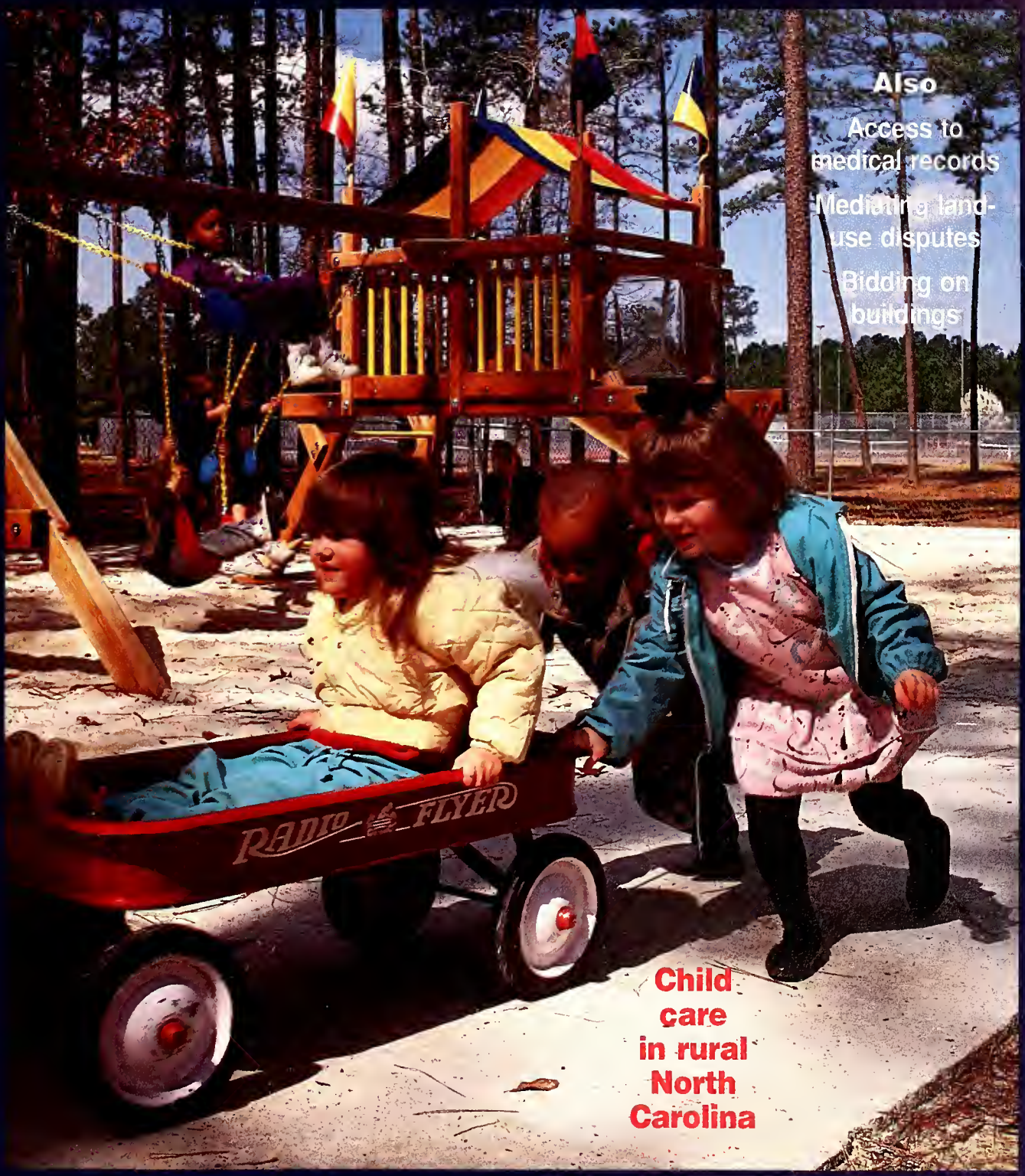
Winter 1991 Vol. 56, No. 3

Popular Government

Institute of Government • The University of North Carolina at Chapel Hill



Also

Access to medical records

Mediating land-use disputes

Bidding on buildings

Child care in rural North Carolina

On the Cover

Children from the Southeast Community College Child Development Center in Whiteville, North Carolina, enjoy the center's playground.
Photograph by Bob Donnan

Popular Government (ISSN 0032-4515) is published four times a year (summer, fall, winter, spring) by the Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330. Subscription: $12.00 per year. Second-class postage paid at Chapel Hill, NC, and additional mailing offices. POSTMASTER: Please send change of address to Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330.
The paper used in this publication meets the minimum requirements of American National Standard for Information Services—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1984.
Printed in the United States of America

Popular Government is distributed without charge to city and county officials as one of the services provided by the Institute of Government in consideration of membership dues.

A total of 7,700 copies of this public document were printed by the Institute of Government, The University of North Carolina at Chapel Hill at a cost of $7,425.15, or $0.96 per copy. These figures include only the direct cost of reproduction. They do not include preparation, handling, or distribution costs.

Institute of Government

The University of North Carolina at Chapel Hill

John L. Sanders, Director
William A. Campbell, Associate Director

Faculty

Stephen Allred
A. Fleming Bell, II
Joan G. Brannon
Stevens H. Clarke
Ann C. Clontz
Janine M. Crawley
Anne M. Dellinger
James C. Drennan
Richard D. Ducker
Robert L. Farb
Joseph S. Ferrell
S. Grady Fullerton
Milton S. Heath, Jr.
Joseph E. Hunt
Kurt J. Jenne
Robert P. Joyce
Jeffrey S. Koeze
Patricia A. Langelier
David M. Lawrence
Charles D. Liner
Ben F. Loeb, Jr.
Ronald G. Lynch
Janet Mason
Richard R. McMahon
Laurie L. Mesibov
Joseph F. Miller
David W. Owens
Robert E. Phay
Roger M. Schwarz
Michael R. Smith
Stephen K. Straus
Mason P. Thomas, Jr.
Thomas H. Thornburg
A. John Vogt
Warren J. Wicker

The Institute of Government of The University of North Carolina at Chapel Hill is devoted to teaching, research, and consultation in state and local government.

Since 1931 the Institute has conducted schools and short courses for city, county, and state officials. Through monographs, guidebooks, bulletins, and periodicals, the research findings of the Institute are made available to public officials throughout the state.

Each day that the General Assembly is in session, the Institute's *Daily Bulletin* reports on the Assembly's activities for members of the legislature and other state and local officials who need to follow the course of legislation.

Over the years the Institute has served as the research agency for numerous study commissions of the state and local governments.

Popular Government

Institute of Government • The University of North Carolina at Chapel Hill

CONTENTS

Winter 1991 Vol. 56, No. 3

Jodi Anderson

p. 2

Feature Articles

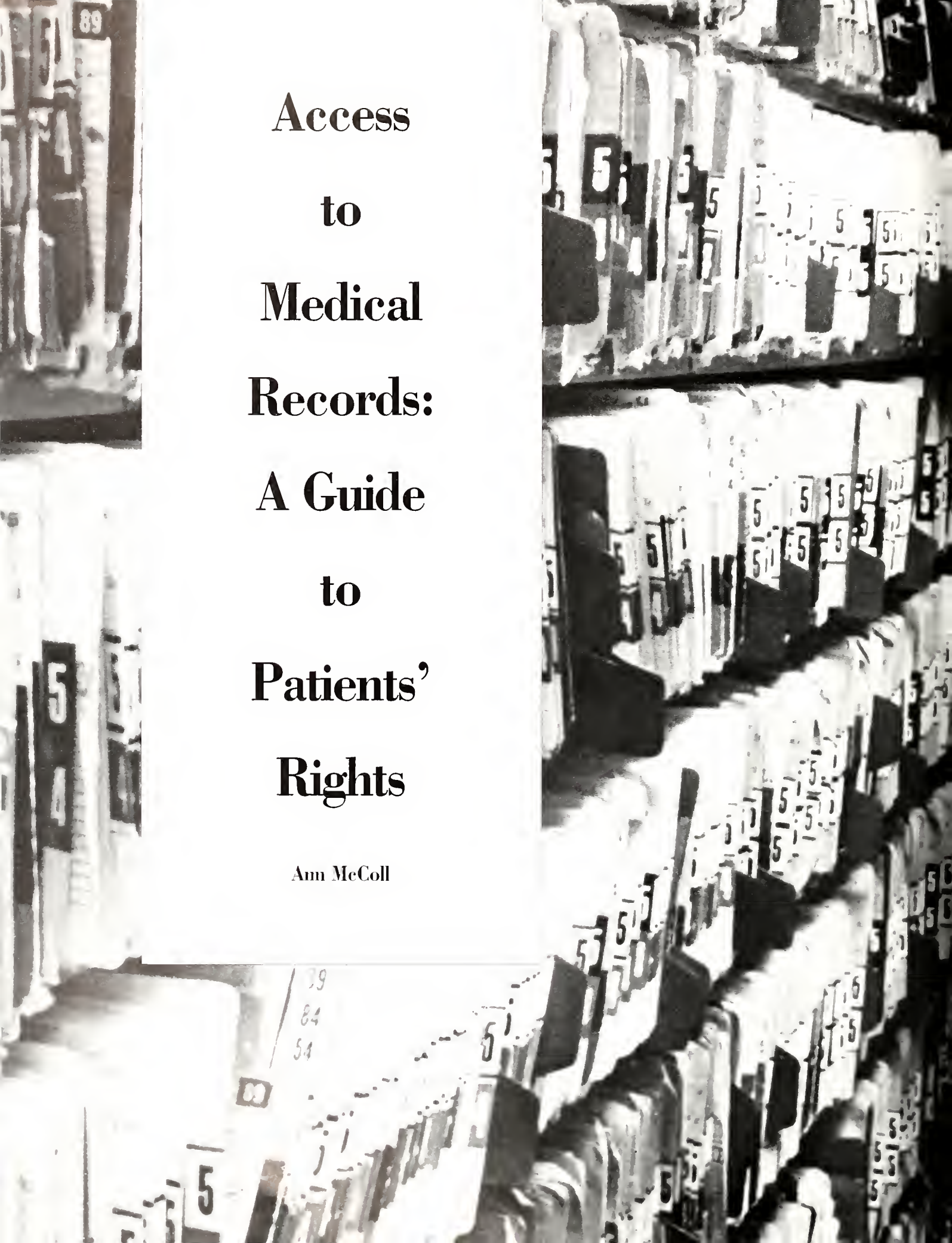
Bob Donnan Photography

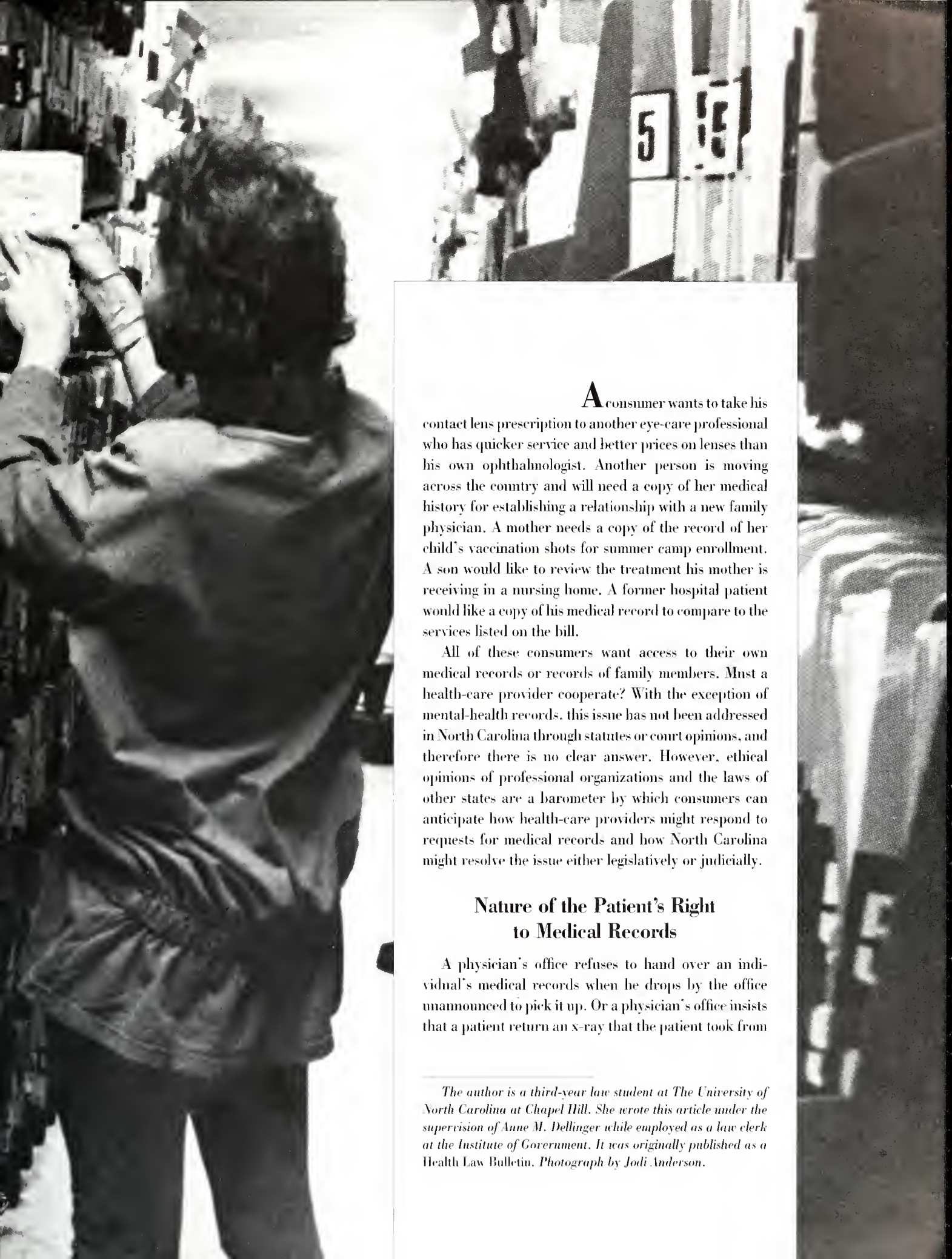
p. 10

At the Institute

Access to Medical Records: A Guide to Patients' Rights

Ann McColl





A consumer wants to take his contact lens prescription to another eye-care professional who has quicker service and better prices on lenses than his own ophthalmologist. Another person is moving across the country and will need a copy of her medical history for establishing a relationship with a new family physician. A mother needs a copy of the record of her child's vaccination shots for summer camp enrollment. A son would like to review the treatment his mother is receiving in a nursing home. A former hospital patient would like a copy of his medical record to compare to the services listed on the bill.

All of these consumers want access to their own medical records or records of family members. Must a health-care provider cooperate? With the exception of mental-health records, this issue has not been addressed in North Carolina through statutes or court opinions, and therefore there is no clear answer. However, ethical opinions of professional organizations and the laws of other states are a barometer by which consumers can anticipate how health-care providers might respond to requests for medical records and how North Carolina might resolve the issue either legislatively or judicially.

