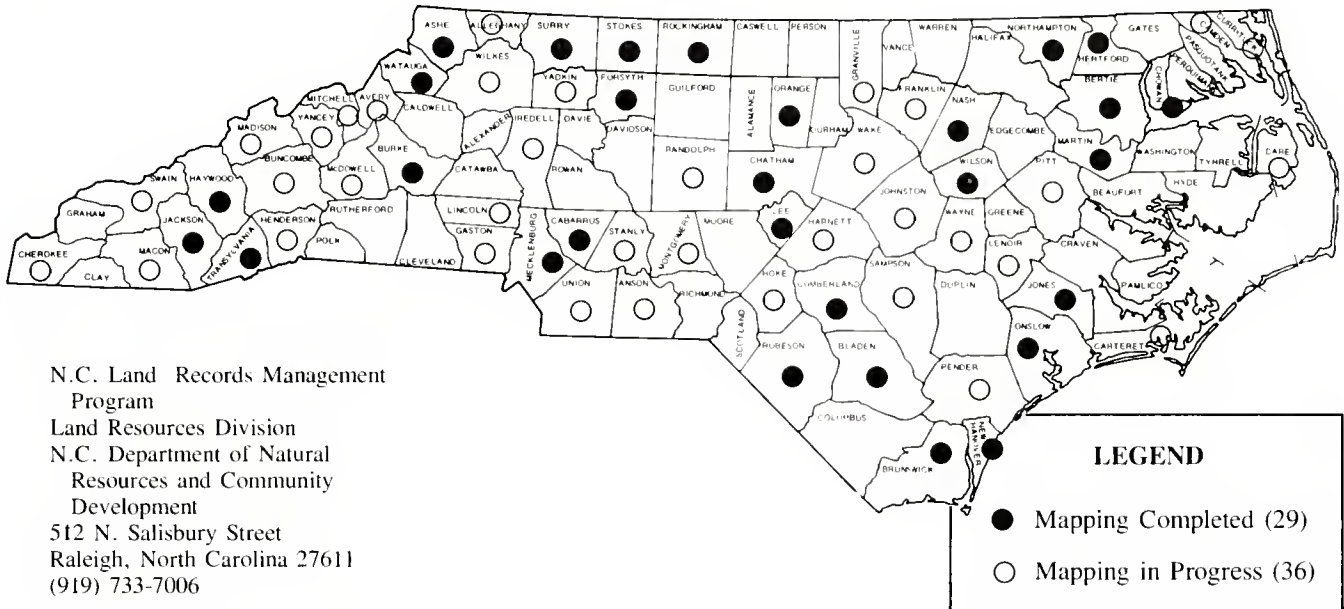
In 1977 when the program began, only ten North Carolina counties were mapped. We now have 65 counties that have either completed their base and cadastral mapping or are in the process (Figure 2). Most of the counties that have started a mapping program using the Land Records Management Program

“Specifications for Base and Cadastral Maps” have chosen to develop orthophoto maps as their base maps. This representation of the earth’s surface appears to be the most useful product at the local government level, and it is less expensive than the cartographic base map. In addition to developing the base and cadastral maps, counties have become interested in acquiring soils mapping of their areas. The soils maps are developed by the Soil Conservation Service (SCS) and are published at a scale of 1:24,000 (1” = 2,000’). It is very difficult to correlate soils data from the small-scale map to the large-scale (1” = 400’, 1” = 200’, 1” = 100’) maps that are prepared by the county. Many of the counties are electing to have the Soil Conservation Service published soil maps digitized (lines are encoded using northing (x) and easting (y) coordinates into a computer data base) and plotted at corresponding scales (1” = 400’, 1” = 200’) to the counties’ base and cadastral maps.

The next logical process has been an increased interest in Geographic Information Systems (GIS) often referred to as “Computer Mapping.” Geographic Information Systems are composed of hardware and software that will accept digital data and allow the user to maintain and access needed information. Four counties and three cities (Forsyth, New Hanover/Wilmington, Watauga, Gaston, Rocky Mount, Wilson) have computer mapping systems in place. There is widespread interest in Geographic Information Systems across our state. At the time this article was written, Stanly County had requested bids on a GIS. It is anticipated that within the next two years the following counties will also have purchased a system: Randolph, Buncombe, Wake, Pitt, and Carteret.

This awareness of computer map-

**Figure 2.**  
Mapping Status—June 1986



N.C. Land Records Management  
Program  
Land Resources Division  
N.C. Department of Natural  
Resources and Community  
Development  
512 N. Salisbury Street  
Raleigh, North Carolina 27611  
(919) 733-7006

**LEGEND**

- Mapping Completed (29)
- Mapping in Progress (36)

ping systems has stimulated interest in a statewide conference on Geographic Information Systems. This conference is being jointly-sponsored by the Triangle J Council of Governments, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and the North Carolina Department of Natural Resources and Community Development. Some of the topics to be addressed at this conference are as follows:

—*Defining a Geographic Information System;*

- Assessing Needs;*
- Need for a Consultant;*
- Possible Solutions;*
- Procuring a GIS;*
- Managing a GIS; and*
- Special Data Considerations.*

There will be vendor presentations, case studies, and vendor exhibits. This promises to be an excellent opportunity for interested local government officials to learn more about “Geographic Information Systems” during January 8 and 9, 1987, at the McKimmon Center on the North Carolina State University campus in Raleigh.

**Conclusion**

North Carolina was the first state in the nation to establish a Land Records Management Program to assist local governments in modernizing their land records systems. Just this past year, South Carolina has established a similar program and has adopted North Carolina’s “Specifications for Base and Cadastral Mapping.” With the positive attitudes of our local government officials who realize the benefits that are derived from good maps and automated data bases, North Carolina will continue to be the leader. P

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# The Responsible Administrator: Contributions of the City Manager to Effective Governance

James H. Svara

**E**ffective governance and management of community affairs require that elected officials and staff cooperate. Council members and administrative staff have distinct contributions to make to the governing process. In an earlier article, I identified the kinds of decisions made by the city council to strengthen its performance.<sup>1</sup> It was assumed in that discussion that the city manager in particular and appointed staff in general bring complementary responsibilities to their relationship with elected officials. This article examines those responsibilities.

Although the city management profession has long had a *Code of Ethics*, that code does not elaborate on the full range of contributions that managers need to make. The goal of this discussion is to develop a positive, com-

prehensive statement of responsibilities. The recommendations reflect the high level of managerial performance I have observed in my research of governmental organization in large cities in North Carolina. It is useful to articulate the responsibilities explicitly so that council members and citizens will have reasonable expectations of administrators. The standards will also offer managers guidance about acceptable behavior and help them justify their actions.

There is a potential conflict between adhering to professional commitments and following the dictates of the democratic process. Administrators are sometimes forced to counter pressures from elected officials or powerful individuals and groups in the community who propose actions that are unwise, unjust, or detrimental to the integrity of the organization. The manager must also undertake "positive" actions if local government is to be effective. Still, the manager, as an appointed official, must respect democratic control. In what areas, therefore, and within what limits should the manager take the initiative? Standards for the manager must encompass the full range of his or her activities as policy adviser, policy maker, implementor, and organizational leader.

## The bases for managerial ethics in government

Specifications for proper and expected behavior are important in every profession. Members of a group may generate rules to govern their behavior and enforce those rules with sanctions when members are found to have violated them. The International City Management Association (ICMA), with its *Code of Ethics*, first formulated in 1924, has been very successful at maintaining the honesty and integrity of managers. "It is a tribute to the high standards of the profession," Ralph Clark Chandler recently observed, "that fewer than 25 complaints have been received by the ICMA Committee on Professional Conduct in each of the last four years."<sup>2</sup> Of these, only one-fourth resulted in disciplinary action.

Professionals in governmental service, however, have obligations that extend beyond mere "correct" behavior. A major distinguishing feature of *public* administration is the requirement to protect and advance the "public in-

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1. "Contributions of the City Council to Effective Governance," *Popular Government* 51 (Spring 1986), 1-8.

2. Ralph Clark Chandler, "Ethics and Municipal Administration," *Michigan Municipal Review* 58 (June 1985), 103.

terest." The city manager should not be a "hired hand" who will carry out any dictate of elected officials regardless of its implications for the public interest. Nor should the manager be a passive subordinate who waits for council direction while problems affecting the community's well-being are ignored.

Analysis of the ICMA *Code of Ethics* and its recently developed *Declaration of Ideals*<sup>3</sup> reveals certain shortcomings. Following the *Code* will help prevent a manager's doing something that is wrong, and the *Declaration* lists many positive goals. The statements reflect a commitment to professional principles and practices designed to produce sound government. Nevertheless, these statements provide only partial guidance. Furthermore, the statements do not fully elaborate ways to help the council discharge its own responsibilities. What standards for the manager will promote effective and supportive interaction with the council?

To assess the statements in the *Code* and in the *Declaration* systematically, the provisions have been arranged according to the four dimensions of the governmental process—mission, policy, administration, and management—and presented in Figure 1.<sup>4</sup>

Key points that are not covered in each dimension should be briefly noted. First, administrative ethics for the city manager should be derived from values of the constitutional order of the larger society, transcendent principles of right, and enduring positive

3. The *Ideals* were developed to express the aspirations of the profession as distinct from the enforceable *Code of Ethics*. For a discussion of the background, see *Public Management* 66 (August 1984), 2-15.

4. In order to focus attention on the city manager, the new *Code of Ethics* approved by the American Society for Public Administration in 1984 is excluded from this analysis. Relevant parts are included, however, in the responsibilities developed in the following section of this paper.

**Figure 1.** Ethical Values and Standards of the ICMA Arranged by Governmental Function

<i>Mission</i>		<i>Administration</i>	
A-1	Foster effective and democratic local government by elected officials	A-5	Uphold and implement municipal policies adopted by elected officials
A-3	Maintain a deep sense of social responsibility	A-6	Assume responsibility for policy execution
A-4	Serve the best interests of all the people	B-6	Advocate equitable regulation and service delivery
B-2	Facilitate clarification of community values and goals	B-7	Develop a responsive organization
A-5	Provide facts and advice on policy matters as a basis for setting goals	A-9	Emphasize friendly and courteous service to public
B-3	Respect special character of community while promoting cooperation with other jurisdictions	A-18	Handle each problem without discrimination on the basis of principle and fairness
B-4	Promote social, cultural, and physical integration of community		
B-5	Balance resource use and preservation		
<i>Policy</i>		<i>Management</i>	
A-5	Submit policy proposals and provide facts and advice on matters of policy	B-7	Develop a dynamic organization that continuously assesses purpose and seeks the most effective techniques and technologies
A-6	Give credit for establishing policy to elected representatives	A-18	Resist encroachment on professional responsibilities
B-2	Recognize rights of citizen participation and advocate a meaningful participation	A-8	Improve ability and develop competence of associates
B-1	Promote understanding that each citizen has privileges and responsibilities	B-8	Foster professional and personal development of all employees
A-9	Keep community informed on all municipal affairs and encourage communication between citizens and officials	A-11	Handle personnel matters on basis of merit to ensure fairness and impartiality
		A-12	Seek no favor; avoid personal aggrandizement

*Abbreviations:* Numbers refer to items in the original *Code* and *Declaration*; one item may be listed more than once if it is relevant to more than one dimension.

A — ICMA *Code of Ethics*, 1976. (See p. 22.)

B — ICMA *City Management Declaration of Ideals*, 1984. (See p. 24.)

values of the community.<sup>5</sup> The manager, David Hart has argued, has a "professional obligation to transcend administrative neutrality in any cases in which public policy conflicts with the regime values."<sup>6</sup> This concern is not fully developed in the ICMA statements. The prologue to the *Declaration of Ideals* states that the ICMA as an association works to achieve equity, social justice, human dignity, and the quality of life, but these goals are not addressed in the statement of the individual manager's responsibilities. The *Code* refers to maintaining a deep sense of social responsibility and to serving the best interests of all the people. There is no elaboration, and the guideline for interpreting the latter point is vague.<sup>7</sup>

Second, the *Code* and *Declaration* maintain a passive stance with respect to the manager's assisting the council in formulation of mission. Beyond submitting policy proposals and advice for setting community goals or helping to facilitate clarification of values, the manager is not explicitly obliged in either of the statements to urge the council to clarify its general purpose, identify the need for change, or to look ahead.