Nature of the Patient's Right to Medical Records

A physician's office refuses to hand over an individual's medical records when he drops by the office unannounced to pick it up. Or a physician's office insists that a patient return an x-ray that the patient took from

The author is a third-year law student at The University of North Carolina at Chapel Hill. She wrote this article under the supervision of Anne M. Dellinger while employed as a law clerk at the Institute of Government. It was originally published as a Health Law Bulletin. *Photograph by Jodi Anderson.*

the office to use in consulting with a specialist. In both instances the question arises, who owns the medical records?

While North Carolina has not addressed this question directly, other states have consistently answered it by finding the health-care provider to be the owner of the actual medical record.[1] Most court opinions and statutes dealing with the issue have explained that this property interest means that the provider is the custodian of the record for all of those who may have a legitimate interest in its contents.[2] By comparison, the American Medical Association and some courts, in language sounding more protective of the health-care provider's interest, consider medical records the personal property of the provider to be used to assist and record diagnostic treatment and decisions.[3]

This recognition of the health-care provider's property right does not inherently curtail the patient's right to the contents of the medical records. However, it does mean that health-care providers may set up reasonable guidelines in allowing access to medical records. Requests that consumers may anticipate are discussed below.

Copying fees. Health-care providers are not obliged to give patients the original medical record. Rather, a copy can be provided. States with statutes on access to medical records typically allow the provider to charge copying fees reasonably related to the actual cost of providing copies of the record. Thus fees that appear to be priced to discourage patients or their lawyers from obtaining the records would be unreasonable and presumably would be struck down by courts if challenged. Courts have been reluctant to spend time determining exactly what would be a reasonable fee.[4] Charging fees comparable to other institutions, such as the local courthouse, would be one way to establish fees that courts would likely find reasonable.

Reasonable time to produce record. The appropriate response time for a request has not been widely litigated. However, the standard most likely to be employed, just as with cost of copying, is reasonableness. The Statutes of California require a response to a request within ten days, or, if the record is very large, notice of the delay must be given within ten days, and the records must be given within thirty days.[5] In Missouri a court upheld a hospital's policy of a ninety-day period for responding to medical records requests.[6]

Sometimes a patient may want a copy of the record before it has been completed. Where treatment will occur over a relatively short period of time, such as in a hospital, the provider may have a reasonable and legitimate interest in retaining the record until all medical notes have been incorporated. Where treatment extends over a long or indefinite period, such as ongoing psychiatric treatment or nursing-home care, a refusal to open the records to the patient during treatment may be unreasonable.

Summary of record. Some providers prefer to respond to requests for medical records with a summary of the pertinent information: This may save time and the cost of copying a large record. In addition there may be medical notes that would be unintelligible to the patient. For patients, a major concern with summaries is the fear that an unscrupulous health-care provider might censor portions of the record that reflect negligence or deliberate misconduct. The patient also may doubt whether a summarizer, even operating in good faith, will include all the information of present or future value to the patient.

States have resolved the issue of summaries differently. In New York a court upheld a statute that gave the physician full discretion in determining what should be included in the summary (although other laws would prevent deliberate misleading by the physician).[7] A California statute allows summaries of medical records, but it stipulates what must be included in the summary.[8] And in Massachusetts, a jurisdiction that does not have a statute on medical records, the court refused to allow a physician to respond to a medical records request with a summary.[9] While there are not enough cases for a clear pattern, these court opinions suggest that a North Carolina court might be reluctant to allow a summary because the legislature has not statutorily authorized it.

Employee present. When a patient wants to view his or her medical record, the health-care provider may require that an employee be present. The purpose is to have someone available to answer questions or explain those portions of the record that may be unclear. In addition, as custodian of the record, the provider has a responsibility to protect the record from theft or alteration.

Identification of requester. The patient's right to gain access to medical records is generally acknowledged to include legal representatives and authorized family members of the patient. The requester (patient or representative) should be prepared to provide identification. A provider's policy on identification will be designed to protect patient confidentiality by ensuring that only authorized persons can gain access to the medical records.

Disclosure to Other Parties

Sometimes a patient may request that medical records be sent from one health-care provider to another. For instance, a patient might ask a hospital to send medical records to her family-practice physician. If the patient at a later time wants all her records with the family-practice physician sent to another provider, does the family-practice physician have the authority to include the records from the hospital?

North Carolina has not addressed this issue. The following is the recommended disclosure policy of the American Hospital Association:

> [There should be an] Agreement by the recipient not to further disclose such information, or make copies of it, unless further disclosure is expressly permitted in the original authorizations or is by necessary implication inherent in the purposes or the original consent or authorization.[10]

If this policy were followed, the family physician probably could send the hospital records to another provider because it would be for the same purpose of maintaining a complete health history for medical treatment. The physician probably could not send them to the patient's employer, because this serves a different purpose.

Sources of the Right

As mentioned above, with the exception of mental-health records, North Carolinians are not given by law an explicit right to gain access to their medical records. However, there are laws that imply such a right, as well as nonbinding opinions by professional organizations and laws in other states that may be persuasive to a provider, or in the event of litigation, to the courts. Because the sources of the right differ depending on the health-care provider, these sources are discussed below in connection with the most frequently sought providers.

Private Physician

All physicians are covered by the common law, and many are members of the American Medical Association and the North Carolina Medical Society, which issue ethics opinions. Additional provisions apply to those working in a United States government-funded or -operated facility, discussed below.

North Carolina courts have recognized that physicians owe a fiduciary duty to their patients. Court opinions have described this duty as the requirement that physicians act in good faith in interactions with the patient or that decisions be made in the patient's best interest.[11] North Carolina courts also have recognized a physician's contractual obligation to the patient once the physician has agreed to attempt diagnosis or treatment.[12] Several states that recognize a common-law fiduciary duty or contractual obligation of the physician to the patient have extended the principle to include the patient's access to medical records.[13] These precedents should be persuasive to North Carolina courts in deciding whether to extend their own rulings on the common-law requirements in the physician-patient relationship.

Approximately 40 percent of physicians in the United States belong to the American Medical Association (AMA).[14] The AMA publishes ethical opinions that it encourages its members to follow. The opinions are not, however, legally binding, nor does the organization enforce them against individual members. Still, opinions by the AMA can be helpful to physicians who are trying to resolve ethical issues, as well as to the Board of Medical Examiners or the North Carolina courts in determining a reasonable standard by which to measure the conduct of particular physicians. The AMA states that medical records are the physician's personal property but copies of medical records and prescriptions should be provided to patients upon request. The AMA also explicitly states that physicians should not withhold records until medical bills are paid.[15]

The North Carolina Medical Society, a voluntary membership organization for physicians, looks to the AMA's ethical opinions on patient access to medical records. Although the organization does not take legal action against a physician for withholding medical records, the Medical Society will refer consumer complaints to local-chapter grievance committees. These committees investigate complaints and mediate between patients and physicians.

Acute Care Hospital

Originally, hospitals were considered merely the physical facilities used by doctors in treating patients. Reflecting the changes in the hospital industry, in the 1960s courts began to recognize a duty of care owed directly by the hospital to patients. When this duty has been violated by a hospital, some courts have called it "corporate negligence."[16] From this duty of the hospital to the patient, certain states have inferred a right of

consumers to request their hospital records.[17] While North Carolina has not recognized this right explicitly, it has adopted the corporate negligence doctrine.[18] Because it has adopted the doctrine and most hospitals already comply with medical records requests, the North Carolina courts would be likely, if asked, to extend the doctrine to include access to medical records.

For a hospital to be licensed to operate in North Carolina, it must meet standards established by the North Carolina Administrative Code. The code stipulates that patient records are the property of the hospital but requires the hospital to retain the records for at least the time established in the North Carolina statute of limitations for malpractice actions.[19] Together these provisions reflect the view of the hospital as the custodian of medical records. While it does not state explicitly a patient's right to obtain the records, the reference to the statute of limitations clearly indicates the need to retain medical records for potential lawsuits—including those initiated by former patients. If patients have the right to their records for litigation, the courts may find they have a right to the records for other reasons.

Both the American Hospital Association (AHA) and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)[20] have policies on patient rights that include a right to information. But like the AMA's, these policies do not bind the health-care provider automatically; the hospital must explicitly adopt the statement as part of its own policy. The following is taken from the AHA's guidelines regarding disclosure to patients:

> The American Hospital Association's policy entitled *A Patient's Bill of Rights* states: "The patient has the right to obtain from his physician complete current information concerning his diagnosis, treatment, and prognosis in terms the patient can be reasonably expected to understand. When it is not medically advisable to give such information to the patient, the information should be made available to an appropriate person in his behalf."
>
> In addition to information available from the physician, the law (statutory or judicial) of most states recognizes a reasonable right of access to medical record information by the patient or his nominees. The patient's right of access in no way abrogates the hospital's property rights in its record and its right to establish reasonable procedures for access to the patient's record. The attending physician should be notified of the patient's request for access to the medical record. Records containing information that might be detrimental to the physical and/or mental health of the patient, as determined by the attending physician, should be released in a form that minimizes any adverse effect on the patient.[21]

Recognition of patient access by these organizations, as well as by the AMA, may persuade North Carolina hospitals (or courts) that access is the norm in the health-care community.

United States Agency

All United States agencies, including government health-care facilities, are required to provide access, upon request, to records maintained on individuals.[22] Thus a consumer treated at a federal hospital or clinic has an explicitly protected right to gain access to records.

Mental-Health and Substance-Abuse Service

The rights of mental-health patients to their medical records is specifically addressed in the North Carolina General Statutes: "Upon request a client shall have access to confidential information in his client record except information that would be injurious to the client's physical or mental well-being."[23] The statute appears to cover all, or almost all, mental-health patients.[24] This would include the patients of psychiatrists, psychologists, and therapists in private practice or in government-funded programs.

When a patient asks, any health-care provider offering treatment for alcoholism or drug abuse who receives direct or indirect assistance from a United States department or agency must comply with federal statutes requiring disclosure of records.[25] Indirect assistance can be interpreted broadly. For instance, a program operated by a town was held to receive federal assistance because the program received funds from state and county authorities that participated in federal revenue sharing.[26]

Nursing Home

North Carolina statutes establish certain rights for nursing-home patients. Among them are requirements that the nursing home maintain a record on each patient and notify all patients of their rights and that the courts recognize a right to civil action to enforce these provisions.[27] Read together, these provisions imply a right to gain access to one's own medical records; otherwise, the civil action provision would be meaningless—if a patient did not know whether a record was being kept or what it contained.

Statutes governing facilities participating in Medicaid also imply a right to one's medical records. They state

that patients have a right to be informed and to participate in treatment.[28] Without access to medical records, neither of these statutorily granted rights could be fully exercised.

Limitations on the Right

While the above sources suggest a right to gain access to medical records restricted only by administrative procedures for requesting and receiving copies of records, two limitations are generally recognized by courts in other jurisdictions: therapeutic privilege and a lesser right of access for minors. Like the general right to access to medical records, these limitations have not been addressed specifically in North Carolina, except as applied to access to mental-health records.

Therapeutic Privilege

With mental-health records, North Carolina explicitly recognizes the therapeutic privilege by allowing the facility or attending physician to withhold information that may injure the health of the patient.[29] In fact one reason access to mental-health records has been codified in North Carolina as well as other jurisdictions is the strong common-law presumption against allowing mental-health patients access to their records for fear that seeing the physician's notes would worsen the patient's condition.[30] The therapeutic privilege also has been applied in areas outside mental health whenever the physician has felt that the information would have a harmful effect on the patient. This reflects the historic view of the physician as the protector of the patient, but as the relationship evolves into a joint decision-making process, assertion of the therapeutic privilege is becoming increasingly rare. In addition patients may suspect providers of using therapeutic privilege as a pretext for less legitimate reasons for denying access, such as fear of malpractice claims. This concern, together with providers' greater willingness to reveal diagnoses and prognoses to patients, may cause courts to scrutinize the privilege more closely than in previous decades.

Minors

Historically, minors have not been afforded the right to decide about medical care. In fact a doctor could be sued for assault and battery for treating a child without the consent of the parent.[31] However, most states, including North Carolina, have made an exception to a minor's inability to consent for treatment for procedures that are particularly intimate. In North Carolina minors can consent to diagnosis and treatment of alcohol or drug abuse as well as communicable diseases, emotional disturbances, or pregnancy.[32]

North Carolina statutes are silent on the minor's right to request access to medical records. Federal regulations on the confidentiality of the records of alcohol- and drug-abuse patients specify that if state law allows a minor to consent to treatment, only the minor or minor's chosen representative can gain access to medical records. If state law requires parental consent to treatment, the parent and the child must jointly request the records.[33] If North Carolina courts chose to follow the reasoning of the federal regulations, minors could view their medical records related to pregnancy, communicable diseases, and alcohol and drug abuse or emotional disturbances and prevent their parents from doing so. As with adults, the therapeutic privilege would still prevent access to medical records that the physician thought would harm the minor.

In other states additional exceptions to a minor's inability to consent have been carved out of the common law, especially for older minors.[34] When the older minor can give informed consent or at least participate in medical decisions with the parent, the physician's fiduciary relationship with the patient requires allowing the minor, upon request, to review the medical records. To the extent North Carolina recognizes an older minor's role in decision making, the right to gain access to medical records is likely to be expanded also.

The Patient's Options

In most circumstances health-care providers will accommodate patients who want to read or copy their medical records. A consumer who wants access to her or his records should consider calling in advance to find out the policies of the health-care provider. Reasonable guidelines for a provider include requiring advance notice for access, charging reasonable copying fees, and insisting on proof that the requester is the patient or an authorized representative. Consumers who wish to view the records in the physician's office may be required to make an appointment or come at a particular time of the day. The provider also may require that an employee be present while the record is being reviewed.

A patient denied access to her or his records has several choices. The patient could complain to the

Organizations That Can Help

Listed below are the organizations that may be contacted for information on gaining access to medical records. Each has its own policies and procedures for handling consumer inquiries.

North Carolina Medical Society	919-833-3836
Board of Medical Examiners	919-876-3885
Board of Dental Examiners	919-781-4901
Board of Registered Counselors	919-737-2244
Board of Practicing Psychologists	704-262-2258

appropriate state board of examiners or, if the provider is a member of the North Carolina Medical Society, to the society. In North Carolina, however, none of the major health-care provider boards has a formal policy on the subject, and only the Board of Medical Examiners (the board for physicians) has established a process for accepting and processing such complaints.[35]

Next, a patient might contact his or her legislative representative. While this is unlikely to resolve the issue immediately, it may suggest to the representative a need for legislation on patient access to medical records. A bill requiring health-care providers to allow access to medical records was introduced in the North Carolina House of Representatives in 1989 but failed to emerge from committee before the end of the session. To be considered again by the General Assembly, the bill will have to be reintroduced or a new bill submitted.[36]

Finally, as a last resort, a patient could file a lawsuit seeking the records. The outcome of such litigation cannot be predicted because there have been no lawsuits in North Carolina specifically on access to records. However, North Carolina courts will consider the practices of other states and positions of professional organizations, most of which seem to favor access. A patient who questions the quality of care he or she received by filing a malpractice action is likely to gain access to the records. In such a case, a court would normally order the provider to produce the patient-plaintiff's records as part of the discovery process.