Third, the statements are written as if the manager's policy contributions were minimal. The *Code* asserts that managers are to submit policy proposals and provide facts and advice to the council and to give them "credit for the establishment of municipal

policies." Ignoring administrators' active policy roles precludes the development of explicit expectations for the manager in providing recommendations and information to the council. This is a serious oversight. Some council members in the large cities of North Carolina identified these faults in the manager's policy advice: (1) ignoring council initiatives, (2) steering the council with incomplete or slanted information, and (3) limiting the range of options the council is presented to those the manager prefers. Thus, quality standards for policy activity may be warranted.

Fourth, despite the commitment to openness and participation in the ICMA statements, active encouragement of participation by all groups in the policy process, efforts to assist those less likely to participate, and fairness and impartiality to all groups are not explicitly mentioned.<sup>8</sup>

Fifth, in the administrative dimension, the statements do not deal with the manager's responsibilities to the council with regard to handling complaints and overseeing implementation. More could also be said about program effectiveness, a topic covered in other ICMA publications.<sup>9</sup>

Sixth, there is no reference to the traditional management values of efficiency and economy in the statements, nor any mention of the currently popular concept of productivity.

Thus, the bases for managerial ethics are norms for proper conduct, obliga-

tions to the society and the profession, and actions that will assist the council members in handling their responsibilities and inspire their trust. The following statement of responsibilities is not intended to replace the specifications concerning duties and acceptable behavior in the *Code of Ethics*. Rather, it will go beyond the *Code* to define desirable behavior.

## Responsibilities of the city manager

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The manager has responsibility in all governmental functions. That responsibility is subordinate with respect to mission; substantial and shared with respect to policy and administration; and predominant, but not exclusive, in management. Thus, ethical standards need to be specified for each dimension. The standards suggested here meld the values set forth by the International City Management Association and also incorporate the new code of the American Society of Public Administrators. They are intended to fill the gaps in the ICMA statements. The standards (listed in Figure 2) represent prescriptions for a manager who is both active and responsible.

**Mission.** Managers should act in concert with the purposes of the government as formulated by elected officials. Popularly elected representatives must determine the broad goals for governmental effort, the scope of services provided, and "constitutional" issues concerning governmental structure. The first requirement of democratic government is that the manager accept these goals and promote them by incorporating them into specific recommendations and decisions concerning policy and administration.

The manager must also have a broader commitment than merely supporting the current majority on the city council. The manager should defend and promote the basic values of American society as well as those of the community served. For example, the man-

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5. See John A. Rohr's "The Study of Ethics in the P.A. Curriculum," *Public Administration Review* 36 (July-August 1976), 398-406; *Ethics for Bureaucrats* (New York: Marcel Dekker, 1978); and David K. Hart, "Social Equity, Justice, and the Equitable Administrator," *Public Administration Review* 34 (January-February 1974), 3-10.

6. David K. Hart, "The Honorable Bureaucrat Among Philistines," *Administration & Society* 15 (May 1983), 45.

7. The guideline states that a manager should remain in a community for two years before taking a new position. See "ICMA Code with Guidelines," *Public Management* 66 (February 1984), 10-11.

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8. A survey by Elizabeth Howe and Jerome Kaufman, "The Ethics of Contemporary American Planners," *APA Journal* (July 1979), 247-48, suggests that some guidance is needed. Such actions as releasing reports or leaking information to business groups, developers, or white home owners are more likely to be considered unethical among planners than the same actions helping environmental or low-income groups.

9. Harry P. Hatry et al., *How Effective Are Your Community Services?* (Washington, D.C.: Urban Institute, 1977); *The Effective Local Government Administrator* (Washington, D.C.: International City Management Association, 1983).

ager should promote equality in formulating mission in order to ensure that changes in the scope of services, shifts in the burden of supporting service cost, or alteration in institutional arrangements promote equality and do not harm disadvantaged groups.

The manager should support and help structure council decision making concerning the purpose and direction of city government. Some form of comprehensive planning is needed to identify trends and emerging problems and to frame issues for the council. Sometimes the future is shaped as much by nondecisions as by positive decisions. The manager should provide the council members with the information and, perhaps equally important, the encouragement they need to chart a course for the jurisdiction.

**Policy.** Policy, as used in this context, refers to the middle-range policies that fill in the content of mission goals, to which both council members and managers contribute. Examples are a budget, a land-use plan, or any proposal that reflects the general aims of the council and specific recommendations of the manager. Certain guidelines apply to the manager's policy activities. First, in making recommendations, the manager should provide complete, unbiased information, clearly place his or her recommendation within a full range of alternatives, and express professional judgment about the alternatives. The manager should clearly explain the implications of proposals and actions, so that the consequences are clear to the council and to the public.

Second, the manager should make recommendations and exercise discretion within the framework of mission goals. Discretion is essential in complex situations, and councils should trust managers to make reasonable judgments that are faithful to the overall goals of the government. This trust is more likely to result, however, if *faithful advancement* of the city's goals is the standard for behavior, rather than the current restrained reference in the ICMA Code to "uphold and implement

**Figure 2. Ethical Responsibilities of the Manager for Effective Council-Manager Relations**

**MISSION**

1. Respect democratic control, strive to accomplish the established purposes of the government.
2. Defend and promote the basic values of American society and of the community served.
3. Actively assist the governing board to understand the needs of the community and to anticipate the future in formulating mission goals.

**POLICY**

4. Encourage and support the governing board in its development of clear policy that reflects mission, popular concerns, and professional judgment.
5. Provide complete, unbiased information concerning proposals and fully elaborate potential alternatives.
6. Advance the government's goals in recommendations and exercise of discretionary authority.
7. Explain the implications that recommendations and actions may have on the distribution of resources and in respect to values in the community.
8. Be sensitive to the need for change and advocate alteration in policy when appropriate.
9. Ensure that the process of making policy is open; information is available, and participation of all citizens is encouraged. Provide access and respond to all individuals and groups fairly and impartially, while recognizing that affirmative efforts are required to involve individuals who have fewer political resources.

**ADMINISTRATION**

10. Faithfully translate policies into programs and services and administer them with effectiveness, professional competence, and responsiveness to citizens.
11. Promote equity in program administration and service delivery.
12. Support the governing board in systematic assessment of program results.

**MANAGEMENT**

13. Maintain high standards of personal conduct, support employees' development, promote merit and affirmative action, and foster a positive organizational climate.
14. Support the accomplishment of organizational goals with optimal use of resources; promote savings and improved productivity.
15. Assert the right to manage the organization without interference and support the governing board in its appraisal of managerial and organizational performance.

municipal policies adopted by elected officials."