Suggestions for the Provider

To alleviate confusion and minimize the frustration of patients and staff, as well as to discourage litigation, the health-care provider should establish a clear policy on patient and patient-representative access to medical records. This should be available in writing, and the staff should be sufficiently knowledgeable to explain to patients why only copies are available and why certain guidelines are followed. Professional organizations, laws in other states, and policies of the relevant board of examiners can provide guidance in developing a policy.

Sometimes patients ask for their medical records in order to submit them to a third party, such as an employer or health-insurance company. The record may include information not relevant to the third party's interest—information that the patient would not want revealed if aware that it was in the record. Before sending the record, the provider may wish to alert the patient to the presence of such information in the record. The American Hospital Association advises providers to require that requests for disclosures specify medical condition, injury, time period, or any other specification that would help identify the information needed.[37]

Often medical records are cumbersome and written in a manner unintelligible to the typical consumer. Yet many patients find written information about their medical condition to be helpful. Health-care providers should explore alternatives with their patients when the medical record itself is not needed. For instance, physicians could provide patient information sheets for recording basic information collected in an office visit, such as blood pressure, cholesterol level, or results of an eye examination with explanations of what the various measures mean. Published booklets on health-care topics also may be helpful. ❖

Notes

1. *See* Thurman v. Crawford, 652 S.W.2d 240 (Mo. Ct. App. 1983); Young v. Madison Gen. Hosp., 337 So.2d 931 (Miss. 1976); Hutchins v. Texas Rehabilitation Comm'n, 544 S.W.2d 802 (Texas Civ. App. 1976).

2. *See, e.g.*, Miss. Code Ann. § 41-9-65 (1988) ("Hospital records are and shall remain the property of the various hospitals, subject however to reasonable access to the information contained therein"); Colo. Rev. Stat. §§ 25-1-801, -802 (1988); Cynthia B. v. New Rochelle Hosp. Medical Center, 458 N.E.2d 363, 60 N.Y.2d 452, 470 N.Y.S.2d 122 (1983).

3. American Medical Association, *1989 Current Opinions* (Chicago, Ill.: AMA, 1989), § 7.02; Gotkin v. Miller, 379 F. Supp. 859, 867 (E.D.N.Y. 1974), *aff'd* 514 F.2d 125 (2d Cir. 1975).

4. In a series of cases in New York, the courts declined to rule whether the amount per page set by the provider was reasonable. Instead, the courts held that the provider must give patients the alternative of bringing in a copier and copying the records themselves, plus paying a handling fee and charge for employee supervisory time. *See In re* Ventura v. Long Island

Jewish-Hillside Medical Center, 112 A.D.2d 437, 492 N.Y.S.2d 96 (1985); *In re* Hernandez v. Lutheran Medical Center, 104 A.D.2d 368, 478 N.Y.S.2d 697 (1984); Hayes v. County of Nassau, 127 A.D.2d 742, 512 N.Y.S.2d 134 (1987); *In re* Kaplan v. North Shore Univ. Hosp., 117 Misc. 2d 734, 459 N.Y.S.2d 361 (1982); *In re* Scipione v. Long Island Jewish-Hillside Medical Center, 460 N.Y.S.2d 409, 118 Misc. 2d 324 (1982).

5. Cal. Health & Safety Code § 1795.20(a) (West Supp. 1990).

6. Thurman v. Crawford, 652 S.W.2d 240 (Mo. Ct. App. 1983).

7. Lipsman v. New York City Bd. of Educ., 133 A.D.2d 812, 520 N.Y.S.2d 396 (1987).

8. Cal. Health & Safety Code § 1795.20(a).

9. Mitchell v. Subramanya, 27 Mass. App. Ct. 365, 538 N.E.2d 319 (1989).

10. American Hospital Association, "Institutional Policies for Disclosure of Medical Record Information," *Guidelines* (Chicago, Ill.: AMA, 1979), 9.

11. *See* Black v. Littlejohn, 312 N.C. 626, 646, 325 S.E.2d 469, 482 (1985) ("duty of good faith and fair dealing"); Cates v. Wilson, 350 S.E.2d 898 (1986) *aff'd in part and modified in part*, 321 N.C. 1, 361 S.E.2d 734 (1987) (does not affect this point). For other jurisdictions, see Cannell v. Medical & Surgical Clinic, 315 N.E.2d 278, 280, 21 Ill. App. 3d 383, 385 (1974).

12. *See* Galloway v. Lawrence, 266 N.C. 245, 247, 145 S.E.2d 861, 864 (1966) ("The duty which a physician or surgeon owes his patient is determined by the contract by which his services are engaged"); Kennedy v. Parrott, 243 N.C. 355, 360, 90 S.E.2d 754, 757 (1956); Pierce v. Piver, 15 N.C. App. 111, 262 S.E.2d 320 (1980).

13. Cannell v. Medical & Surgical Clinic, 315 N.E.2d at 280, 21 Ill. App. 3d at 385 ("the 'fiducial qualities of the physician-patient relationship' require the disclosure of medical data to a patient or his agent on request").

14. In 1989, 42.2 percent of all physicians and medical students were members of the AMA. K. Lane, *American Medical Association Membership Facts 1989* (Chicago, Ill.: AMA, 1990).

15. American Medical Association, *1989 Current Opinions* (Chicago, Ill.: AMA, 1989), §§ 7.02, 8.06(4).

16. Darling v. Hospital, 33 Ill. 2d 326, 211 N.E.2d 253 (1965).

17. *See* Hutchins v. Texas Rehabilitation Comm'n, 544 S.W.2d 802, 804 (Tex. Civ. App. 1976) (common-law right to medical records); Pyramid Life Ins. Co. v. Masonic Hosp. Ass'n of Payne County, 191 F. Supp. 51 (W.D.Okl. 1961).

18. Bost v. Riley, 41 N.C. App. at 647, 262 S.E.2d at 396; *see also* Blanton v. Moses H. Cone Memorial Hosp., 319 N.C. 372, 375, 354 S.E.2d 455, 457 (1987) (corporate negligence is the application of well-established principles of common law).

19. N.C. Gen. Stat. § 131E-79; N.C. Admin. Code tit. 10, ch. 3(3), .1403(d), .1405.

20. 1991 Joint Commission on Accreditation of Healthcare Organizations, *Accreditation Manual for Hospitals, 1990* (Oakbrook Terrace, Ill.: JCAHO, 1990), xii.

21. American Hospital Association, "Institutional Policies for Disclosure of Medical Record Information," *Guidelines* (Chicago, Ill.: AMA, 1979), 6.

22. 5 U.S.C.A. § 552a(d)(1) (Administrative Procedure Act).

23. N.C. Gen. Stat. § 122C-53(c).

24. While there is some uncertainty about whether the statute covers just those patients treated at a "facility," any provider whose primary purpose is to offer services for mental illness or substance abuse qualifies under the definition of a facility. N.C. Gen. Stat. § 122C-3(14).

25. 42 U.S.C.A. § 290dd-3(a),(b) (patient records relating to alcohol abuse or alcoholism). § 290ee-3(a),(b) (patient records relating to drug abuse).

26. Town of Huntington v. New York State Drug Abuse Control Comm'n, 373 N.Y.S.2d 728, 84 Misc. 2d 138 (1975).

27. N.C. Gen. Stat. § 131E-117(3) (written statement of services required), (4) (record must include verbal and written orders); § 131E-120(a) (notice of patient rights upon admittance to facility); § 131E-123 (right to institute civil action to enforce provisions).

28. Section 1919 of the Social Security Act, 42 U.S.C.A. § 1396r(c)(1)(A)(i).

29. N.C. Gen. Stat. § 122C-53(c) ("Upon request a client shall have access to confidential information in his client record except information that would be injurious to the client's physical or mental well-being").

30. *See* Note, "Patient Access to Records," *Washington Law Review* 57 (1982): 697; Gotkin v. Miller, 379 F. Supp. 859, 866 (E.D.N.Y. 1974), *aff'd* 514 F.2d 125 (2d Cir. 1975). For a statute that limits access to mental-health records, see Colo. Rev. Stat. § 25-1-801, -802 (Supp. 1988) (for psychiatric records, physician can release summary if it will not have negative effect).

31. *See* A. Holder, *Legal Issues in Pediatrics and Adolescent Medicine* (New Haven, Conn.: Yale University Press, 1985), §§ 124-25, 142-45; Note, "The Minor's Right to Consent to Medical Treatment," *Southern California Law Review* 48 (1975): 1417. These authorities also discuss recent changes in the minor's inability to consent to treatment in a number of states.

32. N.C. Gen. Stat. § 90-21.5. Minors are defined in Section 48A-2 as anyone under the age of eighteen.

33. 42 C.F.R. § 2.14(b), (c).

34. *See* A. Holder, *Legal Issues in Pediatrics and Adolescent Medicine* (New Haven, Conn.: Yale University Press, 1985), § 133-35. Citing other sources, Holder speaks of a "mature minor" as a child of fifteen or older.

35. By statute, all physicians practicing in North Carolina must be licensed by the state. The Board of Medical Examiners is empowered to make licensing decisions, including the suspension or revocation of licenses of those currently practicing in the state. N.C. Gen. Stat. § 90-2.

36. House Bill 50 required health-care providers to allow access and make photocopies of all medical records upon request by a patient or patient's representative. A fee to cover costs could be charged for making photocopies; however, the charge could not exceed $0.50 per page. Part of the disagreement on the bill was whether $0.50 per page was a reasonable ceiling for photocopy charges.

37. American Hospital Association, "Institutional Policies for Disclosure of Medical Record Information," *Guidelines* (Chicago, Ill.: AHA, 1979), 9–10.

Rural Child Care

Florence Glasser

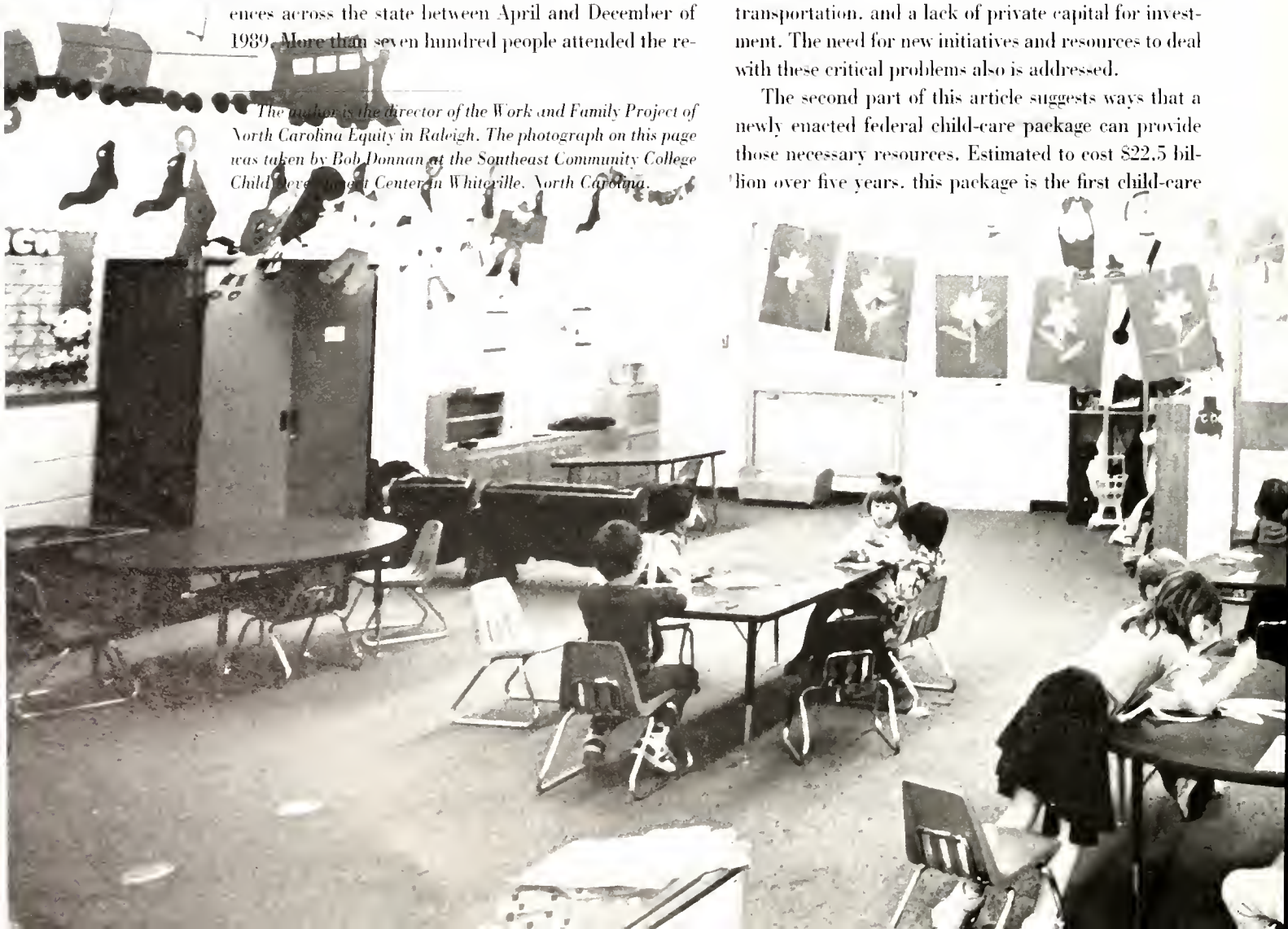
As more and more mothers enter the labor force, the issue of child care becomes crucial for the functioning of our economy as well as for the future of our society. Women workers now constitute almost half of North Carolina's work force. In 1988 66 percent of North Carolina mothers with preschool-age children worked outside the home, as did 77 percent of mothers with school-age children. One rural economist points to the development of quality child care as a wise economic-development strategy: "We have quietly and without much discussion built an economy that depends upon working mothers as a central component of the labor force. That also means we have built an economy that, if we value our children at all, depends on the availability of quality child care."[1]

Child care can differ greatly between rural and urban areas, and North Carolina is largely a rural state. Of North Carolina's one hundred counties, ninety-one are considered rural, according to the Census Bureau definition.[2] (These counties are noted in figures 1 and 2.) In an effort to learn first hand about child-care issues in these rural areas, the Rural Child Care Project staff at North Carolina Equity[3] organized ten regional conferences across the state between April and December of 1989. More than seven hundred people attended the regional conferences. In every rural region of the state, citizens expressed concern about the way children are cared for while their parents work. They said that although the need for child care is greater in rural counties because a higher percentage of rural mothers work, child care is less available. They said that many parents in rural counties could not afford the care when it did exist. They said that parents were not satisfied with the quality of child care, but most could not afford to pay the full costs of improved programs, staffing, and facilities.

The first part of this article examines three rural child-care issues that surfaced during the regional conferences: availability, affordability, and quality. Although these are the same child-care issues that face urban families, the problems are compounded for rural families because of poverty, a dispersed population, a lack of public transportation, and a lack of private capital for investment. The need for new initiatives and resources to deal with these critical problems also is addressed.

The second part of this article suggests ways that a newly enacted federal child-care package can provide those necessary resources. Estimated to cost $22.5 billion over five years, this package is the first child-care

The author is the director of the Work and Family Project of North Carolina Equity in Raleigh. The photograph on this page was taken by Bob Donnan at the Southeast Community College Child Development Center in Whiteville, North Carolina.



in North Carolina

legislation to pass the United States Congress in nineteen years. The new appropriations are designed specifically to help lower and lower-middle income families by improving the availability, affordability, and quality of child care.

Rural Child-Care Issues

Availability

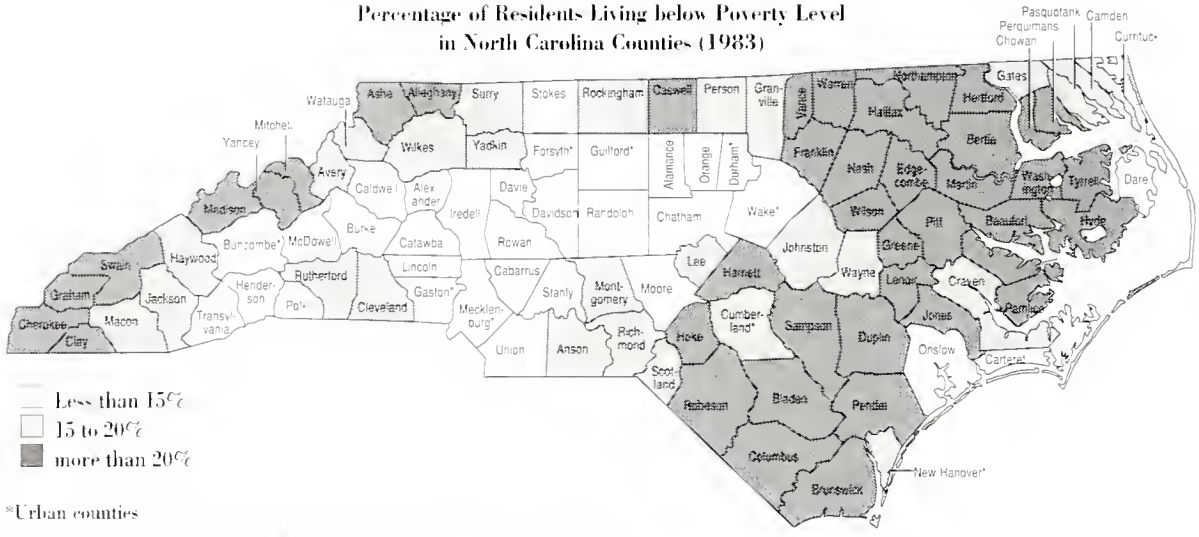
As mentioned earlier, North Carolina has a high percentage of working mothers; in fact in 1980 it had the highest percentage of working mothers in the United States.[4] When researcher Pat Garrett compared the 1980 maternal labor force in the ninety-one rural North Carolina counties to the nine urban counties, she was surprised to find an even larger percentage of rural mothers working than their urban counterparts.[5]

Yet less child care is available in rural than in urban counties. In 1988 there were 2,859 licensed child-care centers and 4,745 registered family day-care homes in North Carolina with a total enrollment of 145,201 children whose families paid a fee for these arrangements.[6] Garrett found that the distribution of these child-care services varied, depending upon whether the county was urban or rural. Dividing the number of child-care spaces or "slots" by the number of children under age five in each county, she found that the nine urban counties have far more child-care service available than the rural counties. In urban counties there is an average of 38.12 licensed slots per one hundred children, compared to 23.23 slots in rural counties.

Child-care services are especially inadequate for certain groups of children. Infant and toddler care is particularly hard to find. Parents of school-age children have difficulty with the hours before and after school, on teacher work days, during summer months, and when bad weather interferes with travel to the care giver or the school. Both parents and personnel managers complain about the lack of child care that matches the work schedules of parents, particularly for those who work second or third shifts and weekends. Rural parents who do not "own their own shift," but rather work rotating shifts, are in dire straits. Three issues contribute to the problem of child-care availability in rural areas:

First, no state, county, or municipal government agency has a mandate to start up or expand child-care facilities. Rather, the private sector is expected to respond to child-care needs. As we have seen, the private sector has not responded sufficiently to provide adequate services, especially in rural counties. In recent years local child-care resource and referral agencies have been organized in nineteen areas across the state to develop

Figure 1
Percentage of Residents Living below Poverty Level
in North Carolina Counties (1983)



Source: N.C.S.U. Department of Sociology, Anthropology, and Social Work

and support new child-care homes and centers in unserved areas. These programs also provide child-care information to parents, provide technical assistance and training to care givers, and respond to the child-care needs of employees in local businesses. Started first in metropolitan areas like Charlotte, Durham, Greensboro, and Raleigh, and financed with a combination of private and public funds, these organizations are now spreading to rural counties that have applied for and received federal Dependent Care Grant money. However, once this start-up money runs out, ongoing support money will be uncertain, especially in rural areas with few local resources. The lack of child-care resource and referral information can cause serious problems for parents searching for child care, for state licensers and regulators whose job it is to protect children, and for employers whose employees may be less productive because of unreliable, unstable child-care situations.

A second issue is the lack of child-care availability for children living in poverty and therefore eligible for child-care subsidies from the state. In November, 1990, the Day Care Section of the North Carolina Department of Human Resources surveyed county departments of social services and found that 14,449 children eligible for subsidy were on waiting lists for the service. Thirteen counties cited the lack of available child-care services as the reason the care was not being provided. All thirteen counties are rural.[7]

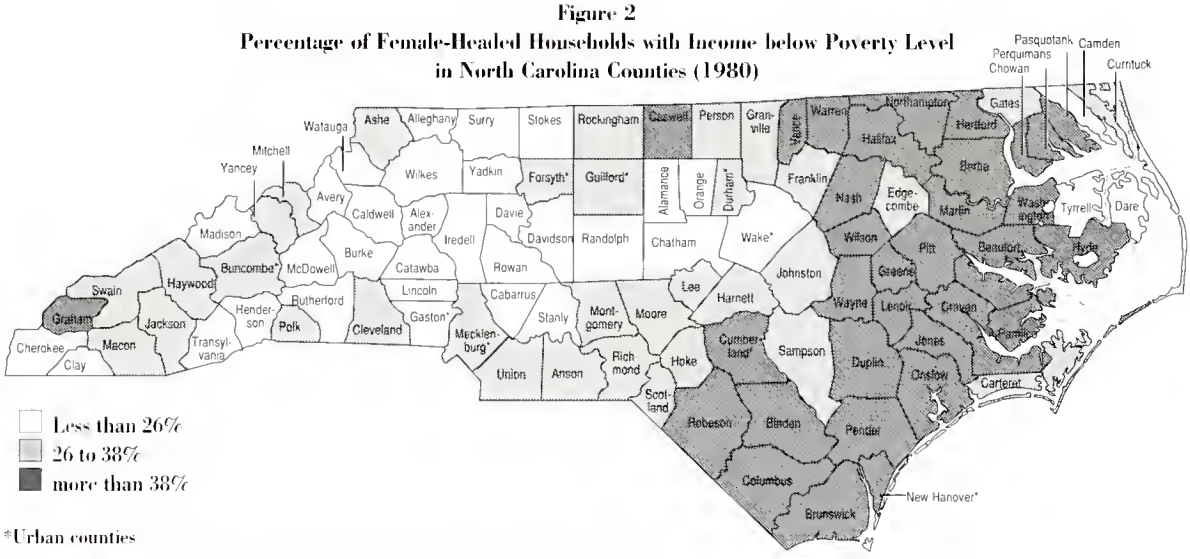
Finally, a dispersed population and transportation difficulties make those centers and homes that do care for children in rural areas less accessible. Low-income families often cannot afford a car to take children to child care, and public transportation does not exist. Day-care centers and homes cannot afford to buy and maintain buses to pick up and deliver children. Even public schools that offer after-school programs cannot afford to bus children home when the after-school program ends. Parents must pick up children at school at the end of the day, and families without transportation are unable to enroll their children in the after-school program.

Affordability

While there is generally a shortage of available child-care options in rural North Carolina, there is particularly a shortage of *affordable* child-care options. Child care is a major expense for both single and two-parent families. In 1988 the average cost of child day care in North Carolina was $2,200 a year,[8] representing the fourth largest item in the family budget following housing, food, and taxes. For minimum wage earners, single-parent families, most minority families, and many rural two-worker families, that cost is out of reach.

It is clear that rural parents are more likely to be poor than urban parents. In 1987 per capita income in rural North Carolina was 76 percent of per capita income in urban North Carolina.[9] The number of people living below poverty level is significantly higher in rural areas (see Figure 1). Rural counties also are home to a higher percentage of female-headed households living below

Figure 2
Percentage of Female-Headed Households with Income below Poverty Level in North Carolina Counties (1980)



*Urban counties

Source: N.C.S.U. Department of Sociology, Anthropology, and Social Work

poverty-level income (see Figure 2). Public programs that help low-income families do exist but currently are underfinanced. The Head Start program served 11,034 low-income children in ninety-three North Carolina counties in fiscal year 1989–90. However, the program has been restricted to children three to five years old, often is limited to part-day and part-year programming, and currently is funded to serve less than 20 percent of eligible low-income children. In seven rural counties no Head Start program is available at the present time.

Public schools are able to use federal Elementary and Secondary Education Act Chapter One and Chapter Two funds to provide preschool programs for three and four year olds. In fiscal year 1989–90, fewer than 2,000 preschoolers were served, and more than half of these children resided in four urban counties: Guilford, Wake, Mecklenburg, and Durham. Public schools also offer before- and after-school care to 25,000 school-age children in every school district in the state, but many rural schools within these districts still offer no after-school programs, and the start-up money for additional programs has run out.

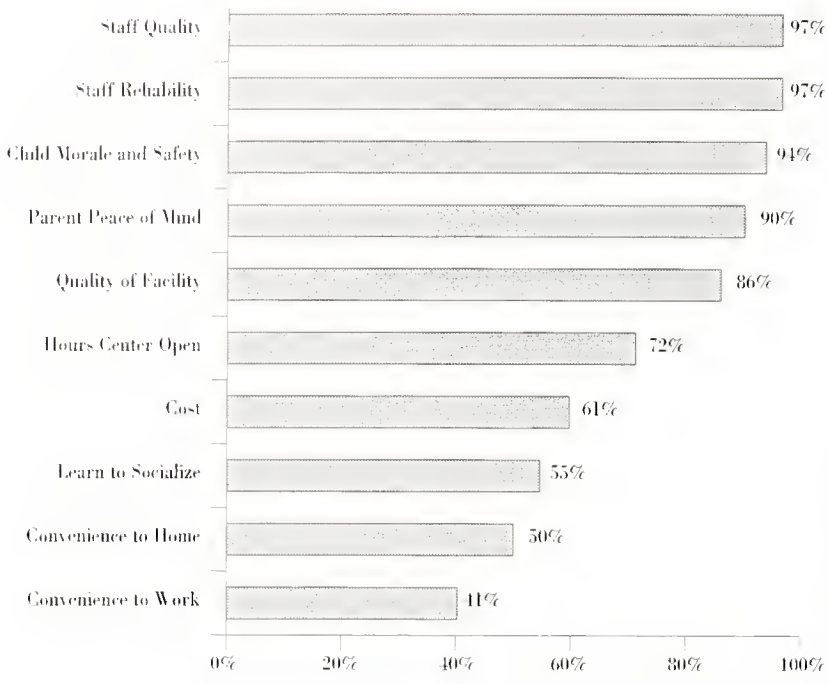
Financial assistance for child care also has been available for very low-income women through county departments of social services. However, many low-income families are ineligible for the subsidy. No state subsidy is offered currently for families of two with income above $11,053. No subsidy is available for families of three with income above $13,651, for families of four with income above $16,249, and for families of five with income above $18,853. Clearly the subsidy program currently offers no help to many rural working poor families with incomes below the current state median family income, but above the eligibility income for subsidized care. The current eligibility scale for child-care subsidy was established in 1979 and has not been revised since then.

Not only are too few working parents eligible for child-care subsidies, public program dollars are failing to reach many rural families who are eligible for those subsidies. In 1989 thirty counties gave up some or all of their child-care subsidy allocation. All of these counties were rural. Very poor rural counties with a weak tax base were unable to pay the administrative cost of the child-care subsidy program and, without staff to determine eligibility, find suitable child-care arrangements, and process the paperwork, were unable to spend the money. Once reverted back to the state, the subsidy money was reallocated to a financially stronger, better staffed county that was eager to have additional subsidy dollars. Even with North Carolina's restrictive income eligibility requirements, 14,500 eligible children remained on the waiting list for child-care subsidies on May 1, 1990.

Quality

What constitutes quality child care? Like truth and beauty, does quality lie in the eyes of the beholder? How do parents and citizens choose child care? In the 1970s numerous national and state surveys asked parents how

Figure 3
Elements Parents Look For in Child Care



Base: Parents with children six and under, randomly sampled throughout the United States.

Source: Phillip Morris Companies Inc. Family Survey II: Child Care.

they chose child care. Most parents responded that the two factors they considered most critical were cost and convenience. In 1989 Louis Harris, a respected national pollster, asked the same question of parents across the country and found that although cost and convenience are still important considerations, quality and reliability of the care giver top the list of factors important to parents (see Figure 3).[10]

The seven hundred citizens who participated in the North Carolina Equity-sponsored rural regional conferences across the state were asked whether quality care was available in their communities. Although this was not a scientific survey, it did produce results similar to Harris's findings. Insufficient quality care was cited as a critical problem in every rural community. When asked to define *quality care*, respondents stressed the importance of a loving, nurturing care giver; a safe, home-like environment; and a program that fosters healthy child development.