Third, managers as policy makers should urge change responsibly. They should inform the council—with tact to be sure—when there are problems requiring attention. Advocating change

is not inconsistent with the recognition that only the council can actually change policy.

Fourth, managers should ensure that the policy-making process is open, and information is accessible. They should encourage the participation of all

groups in the community, while recognizing that special efforts are required to involve those who are alienated from city government or who perceive themselves to be powerless. All groups should be treated with fairness and impartiality.

**Administration.** Administration, in contrast to management, has explicit policy content because it involves the implementation of policy. The extensive, but typically unrecognized, involvement of elected officials in administration makes the task more challenging. The interest of council members is not surprising, given the political ramifications of implementation and service delivery. Standards, therefore, must not only prescribe rules for staff, but also for staff members' relationship to the council in this dimension.

The essential requirement for staff is the translation of policies into concrete programs and services. Services should be effective; that is, they should accomplish their intended purpose and be delivered equitably. Most cities need to refine their effectiveness measures and to strengthen their capacity to evaluate programs.

Councils are most involved in administration through handling citizen complaints, in part because council members feel that citizens do not receive adequate response from staff. A small number of council members complained in my interviews that staff members sometimes forget that they are supposed to be serving the public and are not as responsive to citizen inquiries as they should be. Administrators should reaffirm the obligation to be responsive to citizens. One specific quality standard in this regard is to ensure that staff members respond to citizen inquiries as promptly, as courteously, and in as much detail as when they respond to inquiries from council members. It is useful for staff to provide a follow-up report to the council member who directs an inquiry for investigation.

Managers also have an obligation to

## *City Management Code of Ethics*

*THE PURPOSE of the International City Management Association is to increase the proficiency of city managers, county managers, and other municipal administrators and to strengthen the quality of urban government through professional management. To further these objectives, certain ethical principles shall govern the conduct of every member of the International City Management Association, who shall:*

- 1** Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
- 2** Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward urban affairs and a deep sense of social responsibility as a trusted public servant.
- 3** Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
- 4** Recognize that the chief function of local government at all times is to serve the best interests of all of the people.
- 5** Submit policy proposals to elected officials, provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals, and uphold and implement municipal policies adopted by elected officials.
- 6** Recognize that elected representatives of the people are entitled to the credit for the establishment of municipal policies; responsibility for policy execution rests with the members.
- 7** Refrain from participation in the election of the members of the employing legislative body, and from all partisan political activities which would impair performance as a professional administrator.
- 8** Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
- 9** Keep the community informed on municipal affairs; encourage communication between the citizens and all municipal officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
- 10** Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
- 11** Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.
- 12** Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

This Code was originally adopted in 1924 by members of the International City Management Association and has since been amended in 1938, 1952, 1969, 1972, and 1976.



support the council in its oversight of services. Oversight is weakly developed in most cities, except for general checking activities. The manager, as an extension of his obligation to ensure effectiveness, needs to provide information to support the council's evaluative oversight.<sup>10</sup> Doing so will promote the council's comprehensive assessment of services. A strong oversight capacity is necessary to balance the extensive and appropriate discretion the manager and staff exercise in the policy and administrative dimensions. This may appear to be a formidable task, but it should reduce the need for specific inquiries into administrative performance and the council members' pursuit of individual complaints. Systematic oversight promotes interaction with the council in administration, while insulating staff from council interference.

**Management.** Although the management function is policy neutral, it determines the effectiveness of governance. Management entails the arrangement and control of human, informational, and material resources to achieve the purposes of the organization. This responsibility includes and extends beyond the provisions in the ICMA statements for high standards of personal integrity.

Citizens and elected officials are challenging administrators to reconsider the concept of economy and to define it in ways that are more comprehensive than in the past. Some respondents to my surveys in the North Carolina cities complained that their organizations were less efficient than they should be, although the general assessment of efficiency was positive. Government is not entitled to any given share of the community's resources,

and it must make optimum use of those resources it controls. Administrators can initiate savings in the management dimension because these savings do not have major programmatic consequences. Indeed, if economizing is to be achieved by changes in the nature or cost of services, cutbacks should be treated not as management decisions, but as policy recommendations that would alter the distribution of resources, and handled by referring proposals to the council.

Thus, in addition to the existing standards concerning organizational performance, Walter Balk has argued that it is "critical for managers and employees in government to develop a solid productivity ethic."<sup>11</sup> This has clearly been a concern of the ICMA and the Urban Institute.<sup>12</sup> That concern should be reflected explicitly in the standards for managers. Managers should acknowledge the need to economize within the parameters of mission, policy, and administrative decisions, but economizing should not be seen as an objective in itself.<sup>13</sup>

Furthermore, managers should encourage appraisal of organizational performance; it is in their interests to do so. The likelihood of disruptive coun-

cil action is lessened if the manager has maintained the highest standards of management practice and if the council is fully aware of the quality of management. The council that raids departmental budgets to make cuts or threatens job reductions to wring out more savings presumably does not believe that the manager has maintained adequate control over budgeting or personnel. The manager should invite the council to be a critical reviewer of the performance of the whole organization in order to expand support for improved management and to strengthen his or her prerogatives in this area.

To summarize, the manager should actively assist the council, uphold important social values, and take initiatives that are appropriate to each dimension. The standards call for greater activism, and, at the same time, they clarify the obligation to be faithful to the purpose and goals of the city and responsive to elected officials and citizens. The effect of these combined obligations is to provide for expanded contributions and higher involvement from the manager in all phases of the governmental process without reducing the council's contribution. Indeed, as the manager pursues his or her responsibilities, the council is better able to accomplish its own.

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## A reprise of the mayor's role

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I shall not repeat the full list of mayoral contributions to city government, but simply note those that have a special bearing on the relationship between the council and the manager.<sup>14</sup> The mayor, particularly in the liaison and organizer roles, helps ensure that the council and manager are communicating clearly and that the rela-

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10. *The Effective Local Government Manager* (Washington, D.C.: International City Management Association, 1983), 56, recommends one such oversight activity by including in the annual program calendar the review of one major program or service-delivery area in a monthly open meeting.