Child development professionals and advocates agree that these are elements of quality child care. They also express concern about the long-term effects of child-care arrangements on the health and safety of children, as well as their cognitive, social, emotional, and physical development. They have identified the following features of child-care arrangements that have a positive effect on children:[11]

- High staff-child ratios and small groups allowing interaction between children and care givers
- A nurturing, stable staff with training in child development
- A developmentally appropriate curriculum
- Stability and continuity between children and care givers
- A safe and sanitary physical environment
- Parental choice and parental involvement

Some or all of these characteristics have been translated into measurable standards adopted by each state as licensing and regulatory requirements. How do North Carolina standards compare with quality standards set by professional groups and other states? Unfortunately North Carolina's standards for licensing and certification remain among the weakest in the nation.[12] The current requirement of only one staff person for every seven infants or toddlers is one of the largest ratios allowed in any state. Only two other states (Georgia and South Carolina) have ratios larger than one person for every six infants and toddlers. The majority of states (thirty-nine) have set their ratios at one staff person for every eight children aged two to three, but North Carolina allows one provider to care for twelve children in this age group.

North Carolina day-care teachers have only minimal formal education, usually a high school education with some additional training through workshops. North Carolina's licensing law requires child-care center staff to receive training, but this requirement is limited to twenty hours of annual inservice training, a minimal measure that is simply quantitative, not qualitative. Care givers must pay for the training themselves, and many cannot afford this expense. Specialized training is often located far away from rural teachers, making it difficult for them to get to the training.

In addition to weak state standards that do not assure quality care, problems in monitoring and enforcing these requirements exist. The state Day Care Section employs only twelve consultants to monitor and enforce regulations in 3,442 family day-care homes and thirty-four consultants to inspect 2,113 centers. The case load of each regulator is so high that it makes enforcement of licensing

standards extremely difficult. Rural areas are especially hard hit by inadequate staffing patterns of consultants. A single family day-care home consultant in Mars Hill must visit and inspect every day-care home arrangement in nineteen mountainous counties in western North Carolina. Her counterpart in Spring Hope must inspect homes in twenty remote eastern counties.

Yet another complicating factor adds to the difficulty of enforcing licensing standards. Family day-care home consultants are paid less by the state than center consultants. It is therefore no surprise that home consultant positions are often vacant, as those regulators leave to fill center consultant positions.

Let us return once more to the importance of good teachers to the quality of child care provided. A recent North Carolina study reveals the bleak situation of child-care providers as of 1989.[13]

- One half of day-care center teachers in North Carolina earned $4.50 an hour or less.
- Only one out of every six teachers earned $6.00 or more an hour.
- More than one third of teachers lived in households earning less than $10,000 a year, and more than one fourth were single parents.
- More than one out of every twelve teachers had a second job.
- Teachers were not entitled to any paid sick leave in 35 percent of the centers surveyed.
- Thirty-six percent of the centers offered five or fewer vacation days in a year to their workers, and 33 percent offered none.
- More than one half of the centers did not pay health insurance benefits for teachers, and more than three quarters did not offer retirement benefits.
- Eighty-three percent of teachers reported receiving no salary compensation for training, and almost 40 percent received no reimbursement for training expenses.
- Almost 50 percent of teachers reported receiving no breaks during the day.

According to the study, "When teachers were asked what they liked most about their jobs, they most often responded, 'the children'; when asked what they liked the least, the majority said the low pay, lack of benefits, unappreciative parents, and too many children."[14]

Is it any wonder that 37.5 percent of the teachers in North Carolina child-care centers change jobs in a given year? Nationally the annual staff turnover of child-care teachers rose from 15 percent in 1977 to 41 percent in 1988. Adjusted for inflation, teachers' wages dropped 27 percent over the period. The study states that low wages, averaging $5.35 an hour in 1988, are "feeding a rapidly increasing and damaging exodus of trained personnel from our nation's child-care centers."[15]

It is natural to assume that women in rural areas have fewer job options than women working in urban areas and therefore that turnover in child-care jobs would be lower in rural areas. In fact rural care givers leave their jobs as quickly as their urban counterparts and for exactly the same reasons.

These studies have serious implications for parents, children, and child care givers. Parents constantly must scramble to find suitable child care, and most parents report two or three disruptions in their child-care arrangements every year. Children need a stable, continuous source of care from trained, qualified care givers to ensure their healthy development. Workers at impoverished child-care centers are caught in an impossible situation if they try to improve the quality of their programs while maintaining a fee schedule that parents can afford.

This section has focused generally on the need for quality child care for preschool children; however, the status of programs for school-age children should also be noted. Although 25,000 children now participate in before- and after-school programs, the North Carolina Department of Public Instruction has never issued standards, not even minimum standards, that would ensure program quality. Clearly parents in this state must still bear full responsibility for ensuring that their children are receiving quality care.

The Potential Impact of Recent Federal Legislation

The dismal picture of child care painted in this article may brighten because of recent landmark legislation enacted by Congress. On October 31, 1990, the *New York Times* characterized the new child-care authorizations, entitlements, and tax relief as "a boon not only for the working poor but a long-overdue response to the new realities of American life." The editorial concludes, "This 101st Congress was disputatious. But its work for the neediest Americans was a triumph."[16] It is remarkable and somewhat ironic that Congress and the president agreed to this impressive new federal initiative in the midst of wrangling over a $500 billion deficit reduction

bill. But the potential impact of this major action for helping low-income parents meet their child-care needs cannot be overstated.

Earned Income Tax Credit Expansion

Certainly the largest of the new federal expenditures was the $18.3 billion tax package that expands the earned income tax credit (EITC) to parents with incomes less than $20,264.[17] The tax credit is refundable, meaning that those whose tax credits add up to more than the tax they owe will be paid the difference in cash. Congress made the current tax credit more generous, providing a maximum EITC in 1991 of $1,852 for a family with one child and $2,013 for a family with two or more children, compared with $1,127 under current law for all family sizes. An additional supplemental credit for newborns provides an extra $403 maximum for low-income families with a child up to one year old, beginning in 1991. These credits will help reduce the financial burdens of many low-income families in rural areas.

Head Start Reauthorization

A separate piece of legislation has the potential for dramatically improving child care in the nation and in the state.[18] Congress approved a large expansion in funding for the well-respected and popular Head Start program, making it possible for the program to serve all eligible preschoolers by 1994. The federal fiscal year 1991 spending bill gave Head Start nearly $400 million more than it received in fiscal year 1990. The anticipated allocation of new Head Start funds in fiscal year 1991 for North Carolina is approximately $3.5 million. Current Head Start funding for North Carolina's forty-three programs is approximately $29.7 million.

Social Security Title IV-A Non-AFDC Program

A new program under Title IV-A of the Social Security Act authorizes $1.5 billion over five years to provide child-care services for a new group of families.[19] Eligible are low-income families who are not receiving welfare benefits under the Aid to Families with Dependent Children program, who need child care in order to work, or who are at risk of becoming eligible for welfare without child-care assistance. North Carolina's anticipated allocation for federal fiscal year 1991 is $7.3 million. The state will be expected to match 33.1 percent of the total allocated, the same state match required for Medicaid allocations. This is a new entitlement program for which funding is assured, rather than an authorization that would be subject to annual appropriations.

Child Care and Development Block Grant

The Child Care and Development Block Grant authorizes $750 million to be allocated in federal fiscal year 1991, $825 million in 1992, and $925 million in 1993.[20] North Carolina's anticipated allocation for fiscal year 1991 is $2 million, $24.6 million in 1992, and $27.6 million in 1993. No state match is required. On February 1, 1991, Governor Martin held a press conference to unveil his plans for use of the new Child Care and Development Block Grant money. Calling the program "Uplift Day Care," the governor said, "These funds, combined with our existing day-care efforts, provide us with the opportunity to address the issues of affordability, accessibility, and quality." The distribution of these anticipated funds for Uplift Day Care over one fiscal year is outlined below (see also Figure 4).[21]

The governor proposes to use these funds in the following ways to increase the *availability* of child-care services:

1) Fund resource and referral programs that recruit and assist potential child-care providers and provide child-care information to parents. ($650,000 federal dollars and $35,723 local dollars or a total of $792,893)
2) Establish a revolving loan fund that will stimulate the development of additional day-care slots in rural and underserved areas of the state and that will help existing home and center operators who need funds for equipment, renovations, and capital improvements to meet regulatory requirements or to serve more children. ($1,000,000 federal dollars)
3) Provide day-care coordinators to small rural-county departments of social services to ensure that client families have access to available services. ($800,000 federal dollars)

To improve the *quality* of child-care services, Governor Martin proposes to do the following:

1) Reduce the infant staff-child ratio to one provider for every six infants. In the state's subsidized day-care program, approximately two hundred infants might be displaced by this reduction in the ratio.

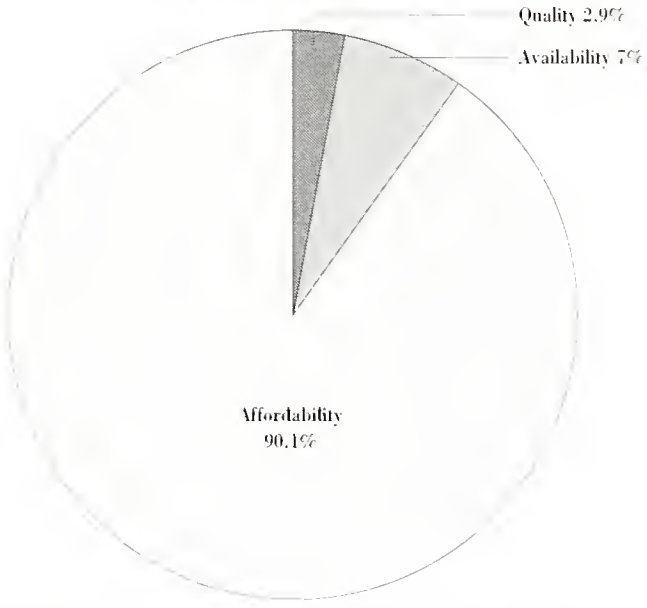
Funds will be needed to continue services to these children. ($250,000 federal dollars)

2) Establish a Child Care Worker Basic Training Credential Program. A scholarship program to reimburse three thousand day-care workers who successfully complete the course each year will improve the quality of child care by offering training in child development, developmentally appropriate curriculum, health and safety, parent involvement, and other important curriculum elements. A child-care credential will be awarded to care givers who complete the course. ($250,000 federal dollars)
3) Finance a Day Care Worker Compensation study. This study will recommend salary supplements and training incentives for child-care workers. ($150,000 federal dollars)
4) Provide additional staff for the Child Day Care Section of the North Carolina Department of Human Resources to administer new resources and provide training and technical assistance. ($350,000 federal dollars)

The governor's plan proposes to use most of the Child Care Block Grant money to assist poor families with the cost of child care. This money will be combined with federal Family Support Act (welfare reform) money and Head Start expansion money. The following proposals will increase the *affordability* of child care for these parents:

1) Serve children currently on the waiting list for state day-care subsidies. These children include those (a) whose parents would then become able to work, complete high school, or enter a job training program; (b) who live in families in crisis and are in need of protective services; and (c) who are developmentally disabled. ($15,885,071 federal dollars)
2) Expand state day-care subsidy coverage to include more children of the working poor. The current maximum income eligibility level for child-care subsidy has not changed since 1979 and for a family of four is currently only $16,249. It is proposed that the maximum eligibility level be raised to $24,940 for a family of four. This represents 75 percent of the 1987 state median income for a family of four. ($10,100,000 federal dollars to support 4,591 additional child-care slots a year)

Figure 4
Percentage of Federal Funds Going To Child-Care Affordability, Availability, and Quality through Project Uplift Day Care



Note: Percentages were calculated from figures supplied by the Office of the Secretary, N.C. Department of Human Resources. Figures are for anticipated federal funds during federal fiscal year 1992.

3) Extend the Head Start program to full day and full year. ($4,500,000 federal dollars to serve 3,700 children)
4) Initiate Head Start Parent-Child Center Projects (Early Start). Four regional Head Start centers would target teen mothers and their children and pregnant women for social services. These projects also would offer child-development services for children up to three years of age, as well as a family support program for four hundred families. ($1,000,000 federal, $600,000 state, and $200,000 local dollars or a total of $1,800,000)

Public hearings on this plan are scheduled across the state in 1991. State legislators also will have the opportunity to review and possibly revise the plan before it is implemented in October of 1991.

Conclusion

New federal resources and programs can have a dramatic impact on working parents and children across North Carolina. But in particular, these programs could bring much needed help to rural families living in

unserved or underserved regions of the state. Additional child day-care coordinators will be hired in the most rural counties that have previously reverted money back to the state due to lack of staff time. Child-care resource and referral agencies will start up to increase the supply of child-care facilities. A revolving loan fund will stimulate the development of additional child-care arrangements in rural unserved areas. More rural parents will be eligible to receive child-care subsidies, and more poor parents will be able to offset the cost of child-care expenses through generous refundable tax credits.

Unfortunately fewer resources will be available to improve the quality of rural child care. The governor has proposed that only 2.9 percent of federal funds for Uplift Day Care be used for quality enhancement initiatives. North Carolina will still allow too many children to be supervised by a single care giver. The salary rural child care givers receive per hour will continue to be less than wages paid to animal care takers, bartenders, or parking lot attendants. Too few child day-care consultants will continue to have too many rural child-care centers and family day-care homes to visit.

However, although the new federal initiatives will not completely solve all of the complex and costly child-care problems in North Carolina, the infusion of large new resources has the potential to address some of the most difficult problems now facing working parents and their employers. ❖

Notes

1. Rick Carlisle, "Child Care: Will It Make an Economic Difference to Rural Communities?" Presented at the Rural Child Care Conference in Raleigh, N.C., March 16, 1990.

2. The Census Bureau defines an urban county as one in which there is at least one municipality with 50,000 or more people residing in it. North Carolina's nine urban counties in 1980 were Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, and Wake counties.

3. North Carolina Equity is a nonprofit organization in Raleigh, North Carolina, that develops public policy strategies and advocates for women and families.

4. Bureau of the Census, *1980 Census of Population*, vol. 1, ch. C, part 35, table 67 (Washington, D.C.: U.S. Department of Commerce, 1983). North Carolina still has an above average proportion of working mothers, but the gap appears to be closing between North Carolina and national averages. Bureau of the Census, March 1987 and March 1988 Current Population Survey, N.C. resident subsample (unpublished data).

5. Patricia Garrett, *Working Mothers and Child Care in North Carolina*, (Chapel Hill, N.C.: Frank Porter Graham Child Development Center, The University of North Carolina at Chapel Hill, 1988).

6. Testimony offered by the N.C. Child Day Care Section, N.C. Department of Human Resources, to the Legislative Study Commission on Social Services, Nov. 15, 1990. Generally child-care centers provide child care in a free-standing center, church, home, or community building for more than twelve children, while family day-care homes provide child care for up to twelve children of various ages in the care giver's home.

7. The counties are Alleghany, Ashe, Avery, Greene, Hyde, Jackson, Jones, Madison, Perquimans, Person, Surry, Transylvania, and Yancey.

8. Testimony offered by the N.C. Child Day Care Section, N.C. Department of Human Resources, to the Legislative Study Commission on Social Services, Nov. 15, 1990.

9. Rick Carlisle, "Child Care: Will It Make an Economic Difference to Rural Communities?" Presented at the Rural Child Care Conference in Raleigh, N.C., March 16, 1990.

10. Louis Harris and Associates, Inc., *The Philip Morris Companies Inc. Family Survey II: Child Care* (New York: Philip Morris Companies, Inc., 1989).

11. While specific recommendations of major professional organizations vary somewhat, the elements listed here form the basis for model standards and requirements developed by such diverse groups as the National Association for the Education of Young Children, the Child Welfare League of America, and the National Black Child Development Institute, as well as for the Head Start performance standards, the now-defunct Federal Interagency Day Care Requirements, and standards used by the U.S. Department of Defense for its child-care programs.

12. Michele Rivest, *Child Care in North Carolina: Issues & Options* (Raleigh, N.C.: N.C. Child Advocacy Institute, 1989), 24–27.

13. Child Care Resources, Inc., Day Care Services Association, and the Frank Porter Graham Child Development Center, *Working in Child Care in North Carolina* (Chapel Hill, N.C.: Frank Porter Graham Child Development Center, The University of North Carolina at Chapel Hill, 1990), 1 (hereinafter *Working in Child Care*).

14. *Working in Child Care*, 4.

15. *Working in Child Care*, 4.

16. *New York Times*, 31 October 1990, editorial page.

17. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388.

18. Human Services Reauthorization Act of 1990, Pub. L. No. 101-501, 104 Stat. 1224.

19. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388.

20. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388.

21. Figures were supplied by the Office of the Secretary, N.C. Department of Human Resources.

Mediating Land-Use Disputes

Frayda S. Bluestein

In response to increased land development, both in major population areas and in small communities, local governments have struggled to develop planning and permitting programs designed to regulate the character and pace of new development. At the same time, the increase has prompted substantial litigation, demonstrated by the steady stream of appellate court decisions involving land-use issues. Land-use litigation has clarified old, and developed new, legal doctrines governing the rights of property owners, the authority of local governments to regulate land use, and the tools with which such regulation may be effected.

In most cases, however, what motivates legal challenges to local government land-use decisions is a dispute—usually *not* with the local government, but between private parties about the appropriate use of land. Therefore some local governments and their citizens are turning to alternative dispute-resolution and consensus-building techniques to deal with land-use disputes. This article discusses the usefulness of mediation as an alternative technique to deal with land-use disputes and the legal issues involved in incorporating the use of mediation into the governmental decision-making process.

Traditional Techniques

To understand how dispute-resolution and consensus-building tools may be useful in resolving land-use and development disputes, it is important to consider how these disputes are treated presently.

The author is a staff attorney with the Legislative Drafting Division of the North Carolina General Assembly and has received training in mediation from the Orange County Dispute Settlement Center.

Land-use and development disputes usually arise between private interests.[1] Typically one party proposes a change in land use and one or more parties object to the proposed use. Local governments are involved by virtue of a permitting or other regulatory requirement but are not generally poised to resolve the underlying dispute. The application and public hearing process does not promote communication between the disputing parties. Instead, parties communicate their positions directly to the local government staff and officials. Ultimately the local government "resolves" the dispute by rendering a decision for or against the proposed use, a win-or-lose result for those in dispute. Where the losing party desires to take further steps, often through a legal challenge, it is the government's decision that becomes the subject of litigation. As local government officials understand all too well, the decision-making authority thus becomes the defendant or respondent in a lawsuit challenging the governmental action, even though the motivation for the lawsuit is the underlying dispute between the private parties. In many cases, the decision-making body is likely to be sued no matter which way it decides.

The traditional judicial process can be dissatisfying for those trying to resolve disputes. Lawsuits can be time-consuming, expensive, and frustrating to the litigants and, in some cases, may not even address the underlying dispute. Indeed, legal challenges to land-use decisions often are based on alleged procedural irregularities (for example, failure to give proper notice of public hearings or failure to consider a protest petition) rather than the merits of the challenged decision. Furthermore litigation injects judges into the land-use regulation process, removing from the local government the opportunity to develop solutions that promote the government's regulatory goals.

What Kinds of Land-Use Cases Are Mediated in North Carolina?

Mediators in North Carolina have been helping initiate and maintain negotiations in zoning and other land-use disputes for about four years. In July, 1987, the Mary Reynolds Babcock Foundation awarded a grant to the Orange County Dispute Settlement Center, in part to provide such services. Since then other mediation centers around the state also have been called upon to mediate in local land-use disputes.

Initial contacts with the mediators have been made by elected officials and staff in local government, by private land or business owners, and by citizen organizations. Regardless of who makes the initial contact, the mediators serve on behalf of all the parties to the dispute. If a case is accepted, mediators work with the parties to tailor the process to the specifics of the situation. Participation in mediation is voluntary and motivated by the parties' mutual interests in managing the controversy.

Some examples of public land-use issues that have been handled by mediation centers in North Carolina are described below.

- In Chatham County mediators fostered discussions between proponents of a rural camp for children with emotional disabilities and neighboring landowners. The neighbors were concerned about how the camp would affect the safety of their community. In their mediated discussions, the neighbors and camp proponents agreed to resolve issues collaboratively as problems with the camp or the neighbors arise.
- In Greensboro mediators assisted a human services organization and neighborhood in reaching an agreement on the location of a night shelter. Neighborhood residents were concerned about shelter residents congregating in the area during the day when the shelter was closed. Through the mediation, the parties agreed to approach the city government together, to ask for assistance in finding an alternate site. After a several-year search, the shelter was located in a commercial district with the support of surrounding businesses.
- In Asheville mediators were asked to assist in a controversy over the placement of a wastewater treatment facility. A neighbor of the proposed facility opposed the site advocated by the facility sponsors. Mediators worked with each side independently, to the point where the parties were willing and able to talk together without outside assistance. The facility proponents agreed to install barriers to mitigate noise from the plant.
- In Carrboro the mediation center was asked by the Downtown Development Commission and the town manager's office to design and conduct two public forums and several smaller working sessions at which representatives of the general public, the business community, and the planning department could discuss problems that had arisen over the town's permit application and review process. The commission is converting the consensus reached at those meetings into recommendations to the Carrboro Board of Aldermen.

—*Andy Sachs*

The author is the Public Disputes Program coordinator at the Orange County Dispute Settlement Center in Carrboro. The following mediation centers and mediators supplied descriptions of cases: Paula Browder, Chatham County Dispute Settlement Center; John Stewart and Hermonn Fox, Mediation Services of Guilford County; and Paul Godfrey, Cooperative Concepts in Asheville.

An Alternative Technique

Interest in alternatives to litigation has grown because of the dissatisfaction with the traditional judicial process. Mediation is a consensus-building process available to local governments and disputing parties. The technique of mediation is designed and used to deemphasize adversarial positions and to promote consensus, communication, and free exchange of information.

Mediation is a process of resolving disputes in which the disputing parties, with the aid of a neutral third person (the mediator), voluntarily attempt to reach agreement in an informal setting. The mediator helps the parties isolate the issues in their dispute and encourages the parties to develop alternatives for resolving the dispute that are mutually acceptable to the parties. The mediator strives to get the parties beyond impasses and antagonistic postures and promotes open communication between the parties.

Mediation focuses the parties on cooperation rather than antagonism. As a result, even where agreement is not reached on a specific dispute, participation in the mediation process can improve the quality of interaction between the parties in future dealings. This aspect of mediation has direct application in local government land-use disputes. Many public hearings, especially when important issues are being considered, develop into emotionally charged, contentious, and sometimes uncontrollable exchanges between the various "sides" of dispute. The anger and frustration expressed by citizens rarely is diffused during the official public hearing process and may be heard continuing in parking lots and meeting halls for hours afterward. The mediation process is designed to diffuse the anger and

frustration that often result from lack of communication by giving the parties an opportunity to fully air their concerns and helping them focus on issues and potential areas of consensus.

Mediation differs from litigation or arbitration in that the mediator, unlike a judge or arbitrator, does not impose a solution upon or bind the parties. Furthermore neither the mediator nor the mediation process seeks to establish who is right or wrong. The mediator simply helps the parties reach their own solution or agreement to which they can adhere or not, as they choose. Parties are more likely to adhere to an agreement of their own making than to one imposed upon them by a separate authority.

Alternative dispute-resolution techniques have been used in all types of disputes, from interpersonal to international. In North Carolina, nearly twenty counties have established dispute settlement centers in which volunteers who have received mediation training help local citizens resolve conflicts that would otherwise end up in court. In addition a number of mediators from these centers have received special training in resolving public disputes. Several local governments, particularly those with active dispute settlement centers within their jurisdictions, have begun to refer disputed land-use matters to the centers, encouraging the parties involved to use mediation to develop mutually satisfactory alternatives.[2] (See page 23 for a case study of this type of mediation.)

Using Mediation with Land-Use Disputes

Promoting consensus among land owners when changes in land use occur is consistent with the historical underpinnings of land-use regulation. As a starting point, it is useful to recall that zoning has developed, in part, out of nuisance law, as a way to separate incompatible uses.[3] Nuisance-type concepts persist in the zoning permitting process. For example, to issue a special- or conditional-use permit[4] a board or council must find, among other things, that the proposed use will not injure substantially the value of adjoining or abutting property and that it will be in harmony with the area in which it is to be located. Although promoting compatible land uses is not the only legal basis for land-use regulation (see discussion below), encouraging consensus among property owners promotes the nuisance-based aspect of zoning. Indeed, the affected property owners may well be the most qualified to determine what land uses are compatible, or what steps should be taken to minimize negative impacts of new uses on existing uses, and what amount of mitigation is reasonable in light of what is being proposed. Mediation can be employed to allow the affected property owners to disclose their concerns to each other and, potentially, to suggest ways that those concerns can be resolved.

Dispute resolution also can help government officials in rendering and supporting decisions on land-use applications. Land-use disputes often center around the factual issues involved in a particular land-use proposal. Examples include the availability of public services and the traffic or environmental impacts of new development. The sufficiency of the evidence on these and similar matters is of concern to the local government as the permit-issuing authority because, to withstand legal challenge, permitting decisions must be based upon competent, material, and substantial evidence in the record.[5] The permit-issuing authority is not necessarily responsible for compiling, and often does not have the resources to prepare, the evidence relevant to the decision. This is the burden of those favoring and opposing the application.[6] Nonetheless, where the permit-issuing authority must defend its action against a legal challenge, it must support its decision with the evidence in the record. Typically that evidence consists of facts and testimony presented by each side at a public hearing. Under most existing procedures, the disputing parties rarely have an opportunity to exchange factual information or even converse face-to-face. Through mediation, even if the parties do not reach agreement on the entire dispute, they may be able to agree on the crucial facts and issues they feel should be addressed by the decision-making body. Dispute-resolution efforts also can help avoid misunderstandings about what is being proposed or opposed and thereby promote a more efficient, effective hearing process.

Legal Issues

Incorporating consensus, reached through dispute resolution, into the final decision made by the local government authority involves some important legal issues. Although separating incompatible uses is an important aspect of zoning, zoning also is an exercise of the police power and, as such, is designed to protect the *general* health, safety, and welfare, not just the interests of adjacent property owners. Broad public concerns are implicit in the statutes that require zoning to be consistent with a comprehensive plan, and in the judicially created doctrines of contract zoning and improper delegation (discussed in more detail below). As will be shown, if these

essential, well-established legal prerequisites to valid land-use decisions are not adhered to when the local government incorporates a consensus reached between private parties into its decision, the consensus could be the basis for invalidating the very decision for which the consensus was developed.

Flexible land-use permit procedures now exist into which the elements of consensus can be incorporated. Early zoning ordinances simply established fixed districts and regulations regarding building height and bulk, fire safety, traffic, light, and air. Increasingly legislators and judges have recognized the need for flexibility in land-use planning and regulation, including the need for case-by-case development review, now embodied in the special- or conditional-use permit. Most recently the courts have upheld the use of conditional-use zoning, a method of site-specific rezoning in which uses allowed in the new zone are limited to those set forth in a special- or conditional-use permit.[7] With these flexible mechanisms in place, where consensus is reached, for example, on site design, setbacks, or hours of operation, the points of agreement can be readily incorporated into a conditional-use permit application.

The development of consensus between the private parties to a land-use dispute does not end the process for the permit-issuing authority, and local officials must be careful not to approve applications based *solely* on the fact that consensus was reached. The permit-issuing authority must consider the impact of the proposed use on the community as a whole, including those who may not have participated in the mediation. Also the proposed development must be consistent with existing comprehensive land-use, thoroughfare, and capital-facilities plans and must comply with all other applicable ordinance and statutory requirements. Referring again to the typical conditional-use permit, in addition to compatibility with adjacent uses, the permit-issuing authority must find that the application conforms with officially adopted plans and that the use will not materially endanger the public health or safety if located and developed as proposed. For example, even if disputing parties can agree to site-specific conditions, the permit-issuing authority may have to deny the application if the proposed use will create unacceptable traffic levels or cannot be served adequately by necessary public services.

Where a rezoning is involved, the concern for the general public welfare is reflected in the judicially created doctrine that has come to be known as *contract zoning*. In its most recent statement on the subject, the North Carolina Supreme Court has made it clear that local zoning authorities must maintain their independent decision-making authority in approving rezoning requests and must not merely rely on the representations or promises of the applicant.[8] As a related principle, the supreme court has emphasized that in considering general (as opposed to conditional-use) rezoning applications, the decision-making authority must make sure that property is suitable for all uses available in the new district, not just the specific use proposed by a particular applicant. These holdings are consistent with the rule that legislative authority for rezonings must be exercised in the independent discretion of the governing body and with due consideration for the overall public good.

Contract zoning and related doctrines could be used to invalidate a rezoning if the local government relies solely on the representations or uses specifically presented by the applicant, even if the applicant's proposal represents a consensus between opponents and the applicant. For example, in *Hall v. City of Durham*,[9] a developer proposing to build a Lowe's store met with opponents of the project and agreed to make certain changes in the development plan to mitigate the impact of the development on the adjacent area. The changes agreed to were presented by the attorney for Lowe's at the hearing and the city council ultimately approved the application. A landowner sued. Although the city of Durham had obtained special legislation authorizing the city council to consider and rely upon specific development plans in approving rezoning requests, the North Carolina Supreme Court invalidated the rezoning because the council failed to determine that the property would be suitable for all uses permitted in the new district, rather than just the use proposed by the developer.[10] This was true even though the specific use proposed was tailored to address opponents' concerns. Thus the fact that objections to a particular land-use application have been resolved through consensus does not mean necessarily that the application should or may validly be approved by the decision-making authority.