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11. Walter L. Balk, "Toward a Government Productivity Ethic," *Public Administration Review* 37 (January/February 1978), 50.

12. Elizabeth J. Kellar, ed., *Managing with Less* (Washington, D.C.: International City Management Association, 1981); John Greiner et al., *Productivity and Motivation: A Review of State and Local Initiatives* (Washington, D.C.: The Urban Institute, 1981).

13. The emphasis on productivity in the management dimension is not meant to ignore the importance of developing and administering programs in a way that is conducive to productivity. W. Balk, *supra* note 11, at 49, observes that productivity improvement requires a setting in which mission and policy are consistent with organizational performance objectives. Too often, narrow short-term political considerations and conflicting interests shape program definition in ways that impede efficient management. Furthermore, it should be noted that in some cities, managers have taken the lead in improving productivity, only to have elected officials obstruct change.

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14. James H. Svava, "Understanding the Mayor's Office in Council-Manager Cities," *Popular Government* 50 (Fall 1985), 6-11.

tionship is constructive. The mayor can monitor and subtly adjust the performance of either the council or the manager if responsibilities are not being met. The mayor helps meld the contributions of the council and manager, rather than trying to dominate either one. It is particularly important that the mayor respect the manager's executive authority. If the mayor encroaches on the manager's executive functions, the interference impairs the manager's ability to accomplish all of his or her responsibilities. The mayor has ample opportunity for providing nonexecutive leadership through coordination and policy guidance.

## Conclusion

Councils and managers need to work together effectively to achieve a high level of governmental performance. Each set of officials brings distinct perspectives and talents to the work of government. By pursuing their complementary responsibilities, they can sustain positive interaction and contain friction. In the process, they meet each other's needs and make fulfilling their own responsibilities easier.

Councils and managers do not always agree, and tensions may develop between them. Misalignment will occur when one or the other is not filling a responsibility or is exceeding the constraints that each responsibility implies. Councils may not recognize their responsibilities, and managers cannot compel them to do so. It is probable, however, that when managers fulfill the ethical duties of the ICMA Code, along with the responsibilities described here, positive performance and trust will be elicited from the council.

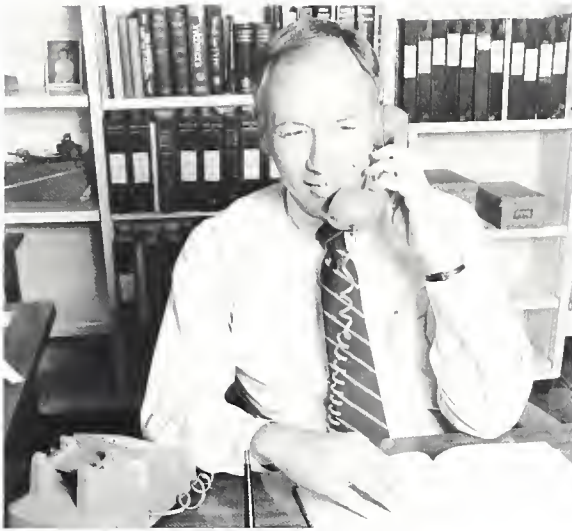
This discussion has focused on the contributions of the manager, as previous articles examined the mayor and the council. In some respects the manager, as a trained, experienced professional who is associated with a

## City Management Declaration of Ideals

*The International City Management Association was founded with a commitment to the preservation of the values and integrity of representative local government and local democracy and a dedication to the promotion of efficient and effective management of public services. To fulfill the spirit of this commitment, the International City Management Association works to maintain and enhance public trust and confidence in local government, to achieve equity and social justice, to affirm human dignity, and to improve the quality of life for the individual and the community. Members of the International City Management Association dedicate themselves to the faithful stewardship of the public trust and embrace the following ideals of management excellence, seeking to:*

- 1** Provide an environment that ensures the continued existence and effectiveness of representative local government and promote the understanding that democracy confers privileges and responsibilities on each citizen.
- 2** Recognize the right of citizens to influence decisions that affect their well-being; advocate a forum for meaningful citizen participation and expression in the political process; and facilitate the clarification of community values and goals.
- 3** Respect the special character and individuality of each community while recognizing the interdependence of communities and promoting coordination and cooperation.
- 4** Seek balance in the policy formation process through the integration of the social, cultural, and physical characteristics of the community.
- 5** Promote a balance between the needs to use and to preserve human, economic, and natural resources.
- 6** Advocate equitable regulation and service delivery, recognizing that needs and expectations for public services may vary throughout the community.
- 7** Develop a responsive, dynamic local government organization that continuously assesses its purpose and seek the most effective techniques and technologies for serving the community.
- 8** Affirm the intrinsic value of public service and create an environment that inspires excellence in management and fosters the professional and personal development of all employees.
- 9** Seek a balanced life through ongoing professional, intellectual, and emotional growth.
- 10** Demonstrate commitment to professional ethics and ideals and support colleagues in the maintenance of these standards.

*(continued on page 27)*



# Questions I'm Often Asked: *May a North Carolina Municipality\* Levy Privilege License Taxes on Newspapers and Radio and Television Stations?*

**William A. Campbell**

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Yes, but the answer is not simple. For purposes of this article, I have made two assumptions about any municipality interested in taxing local newspapers and radio and television stations. First, I have assumed that the municipality already has a privilege license tax ordinance pursuant to which it levies license taxes either at a flat rate or measured by a percentage of gross receipts on numerous trades and businesses conducted within its corporate limits. Second, I have assumed that the municipality is using the privilege license tax strictly for raising revenue, as I have recommended elsewhere,<sup>1</sup> and not as a regulatory measure. Given

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\*This discussion has no application to counties because under G.S. 153A-152 counties must be specifically authorized by Schedule B of the Revenue Act, or some other statute, to levy a privilege license tax on any business, and no statute authorizes a county tax on newspapers and broadcasting stations.

1. See W. CAMPBELL, NORTH CAROLINA PRIVILEGE LICENSE TAXATION (Institute of Government, 1981), 2-4. Three North Carolina decisions discuss the differences between regulatory licenses and privilege license taxes and emphasize that the North

these assumptions, the question can be answered in three steps: Authority of municipalities to levy the tax; first amendment restrictions, if any; and commerce clause restrictions, if any.