The same result could occur if the decision-making authority deferred to affected property owners, other than the applicant, in approving land-use applications. A legislative body cannot rely solely on the acquiescence (assuming consensus is reached) of concerned citizens in granting rezoning requests. This would constitute a delegation of legislative decision making to private individuals, a practice explicitly prohibited in at least one North Carolina Supreme Court decision and, again, inconsistent with the need for independent exercise of legislative discretion. In *Wilcher v. Sharpe*[11] the North

Mediating Land-Use Disputes: A Case Study

The owners of a large tract of undeveloped land situated between two existing neighborhoods wanted to prepare a development plan for the land. The developers felt that to recoup their investment in the land, they had to build apartments there, and they submitted their plans to the city for approval. Neither of the existing neighborhoods consisted of apartments, thus the neighbors were not in favor of having that type of development near them.

The neighborhoods had dealt with the developers in the past in a rather informal manner. Several proposals had been drawn up, and some of the neighbors had been approached for their approval. Other neighbors felt that they had been avoided intentionally. The situation was further complicated by the fact that one neighborhood had a formal homeowners' association that could represent the interests of their residents, while the other neighborhood had no association. Thus any agreement would have to be forged with affected residents individually. As the developer worked with the neighbors, it became apparent that each neighbor had his or her own set of concerns.

The issue came to a head when the developers took the project to the city council for approval. Residents of the two neighborhoods contacted each other and began to openly oppose the developers in a unified fashion. They notified the local newspapers in an effort to sway the decision of the council. When the council met to discuss the issue, one of the neighborhood residents mentioned the possibility of using outside mediators. The council agreed with this idea and referred the matter to its local dispute settlement center.

The dispute settlement center chose a team of two mediators to work with the three parties to the dispute: the developers and the two neighborhoods. The mediators interviewed each party separately prior to the first mediation session. During the interview process, it became apparent that neither of the neighborhoods had unanimity among their residents as to what type or how much development was acceptable.

The author is a trained mediator and the chief planner for the North Carolina Division of Community Assistance, Department of Economic and Community Development.

The parties were each initially a bit wary of the mediation process. Each premediation interview and the first mediation session concentrated on introducing the mediation process. At the first mediation session, which involved all three parties, people were asked to identify their interests and desired outcomes, as opposed to their positions on the question of developing the land. The interviews and the first mediation session allowed the members of the parties to become familiar with and develop trust in the mediators.

The second session was a negotiating session. The developers put forth various alternatives for development. The neighborhoods responded by caucusing and then offering a group response to the plans. At the end of the second mediation session, the developers presented one "final" offer on the developmental density of the project. It was not presented in a "take it or leave it" attitude but rather in terms of "this is as low as we can go in terms of number of units, but we will work with the neighborhoods to make it fit your stated interests." Neither of the neighborhood groups felt that they could agree to the proposal without going back and polling all of the interested residents. The meeting thus ended with an agreement to have the residents review the proposal and report their support or rejection of the plans in the proposal.

The city council had stated that it would pay for the initial interviews and two mediation sessions. The parties decided that they had learned useful techniques from their experience with the mediators and opted to continue to meet on their own. As a result, they developed an agreement that addressed their interests. The amended plans based on this agreement were submitted to the city council and were approved.

The process of resolution took approximately five months from the time the city initially contacted the dispute settlement center to the time the council approved the plans. The developers previously had spent more than six months trying to meet with the property owners separately. All three parties stated that the skills they learned from the dispute settlement center allowed them to come up with a solution that was much more acceptable than would have been developed otherwise.

—Ralph Cantral

Dispute Settlement Centers in North Carolina

The North Carolina Mediation Network is a nonprofit organization established in 1985 to foster the growth and development of community-based dispute settlement centers in North Carolina. These centers use trained local mediators to help individuals and groups negotiate agreements for a variety of disputes. The North Carolina Mediation Network lists the following dispute settlement centers in North Carolina:

Alamance County Dispute Settlement Center. P.O. Box 2485. Burlington 27216. (919) 227-9808

Chatham County Dispute Settlement Center. P.O. Box 1141. Pittsboro 27312. (919) 542-4075

Community Relations Council/Dispute Settlement Program. 817 East Trade Street. Charlotte 28202. (704) 336-2424

Cumberland County Dispute Resolution Center. 310 Green Street. Room 206. Fayetteville 28301. (919) 486-9465

Dispute Settlement Center of Durham. P.O. Box 2321. Durham 27702. (919) 490-6777

Goldsboro-Wayne Dispute Settlement Center. Community Affairs Office. P.O. Drawer A. Goldsboro 27530. (919) 735-6121 ext. 359

Henderson County Dispute Settlement Center. Heritage Square Mall. Church and Barnwell Streets. Hendersonville 28792. (704) 697-7055. (704) 693-4381

The Mediation Center. 189 College Street. Asheville 28801. (704) 251-6089

Mediation Center of Gaston County. 309 North Highland Street. Gastonia 28052. (704) 868-9576

Mediation Center of Pitt County. P.O. Box 4428. Greenville 27836. (919) 758-0268

Mediation Services of Guilford County. 1109 East Wendover Avenue. Greensboro 27405. (919) 273-5667. High Point office (919) 882-1810

Mediation Services of Wake County. P.O. Box 1462. Raleigh 27602. (919) 821-1296

Neighborhood Justice Center. P.O. Box 436. Winston-Salem 27102. (919) 724-2870

Orange County Dispute Settlement Center. 302 Weaver Street. Carrboro 27510. (919) 929-8800

Piedmont Mediation Center. P.O. Box 604. Statesville 28677. (704) 873-7624

Polk County Dispute Settlement Center. P.O. Box 865. Columbus 28722. (704) 863-2973

Repay, Inc.—Catawba County Justice Center. P.O. Drawer 818. Newton 28658. (704) 464-6744

Robeson County Dispute Settlement Center. 207 East 14th Street. Suite 107. Lumberton 28358. (919) 738-7349

Transylvania Dispute Settlement Center. P.O. Box 1205. Brevard 28712. (704) 877-3815

For more information on North Carolina Mediation Network or any of these dispute settlement centers, contact John Fenner, executive director, North Carolina Mediation Network, (704) 877-3815.

Carolina Supreme Court invalidated an ordinance that required that "no more gins or mills be erected in the corporate limits of the town without [the] consent of all property owners within 300 feet of [the] proposed site of [the] building." The court said,

> Where the effectiveness of an ordinance determining the use of property for a lawful purpose is conditioned upon the assent or permission of private persons, such as the owners of adjacent property, it must be held invalid, as it involves the delegation of legislative power to private individuals.[12]

Both the contract zoning and improper delegation cases stand as reminders that the general principles designed to protect community-wide interests cannot be overlooked by the governing body, even where adjacent property owners can reach consensus.

Of course the requirement of independent legislative decision making applies to land-use decisions whether or not disputes are referred to mediation, and it should not be more difficult to comply with simply because mediation has taken place prior to the final governmental decision, as long as the private consensus does not supplant the governmental decision. In addition adhering to the requirement of independent legislative decision making and bearing in mind the broad public interests inherent in the police power will not just reduce the risk of rendering decisions that are technically invalid. These steps also can ensure that concerns of people not participating in the consensus-building process are considered prior to the final decision. Given the difficulty that may be encountered in attempting to identify all of the "parties" to a particular land-use dispute, and given the possibility that some may simply choose not to participate in dispute resolution, adherence to the requirement of independent decision making and the concerns of the public as a whole is more than mere technicality.

Not every dispute can be resolved short of litigation, and it is not suggested that parties should give up their legal claims in exchange for participation in dispute resolution. Nonetheless, dispute resolution has the potential to increase citizen participation in and personal satisfaction with the land-use permitting process and to decrease divisiveness in the community that can result from disputed land-use proposals. In addition the dispute-resolution process, more than the traditional litigation route, gives the government and its citizens the opportunity to address and truly resolve the issues involved in land-use disputes and may therefore promote more effectively the purposes of land-use regulation. ❖

Notes

1. This article primarily addresses disputes arising out of site-specific permit and zoning requests. The adoption of comprehensive land-use, transportation, capital facilities, and regional plans also generates disputes and can benefit equally from the use of consensus-building techniques. However, because these plans typically involve larger scale issues and larger groups of interested parties and raise separate legal and practical considerations, they are beyond the scope of this article.

2. For additional information and background in mediation in North Carolina and as applied in the land-use area, see Dee Reid, "Community Mediation Programs: A Growing Movement," *Popular Government* 52 (Winter 1987): 24; Andy Sachs, "Local Dispute Settlement Centers: Helping Planners to Build Consensus," *Carolina Planning* 16 (Spring 1990): 35–39; and P. Bohan, "Land Use Arbitration and Mediation," ch. 51A in vol. 7 of *Zoning and Land Use Control* (New York: Bender, 1989).

3. *See* Philip P. Green, Jr., *Zoning in North Carolina*, part I (Chapel Hill, N.C.: Institute of Government, 1952).

4. The terms *special-use permit*, *conditional-use permit*, and *special exception* are synonymous and refer to a land-use permit issued for a particular use and containing specific conditions on the use permitted.

5. Refining Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974).

6. The burden of producing evidence may fall on the local government staff where the staff recommends rejection of a proposed use on the basis that the application fails to satisfy general conditions in the applicable ordinance. *See* Woodhouse v. Board of Comm'rs of Town of Nags Head, 299 N.C. 211, 261 S.E.2d 882 (1980), as discussed in Michael B. Brough and Philip P. Green, Jr., *The Zoning Board of Adjustment in North Carolina*, 2d ed. (Chapel Hill, N.C.: Institute of Government, 1981), 81–84.

7. As described by the North Carolina Supreme Court, "conditional use zoning . . . is an outgrowth of the need for a compromise between the interests of the developer who is seeking appropriate rezoning for his tract and the community . . . and the interests of the neighboring land owners who will suffer if the most intensive use permitted by the new classification is instituted." Chrismon v. Guilford County, 322 N.C. 611, 618, 370 S.E.2d 579, 593 (1988) [quoting Shapiro, "The Case for Conditional Zoning," *Temple Law Quarterly* 41 (1986): 267, 280].

8. *See* Hall v. City of Durham, 323 N.C. 293, 372 S.E.2d 564, *reh'g denied*, 372 N.C. 629, 371 S.E.2d 586 (1988). In Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988), the supreme court rejected the court of appeal's conclusion that the county had engaged in illegal contract zoning in approving the challenged conditional-use zoning application. The supreme court concluded that "the rezoning in this case, because the Board neither entered into a bilateral agreement *nor abandoned its place as the independent decision-maker*, was not illegal contract zoning." 322 N.C. at 640, 370 S.E.2d at 596 (emphasis added).

9. 323 N.C. 293, 372 S.E.2d 564, *reh'g denied*, 372 N.C. 629, 371 S.E.2d 586 (1988).

10. 323 N.C. at 305, 372 S.E.2d at 572.

11. 236 N.C. 308, 72 S.E.2d 662 (1952).

12. 236 N.C. at 312, 72 S.E.2d at 665.

Bidding on Buildings: The Requirements of G.S. 143-128

A. Fleming Bell, II

When a local government in North Carolina enters into a construction or repair contract, it must follow special rules and procedures enacted by the state legislature. These rules, which vary according to the size and type of project, are intended primarily to promote competition and avoid favoritism in awarding the contracts. They also help to ensure that local governments do not pay excessive prices for construction and that they actually receive what they pay for. In recent years, certain procedures have also been added to help increase the participation in public construction of firms owned by women and members of racial minorities.

Larger building construction or repair projects are subject to some of the more elaborate procedures, and these rules have been revised greatly and expanded by the General Assembly in recent years. This article reviews these special rules that apply to larger building projects, in addition to the usual competitive bidding, bonding, and other requirements that apply to public construction and repair projects.

The special rules to be discussed are found for the most part in Section 143-128 of the North Carolina General Statutes (hereinafter G.S.). They apply if a project being considered by the responsible "officer, board, department, commission or commissions" of a county or municipality is the erection, construction, alteration, or repair of a building or buildings and the entire cost of the work exceeds $100,000. State building construction and repair projects, although not the focus here, also are covered by most of the guidelines to be discussed. There is also a long tradition and practice of assuming that the rules apply to various other governmental entities such as school administrative units, although these bodies are not mentioned specifically in G.S. 143-128.

Multiple- and Single-Prime Contracts

For projects that fall within the definition just given, separate specifications must be drawn and separate bids received for each of the following four branches of work:

1) Heating, ventilating, air conditioning, and accessories (separately or combined into one conductive system) or refrigeration for cold storage (where the cooling load is fifteen tons or more of refrigeration).
2) Plumbing and gas fittings and accessories.
3) Electrical wiring and installations.
4) General work relating to the erection, construction, alteration, or repair of the building(s) that is not included in the first three branches.

If the estimated cost of the work in one of the four branches is under $10,000, that work may be included in the contract for one of the other branches.

Under this multiple- or separate-prime contract system, each separate contractor is liable directly to the local government and to the other contractors for fully performing its contractual duties and obligations in accordance with the plans and specifications. Local governments may, at their option, prepare specifications and award contracts for other separate categories of work besides those listed in the statute.

The author is an Institute of Government faculty member who specializes in local government law. Much of this article is adapted from various sections of his book Construction Contracts with North Carolina Local Governments, *2d ed. (Chapel Hill, N.C.: Institute of Government, forthcoming).*

The awarding authority also has the option under G.S. 143-128 of soliciting bids for the project under the single-prime contract system. (If the board chooses to take bids on a single-prime basis, it must take bids under *both* the multiple-prime contract approach and the single-prime system.) In single-prime contracting, contractors bid on performing all the work required by the project for a specified price. The selected contractor hires and supervises the subcontractors used for various parts of the work.

If only multiple-prime contract bids are received, a separate contract is awarded for each of the listed branches of work. If both multiple-prime and single-prime bids are received, the contract (or contracts, in the case of multiple-primes) is awarded under the method that produces the lowest responsible bid or bids for the project. Bidders under the single-prime method must identify in their bids the subcontractors they intend to use for the four branches of work mentioned above.

The Three-Bid Rule

When a board awards a construction or repair contract valued at $50,000 or more, formal bidding is required under G.S. 143-129. Section 143-132 sets forth a three-bid rule in regard to the bidding: the board must receive at least three competitive bids to award the contract after the first advertisement for bids. A special provision of that statute deals with the situation in which both single- and multiple-prime bids are being received for a project subject to G.S. 143-128. It specifies that a bid submitted by a single-prime contractor counts as such a competitive bid in each of the four branches of work listed above and that each *full set* of multiple-prime contract bids constitutes a competitive single-prime bid in meeting the requirements of the three-bid rule.

Thus a contract or contracts, as appropriate, may be awarded after the first advertisement to a single-prime contract bidder or to a group of multiple-prime contract bidders if some combination of single- and multiple-prime bids is received (for example, two single-prime bids and one complete set of multiple-prime bids) that together "add up to" three bids in each category. As another example, an award may be made if either three single-prime bids or three complete sets of multiple-prime bids are received, even if no bids are received under the other category.