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## **I. Authority to levy the tax**

Municipalities are authorized by G.S. 160A-211 to levy privilege license taxes "on all trades, occupations, professions, businesses, and franchises carried on within the city" unless restricted or prohibited by some other provision of law. Newspapers and broadcasting stations are certainly "businesses" or "franchises," and cities are not prohibited by Schedule B of the Revenue Act (G.S. 105-33 through 105-113), or any other statutory provision, from taxing them. Although radio and television broadcasting stations are licensed and regulated by the federal government

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Carolina privilege license tax is strictly a revenue-raising measure: *Northcutt v. Clayton*, 269 N.C. 428, 152 S.E.2d 471 (1967); *Great Atlantic and Pacific Tea Co. v. Maxwell*, 199 N.C. 433, 154 S.E. 838 (1930); and *State v. Irwin*, 126 N.C. 989, 35 S.E. 430 (1900).

under the Communications Act,<sup>2</sup> that statute contains nothing that would exempt broadcasting stations from generally applicable state and local taxes. Thus there appears to be no question of a municipality's statutory authority to levy the tax.

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## **II. First amendment restrictions, if any**

Newspapers and radio and television broadcasters enjoy special protections under the first amendment to the United States Constitution,<sup>3</sup> and although they are not shielded by the amendment from generally applicable taxes and other economic regulations, the courts will carefully examine any tax on the press if the tax is challenged. A state privilege license tax levied against only 13 newspapers<sup>4</sup> and a state use tax applicable to only 11 publishers<sup>5</sup> have

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2. 47 U.S.C. § 151 *et seq.*

3. U.S. CONST. amend. 1.

4. *Grosjean v. American Press Co., Inc.*, 297 U.S. 233 (1936).

5. *Minneapolis Star & Tribune Co. v. Commissioner of Revenue*, 460 U.S. 575 (1983).

been held invalid as violating the first amendment. In both cases, however, the Supreme Court was careful to point out that the press is not exempt from generally applicable taxes. The problem in these cases was that either the press had been singled out for special tax burdens or it had been the object of discrimination. In a number of cases decided after *Grosjean*, lower federal courts and state courts upheld privilege license taxes (most of them measured by gross receipts) on newspapers in the face of claims that the taxes violated the first amendment.<sup>6</sup> The following statements of the California court in the *City of Corona* case reflect the attitude of these courts toward the challenged taxes:

While the ordinary business tax here in issue is levied in form upon the privilege of engaging in or transacting business, it is, on its face and in fact, a tax for revenue purposes only, and does not grant or take away any right to do business, does not subject business to withdrawal or control by the city, is not regulatory in any manner, and in substance has been recognized and upheld by the weight of authority.<sup>7</sup>

The only directly relevant North Carolina case concerned the use tax<sup>8</sup> as it was applied to purchases made by a publishing company in producing its “shoppers’ guide” (which consisted mostly of advertisements and some news items and was distributed free). Application of the tax was held valid.<sup>9</sup> The North Carolina Supreme Court distinguished the tax challenged in that case from the taxes struck down in *Grosjean* and *Minneapolis Star* on the ground that the North Carolina use tax—and by extension the local government sales and use tax—applies to all businesses, not just the press, and does not single out the press for disparate treatment.

From the cases discussed above, it would appear that a municipal privilege license tax levied on newspapers and radio and television stations as part of a general taxing scheme at a rate that is generally in line with the rate levied on other businesses is valid under the first amendment. Such a tax appears to be no more objectionable than a local sales or property tax levied on newspapers and broadcasters. In levying the tax, a municipality could set up specific license tax categories for newspapers and radio and television broadcasters. So long as the taxes are part of a broader business and occupational licensing scheme under which most other trades and businesses in the municipality are taxed, such special categories do not appear to be objectionable. Nevertheless, to avoid any argument that by setting up the categories the municipality is levying special taxes on the press or on the exercise of first amendment rights, and that the taxes are therefore unconstitutional, a municipality might prefer to draft a license tax category applicable to any person or firm engaged in the advertising business, and tax

newspapers and broadcasting stations under that category. Or it might choose to tax them under an even broader category of miscellaneous businesses.

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### III. Commerce clause restrictions, if any

Thus far in the discussion, I have assumed that the municipality is contemplating levying the tax at a flat rate. Many municipalities, however, levy privilege license taxes on businesses not limited by Schedule B at rates measured by a percentage of gross receipts; the larger a business’s gross receipts, the larger the tax it pays. Such taxes are authorized by G.S. 160A-211 and find support in case law.<sup>10</sup> But if some of a business’s gross receipts are generated through interstate commerce—as would be the case with most broadcasting stations and many newspapers—a tax based in part on those receipts might be objected to as a burden on interstate commerce that is forbidden by the commerce clause of the United States Constitution.<sup>11</sup> And indeed, in 1936, in *Fisher’s Blend Station v. Tax Commission*,<sup>12</sup> the Supreme Court held that the State of Washington’s gross receipts tax was invalid on commerce clause grounds when applied to radio stations some of whose income was derived from interstate commerce. That decision, however, has been entirely undercut by *Complete Auto Transit, Inc. v. Brady*,<sup>13</sup> decided by the Supreme Court in 1977. The Court held in *Complete Auto Transit* that a state tax measured by gross receipts, some of which are derived from interstate commerce, is not invalid under the commerce clause if (1) there is a sufficient relationship between the

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6. See *Territory of Alaska v. Journal Printing Co.*, 135 F. Supp. 169 (D. Alaska 1955) (general territorial business license tax applied to newspapers and measured by gross receipts); *Arizona Publishing Co. v. O’Neil*, 22 F. Supp. 117 (D. Ariz.), *aff’d*, 304 U.S. 543 (1938) (state business license tax included a special category for newspapers, tax measured by gross receipts); *Giragi v. Moore*, 49 Ariz. 74, 64 P.2d 819, *appeal dismissed*, 301 U.S. 670 (1937) (state excise tax on sales of goods and services, measured by gross receipts, applied to newspapers); *City of Corona v. Corona Daily Independent*, 115 Cal. App.2d 382, 252 P.2d 56, *cert. denied*, 346 U.S. 833 (1953) (municipal privilege license tax on newspapers at flat rate of \$24 a year, separate license category for newspapers); and *Tampa Times Co. v. City of Tampa*, 158 Fla. 589, 29 So.2d 368, *appeal dismissed*, 332 U.S. 749 (1947) (municipal privilege license tax category for newspapers; tax was measured by gross sales of advertising and newspapers, and the rate was the same as for retail and wholesale merchants).

7. 252 P.2d, at 61.

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8. N.C. GEN. STAT. § 105-164.6.

9. *In re Assessment of Additional North Carolina and Orange County Use Taxes*, 312 N.C. 211, 322 S.E.2d 155 (1984).

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10. See *Nesbitt v. Gill*, 227 N.C. 174, 41 S.E.2d 646 (1947), and *Albertson v. Bland*, 81 N.C. 479 (1879).

11. U.S. CONST. art. I, § 8, cl. 2.

12. 297 U.S. 650.

13. 430 U.S. 274.

taxing jurisdiction and the business taxed to justify the tax, (2) the tax is fairly related to services provided the taxpayer, (3) the tax does not discriminate against interstate commerce, and (4) the tax is fairly apportioned, if more than one state could levy the same sort of tax on the business. The tax contemplated here appears to meet the four criteria for constitutionality stated in *Complete Auto Transit*. First, if the newspaper or broadcasting station is located within the municipality, there is clearly a sufficient connection between the taxing jurisdiction and the business to justify levying the tax. Second, if the business is located within the municipality, it is receiving fire and police protection and other municipal services in return for its taxes. Third, since the same tax at the same rate is levied on both purely local businesses and those engaged in interstate commerce, there is no discrimination against interstate commerce. Fourth, if the tax is drafted as one on businesses located in the municipality that publish newspapers or operate broadcasting stations or that

create, publish, and disseminate advertising, and the tax is measured only by the gross receipts of the broadcasting stations and newspapers located in the municipality or state and therefore need not be apportioned.<sup>14</sup>

The effect of *Complete Auto Transit* can be seen in a recently-decided Arizona case, *Arizona Lotus Corp. v. City of Phoenix*,<sup>15</sup> which construed the city's privilege license tax ordinance. The Phoenix ordinance levied a privilege license tax on advertising businesses, including billboards and radio

14. Such a gross receipts tax resembles the one in controversy in *Complete Auto Transit*, concerning which one commentator has written: "Even though the activity producing the taxed gross proceeds in *Auto Transit* was a part of interstate commerce, there was no danger of duplicate taxation of the proceeds, since the entire operation generating the proceeds took place within the borders of the taxing state." P. Hartman, *Federal Limitations on State and Local Taxation* (Lawyers' Co-op., Rochester, N.Y., 1981), p. 91.

15. 136 Ariz. 22, 663 P.2d 1013 (Ariz. Ct. App. 1983).

and television broadcasters. The tax was measured by gross revenues. Until 1977, when *Complete Auto Transit* was decided, the city applied the tax only to revenue generated from local advertising. After 1977, the city informed the taxpayers that the tax would thenceforth be applied to revenue generated from national advertising as well. The issue in the case was whether the city had correctly interpreted and applied the ordinance; the court held that the city had done so. The court did not discuss (and the taxpayers apparently did not raise) the issue of whether the broadening of the tax was authorized by *Complete Auto Transit*; all parties apparently assumed that it was.

In summary, a municipal privilege license tax on newspapers and radio and television broadcasting stations levied at either a flat rate or as a percentage of gross receipts, if levied solely for the production of revenue and as part of a general scheme of taxing trades and businesses in the municipality, is valid under both the first amendment and the commerce clause. ¶

## City Manager

(continued from page 24)

strong national association, has advantages over the elected officials. Still, the manager lacks clear legitimacy as a governmental actor once he or she goes beyond the traditional role as agent of the council. More extensive roles are commonly filled, and they are needed if cities are to meet their challenges. The responsibilities developed here acknowledge the unique position of the city manager as a policy leader, implementor, and organizational manager in a democratic government. I hope that they help officials and citizens alike to realize how much is expected of managers and to appreciate the high standards of responsiveness and competence that should accompany the contributions managers make. ¶

## Announcing

### A New Institute Series

The Institute of Government has added a new series to its publications list. "**Special Series**" publications are brief monographs dealing with many subjects and areas of interest. A streamlined format allows prompt publication of currently relevant material. Written and produced on an occasional basis, these monographs contain technical or specialized material of interest to various groups that may not be served by the Institute's specialized bulletins.

Two "**Special Series**" monographs are now in print:

No. 1, *The Use of Contempt to Enforce Child-Support Orders in North Carolina* by Trudy Allen Ennis and Janet Mason (April 1986), 18 pp. \$2.50 (\$1.50 for 100 or more copies).

No. 2, *The Doctrine of "Vested Rights" in North Carolina Zoning Law* by Philip P. Green, Jr. (May 1986), 18 pp. \$2.50.

These publications can be obtained from the Publications Office, Institute of Government, Knapp Building 059A, The University of North Carolina at Chapel Hill, Chapel Hill, NC 27514. Telephone (919) 966-4119.

## Book Review

***Hazardous Materials in North Carolina—A Guide for Decisionmakers in Local Government***, by Richard N. L. Andrews, Raymond J. Burby, and Alvis G. Turner. Chapel Hill, N.C.: The Conservation Foundation of North Carolina, 1985. 186 pages (available from the Institute for Environmental Studies, UNC-Chapel Hill, Chapel Hill, N.C. 27514).

### Fox on the run

Hounds in hot pursuit, hunters closing in, a fox is on the run. If he knows the terrain and has a plan, he may escape the danger. Without the knowledge and the plan, the fox is in for a painful experience.

The risks posed by hazardous materials in the community are to local governments what the hunters and hounds are to the fox. To minimize the danger, local governments, like the fox, must know the terrain and have a plan. Unfortunately, the "terrain" of hazardous materials use, regulation, and liability is complex and intimidating. As a result, local governments often either postpone planning for the management of risks from hazardous materials or give that planning less attention than it demands.

### Starting points

For local government decisionmakers concerned with hazardous materials issues, help has arrived. *Hazardous Materials in North Carolina—A Guide for Decisionmakers in Local Government* offers local officials and citizens a basic overview of hazardous materials issues, as well as guidance on how to deal with them.

The authors caution early on that the book is not a "cookbook," not a "technical

manual," and not a detailed, step-by-step description of a model program. Rather, the intended purpose of the book is to provide local officials and citizens "starting points" for addressing the issues. It fulfills that role. Indeed, for some issues, the book is exceptionally helpful. For example, the chapter on emergency preparedness for hazardous materials accidents sets out 20 particularly practical and useful guidelines for the development of an emergency preparedness plan.

Other issues are simply identified, but also included at the end of the book is an extensive list of contacts, references, and sources of information. The reader who is interested in developing an approach to a specific issue can refer to this listing. For example, the authors note that local governments, subject to certain limitations, can establish local routing requirements for vehicles carrying hazardous materials. To learn more about routing limitations and requirements, the reader can use the list at the end of the book.

### Hazardous materials, not just hazardous waste

The book begins with two questions: "What are hazardous materials?" and "Why should local governments in

North Carolina be concerned about them?" In answering the questions, the authors strike two important themes that are continued throughout. The first theme is that local governments must manage the risks that hazardous materials, not just hazardous wastes, pose to their communities. The book defines hazardous materials as those substances that are ignitable, corrosive, reactive, or toxic. A hazardous waste is a hazardous material that has been discarded. Most media attention and government regulations, as the authors observe, have focused on hazardous wastes instead of on the broader category of hazardous materials. Nevertheless, raw materials and other hazardous materials pose many of the same kinds of risks for communities as hazardous wastes do. Because hazardous materials are ubiquitous in our communities, the authors quite properly urge that local officials and citizens not ignore the risks arising from that broader category.

### Local governments: Regulator and regulated

The second theme of *Hazardous Materials in North Carolina* is that local governments must be concerned about hazardous materials laws and regulations because

they must comply with them. As the authors emphasize, local governments have dual roles and responsibilities regarding these materials—they both regulate and are regulated. It is not unusual for a local government to be involved in the use, generation, transportation, treatment, storage, and disposal of hazardous materials. When a local government fails to meet its responsibilities as a member of the regulated community, a threat to health and the environment may result; the government may be liable under applicable laws and rules; and the government may lose credibility as a regulator.

### An active role for local governments

*Hazardous Materials in North Carolina* advocates an active, aggressive role for local governments in the management of risks from hazardous materials. The authors emphasize that risks can best be managed by planning *before* a problem arises. To decisionmakers in local government, the book recommends the following agenda:

- Local elected officials should make a policy commitment to address relevant hazardous materials issues;
- Local governments should establish a mechanism for

<p>public participation that will promote common understanding of the community's potential hazardous materials risks and ways to manage them;</p> <ul style="list-style-type: none"> <li>—Local governments should develop an inventory of the hazardous materials present in their jurisdictions;</li> <li>—Local governments should act as catalysts in the understanding, acceptance and application of the "Pollution Prevention Pays" concept;</li> <li>—Local governments should design and establish a fair process for reviewing proposals for the siting of hazardous materials facilities; and</li> <li>—Local governments should develop a plan for emergency preparedness for hazardous materials accidents.</li> </ul> <p>This agenda is a blueprint for a strong, rational, and appropriate local governmental role in the hazardous materials area. The federal and state programs concerning hazardous substances and wastes, although broad in various respects, leave room for responsible local government action under the agenda proposed in the book. Only local government has the local presence, resources, and authority to carry out this agenda. Furthermore, because it has such a large stake in the outcome, no one but local government has the incentive to address the issues on the agenda.</p> <p><b>Local ordinance issues</b></p> <p>The book provides a useful, although brief, legal discussion of the legal</p>	<p>authority of local government to regulate management of hazardous materials. The authors offer little guidance, however, on a topic likely to arise when a community considers enacting an ordinance for regulating hazardous materials. The proposal of an ordinance can raise many difficult issues for a community. Those issues are not just legal, although legal questions about the authority of local government to act in this area have generated much controversy; Issues can also arise from questions about the most effective program management options and from public expectations concerning the local governments' efforts to manage the risks from hazardous materials.</p> <p>From a management perspective, local governments should ensure that the discussion and adoption of an ordinance does not somehow overshadow or forestall the accomplishment of other important parts of the program. Much of the agenda the authors suggest can be implemented without adoption of an ordinance. Furthermore, government officials and citizens must recognize that the adoption of an ordinance is by itself an empty gesture. The necessary resolve and resources to support effective administration and enforcement must back up the ordinance. A discussion of what can and what cannot be accomplished through adoption of an ordinance would have been a useful addition to the book.</p>	<p><b>Environmental auditing and local governments</b></p> <p>In the context of a case study concerning the City of Raleigh, the authors suggest that environmental auditing is a management tool that will help local governments meet their environmental responsibilities. Although the use of environmental auditing is widespread in the private sector, its use by local governments has been limited. Given the broad range of environmental responsibilities that a local government typically has, and given the City of Raleigh's positive experience with this management tool, the suggestion that other local governments consider adopting environmental auditing programs is compelling.</p> <p><b>A local role in enforcement and cleanups</b></p> <p>In various places, the authors refer to the value of local government taking a role in enforcing hazardous materials laws and regulations. Recent events underscore the need for such a role.</p> <p>Limited resources, distance from the local scene, gaps in jurisdiction, and disagreements about program priorities may lead federal and state agencies with responsibilities for hazardous materials programs to overlook a problem developing in a community. For example, limited resources may prevent a federal agency from inspecting a facility that is improperly storing hazardous materials. A local govern-</p>	<p>ment that has addressed the issues on the recommended agenda might be in a position to supplement the federal efforts and spot the problem early. Communities can bring problems that fall within state or federal jurisdictions to the attention of the appropriate agencies and can also deal directly with problems that are best handled at the local level.</p> <p>Federal or state agencies often have jurisdiction over cleaning up contaminating hazardous materials, and either they or designated responsible parties may carry out such a cleanup. Even in these situations, local governments and citizens have an important part. They can provide views, comments, and information on such issues as the nature and extent of contamination, avenues of exposure, the level of cleanup required, the effectiveness of proposed remedies, and the method of carrying out those remedies.</p> <p><b>Conclusion</b></p> <p>Without a doubt, local governments will play a key role in dealing with hazardous materials issues and problems. Whether that role will be effective and timely is uncertain. Using this guide, decisionmakers in local government can greatly increase the chance that their communities will manage the risks posed by hazardous materials in a constructive way.—<i>William G. Ross, Jr.</i> <i>Chairman; Committee on Environmental Law, North Carolina Bar Association.</i></p> 
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