Minority Participation Requirements

Cities, counties, and other public bodies covered by G.S. 143-128 must also adopt goals for participation by minority businesses in the total value of work for each project for which a contract or contracts are awarded pursuant to the statute, whether the contracts are single prime or multiple prime. These "verifiable percentage goals" for such participation—a statutory term discussed later in this section—must be adopted by the governing body of the governmental unit after notice and a public hearing.[1] Note that these minority-business participation requirements, like the multiple- and single-prime contract requirements just discussed, apply only to those projects that come within the definition set out at the beginning of this article (generally, building construction or repair projects involving more than $100,000).[2]

The governmental unit may choose to have either one overall goal or separate goals for different types of contracts (for example, general or electrical). A separate goal or goals may be adopted for each project, or the unit may adopt a single goal or set of goals that will apply to all G.S. 143-128 contracts it undertakes, until the unit chooses to change the goals.

Governmental units and contractors are *not* required to make awards to or purchases from any bidder other than the lowest responsible bidder or bidders to meet minority participation goals, and contracts are to be awarded without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition. But a *good-faith effort* to attain the participation goals *is* required.

The statute defines a minority business as a business with at least 51 percent ownership by minority persons that is managed by one or more of its minority owners. "Minority persons" include blacks, Hispanics, Asian Americans, American Indians, Alaskan natives, and women.

To have a verifiable goal under the multiple-prime contract system, the authority that awards the contracts must adopt written guidelines specifying the actions that will be taken to ensure a good-faith effort in recruiting and selecting minority businesses for participation in these contracts. The guidelines may require potential contractors as well as the entity that is awarding the contracts to take particular actions.

For purposes of the single-prime contract system, having a verifiable goal means that the awarding authority has adopted written guidelines specifying the

actions that the prime contractor must take in order to ensure a good-faith effort in recruiting and selecting minority businesses for participation in the contract. Contractors who submit single-prime bids must provide the awarding authority with written documentation that the required actions have been taken.

The statute requires setting goals for minority-business participation in the *total value of work* for each project for which G.S. 143-128 contracts are awarded. This means that participation by minority suppliers as well as by minority contractors may be encouraged as a means of reaching the goals.

The guidelines that are to be adopted under the statute are not required to provide for racially based set-asides. If a race-based system for making contract awards *were* established, the local government would have to meet a very difficult evidentiary test (called *strict scrutiny*) to avoid having its program invalidated under the equal protection clause of the United States Constitution.[3] Under the strict scrutiny standard, a racially based classification scheme can only be upheld if a state or local government (1) demonstrates a compelling governmental interest that justifies the scheme and (2) shows that the racial classification plan is tailored narrowly to achieve that interest.

Rather than set-asides, what seems to be contemplated by G.S. 143-128 are good-faith general efforts by local governments and contractors to recruit and select minorities, consistent with the statutory standard that the award be made to the "lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract."[4] (The applicability of this standard to G.S. 143-128 contracts is discussed in the section on the lowest responsible bidder, below.) The actions specified in the guidelines might include advertising contracting opportunities widely, including minority firms on bidders' lists, and holding meetings with minority businesses to explain bidding procedures. In effect the verifiable percentage goal that the local government adopts is a *prediction* of the level of minority participation that such general efforts are expected to yield.

Local governments adopting goals programs should be cautioned on two points: First, they should make sure that their written guidelines contain nothing that would lead a court to believe that the local government is allowing racial considerations to enter into its actual contract award decision. Even if the statutory scheme in G.S. 143-128 is relatively benign, a particular program adopted under the statute could be subjected to strict scrutiny if race were in some way made a part of the award criteria. The adopted goal is simply that: it is not a standard or quota that must be achieved before a contract will be awarded.

Second, the guidelines that local governments adopt for contractors to follow should make clear what sorts of good-faith efforts are being required, possibly even suggesting a minimum standard for the amount of effort that must be shown. Contractors are accustomed to certainty in the specifications they receive from local governments and will be less likely to complain about a program if they know clearly what is expected of them.

If the local government chooses to disqualify a bidder for failure to make a good-faith effort to recruit and select minority businesses, it should make very clear that the disqualification is *not* for failure to use minorities, but for failure to determine if qualified minorities are available. Authority to disqualify a bidder for this reason can be implied from G.S. 143-128(c): if a bidder fails to take the good-faith actions specified in the written guidelines—guidelines that the local government has adopted in response to a statutory directive—that bidder has not met a statutorily required part of the specifications for the project.

Effective Dates

The statutory provisions that authorize the use of single-prime contracting, that require adoption of minority participation goals, and that amend the three-bid rule to deal with projects where both single- and multiple-prime bids are solicited were enacted as part of Chapter 480 of the 1989 North Carolina Session Laws. Chapter 480 became effective on June 28, 1989, and expires June 30, 1995. Also, under the provisions of Chapter 770, Section 74.17, contracts awarded under the multiple-prime contract system between June 28 and December 31, 1989, are not invalidated even if the governmental unit had not yet complied with the act's requirements concerning participation by minority businesses.

Lowest Responsible Bidder

General Statutes subsections 143-128(b) and (d) both mention the making of contract awards to the "lowest responsible bidder." If a public body receives both

multiple- and single-prime bids for a project, G.S. 143-128(b) instructs it to "award the contract to the lowest responsible bidder or bidders for the total project." Subsection 143-128(d) specifies that nothing in G.S. 143-128 is to be construed to require awards to or purchases from minority-business contractors or subcontractors "who do not submit the lowest responsible bid or bids."

This choice of terminology is a bit troublesome, as the general award standard for all formally bid contracts, as set out in G.S. 143-129, is somewhat different. That statute requires that awards be made to the "lowest responsible bidder or bidders, *taking into consideration quality, performance and the time specified in the proposals for the performance of the contract*" (emphasis added). This standard allows factors other than cost to be taken into account in making a contract award decision.[5]

Does the language in G.S. 143-128(b) and (d), which was added to G.S. 143-128 many years after the standard in G.S. 143-129 was adopted, signal a legislative decision to adopt a different standard of award—one based more completely on price—for formally bid contracts that are subject to G.S. 143-128? Or should the wording of G.S. 143-128(b) and (d) be regarded as merely a shorthand reference to the general award standard for formal contracts set out in G.S. 143-129?

The latter is probably the better view. There is no logical reason that building projects valued at more than $100,000 should have a different standard of award than other formally bid projects. Further, the G.S. 143-129 standard is so long established and well known that one would expect that if the legislature intended to change it for G.S. 143-128 contracts, it would have done so in a very clear and precise manner. In sum, local officials can probably safely assume that the standard for awarding larger building contracts is the same as that for any other formally bid project.

Other Issues under G.S. 143-128

Definitions

As will be recalled, G.S. 143-128 applies only to projects costing more than $100,000 that involve buildings. However, the term *building* is not defined. This can cause difficulties in interpreting the scope of the statute: local governments must decide on a case-by-case basis whether a particular structure qualifies. While the word *building* is usually associated with projects that require the use of plumbing, electrical, and heating and air conditioning contractors, this is not always the case. For example, a large equipment-storage shed or an outdoor pavilion in a park likely would qualify as a building, even if it were not heated, plumbed, or (in the case of the pavilion) lighted. Most boards probably will wish to be cautious and follow the statute's requirements if there is any question about the matter.

General Statutes Section 143-128 provides guidance on this issue only in its last sentence, which specifies that public authorities that come within the requirements of G.S. 143-128 may "purchase and erect prefabricated or relocatable buildings or portions thereof" without complying with the section's provisions, except as to "that portion of the work which must be performed at the construction site." Thus, for example, the requirements of G.S. 143-128 would not need to be met in contracts to purchase and erect a prefabricated maintenance building, except with respect to the on-site work involved. (Most of the other competitive-bidding and related requirements generally applicable to construction and repair contracts probably *do* apply to the purchase and erection of prefabricated or relocatable buildings.[6])

Left unclear, however, is how one determines whether the $100,000 minimum for invoking the rule as to the on-site work has been met. Must G.S. 143-128's procedures be followed for the on-site work if the total project cost (including both the cost of the prefabricated building and the on-site work) is greater than $100,000? Or does the statute apply only if the cost of the on-site work, standing alone, exceeds $100,000? Both readings of the statute are plausible; G.S. 143-128 will clearly come into play more often under the former interpretation than under the latter.

Related to this issue are questions raised by another undefined statutory phrase. As noted earlier, G.S. 143-128 applies to building contracts where the "entire cost of such work" exceeds $100,000. In calculating the "entire cost," must items such as, for example, architect's or surveyor's fees be included? While G.S. 143-128 provides no answer, a definition of a similar phrase found elsewhere in G.S. Chapter 143, Article 8, may be instructive. Section 143-135 (regulating construction or repair work performed by a public owner's own forces) defines "total cost of the project" to include "without limitation all direct and indirect costs of labor, services, materials, supplies and equipment."

Exemptions from G.S. 143-128's Requirements

Three types of local public bodies are exempted specifically from the requirements of G.S. 143-128: public housing authorities created pursuant to G.S. Chapter 157; hospital authorities established under G.S. Chapter 131E, Article 2, Part B; and soil and water conservation districts created under G.S. Chapter 139. In *Carolinas Chapter NECA, Inc. v. Housing Authority of the City of Charlotte*, the North Carolina Court of Appeals specifically held that the statute does not apply to housing authorities.[7] It noted that G.S. 157-9 provides that "[n]o provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to [a housing] authority unless the legislature shall specifically so state."[8] There is no such specific statement with respect to G.S. 143-128. Language similar to that relied on by the court in the *NECA* case also appears in the enabling statutes for hospital authorities and soil and water conservation districts. The quoted language is broad enough to provide an exemption from other statutory provisions as well as from the requirements of G.S. 143-128.

Conclusion

It is obvious that complying with the requirements of G.S. 143-128 poses special challenges for local governments. The rules are complex, and a number of questions remain about the statute's application. It is hoped that the overview presented in this article will help local government officials identify the major points with which they need to be concerned and make it somewhat easier to follow the mandates of the law. ❖

Notes

1. Subsection 143-128(e) sets a verifiable goal of 10 percent for state projects.

2. It should be noted that cities and counties also are authorized by G.S. 160A-17.1(3a) to "[a]gree to and comply with minimum minority business enterprise participation requirements established by the federal government and its agencies in projects financed by federal grants-in-aid or loans." Such requirements may be included in project specifications, and contracts may be awarded under the applicable formal or informal bidding procedure "to the lowest responsible bidder or bidders meeting these and any other specifications." This provision is part of a broad authorization to make contracts and accept grants-in-aid and loans from the federal and state governments and their agencies for constructing, expanding, maintaining, and operating any project or facility or performing any function that the city or county is authorized legally to provide or perform. See A. Fleming Bell, II, *Construction Contracts with North Carolina Local Governments*, 2d ed. (Chapel Hill, N.C.: Institute of Government, forthcoming), for a discussion of the legal status of such federal minority-business participation requirements for local governments.

3. City of Richmond v. J. A. Croson Co., 109 S. Ct. 706 (1989). See A. Fleming Bell, II, "*City of Richmond v. J. A. Croson Co.*: The Decision and Its Implications for North Carolina Local Governments," *Local Government Law Bulletin* 37 (1989), available from the Institute of Government.

4. G.S. 143-129.

5. The cited standard allows the governing board a certain amount of leeway in deciding which of several similar proposals to select. It is not always required to award the contract to the bidder who is willing to do the work for the lowest cost. Instead, the statute allows the board to consider a number of factors relating to quality, performance, and time in making its decision. The amount of justification needed to choose a bid other than the lowest cost proposal will vary, depending on the bids received. If the lowest bid is a good deal cheaper than the preferred proposal, the board probably is required to present a stronger case than if the proposals involve very similar dollar costs.

6. One possible exception should be noted. One who erects North Carolina-labeled manufactured modular buildings apparently does not need a general contractor's license. While such persons are defined as general contractors in G.S. 87-1, another statute, G.S. 143-139.1, seems to assume that unlicensed persons may erect modular buildings if they meet certain requirements. Specifically, an unlicensed person who wishes to obtain a permit to erect a modular building of the type described must prove to the code enforcement official that he or she has in force, for each building to be erected, a $5,000 surety bond insuring compliance with the State Building Code's regulations governing installation of modular buildings. Also the State Building Code Council is authorized to adopt rules to ensure that any unlicensed person who undertakes to erect such a building meets the manufacturer's installation instructions and applicable provisions of the State Building Code.

7. 29 N.C. App. 755, 756–57, 225 S.E.2d 653, 654 (1976).

8. 29 N.C. App. at 756, 225 S.E.2d at 654.

AT THE INSTITUTE

Two Long-Time Institute Employees Retire

Jodi Anderson

Robert Carver and Luther Atwater, Jr.

Everyone affiliated with the Institute of Government—in whatever capacity—will be affected by the retirement of two long-time Institute employees: Robert Carver and Luther Atwater, Jr. Carver, who worked at the Institute for thirty-eight years, retired January 31, 1991, and Atwater retired October 31, 1990, after thirty-four years at the Institute.

Carver and Atwater spent most of their years at the Institute working in the Print Shop, where the thousands of programs, booklets, handouts, bulletins, and other materials generated by the Institute each year are printed, collated, bound, and mailed. Carver was supervisor of printing, and Atwater was a printing equipment operator. Being a part of the printing department for so many years meant that both had to continue learning the ins and outs of the printing trade. When Carver started working in the printing department in 1956, one mimeograph machine took care of most of the printing needs of the Institute. Collating was done by hand. "To put together a book, we'd put six long wooden tables together," Carver said. "We'd stack the pages to be collated two feet high, one right next to the other, all around those tables. Then we'd walk around and around and around until all the books were put together. . . . It would take weeks."

Carver and Atwater have seen many changes in the Institute over the years, including a growth in the number of faculty from twenty in the early 1950s to thirty-seven in 1991. The number of classes the Institute sponsors also has grown. Phil Andrews, assistant manager of production and distribution, said that these increases, along with a growing sophistication in design and printing equipment, add up to an increase in the number of projects that need printing, as well as the size and complexity of those projects. And most are needed in a hurry. By 1978 about a million separate pages were printed in the Institute's Print Shop, while 1990 saw more than three million pages, most of which were printed for classroom use. Despite this steady increase, Carver said that the Institute has always had high expectations. He warmly recalls Albert Coates, founder of the Institute, as "a man who couldn't take no for an answer." But coworkers say that Carver and Atwater took the large volume and tight deadlines in stride, always showing a gentle nature for which they are remembered fondly. "But Robert [Carver] is no pushover," said faculty member Jake Wicker, who has been at the Institute since 1955. "He can be as stubborn as the rest of us."

Carver came to the Institute as part of the housekeeping staff in 1952 after two years in the armed services. The Institute was then located on Franklin Street in Chapel Hill. When the Institute moved to its present location at the corner of South Road and Country Club Lane in 1956, Carver began working in the printing department. Atwater started at the Institute in 1956, also in housekeeping, then moved to printing in 1965. Both had to learn the printing trade as they went along. "They got a little training from the vendors [of the printing equipment]," said Andrews, "but

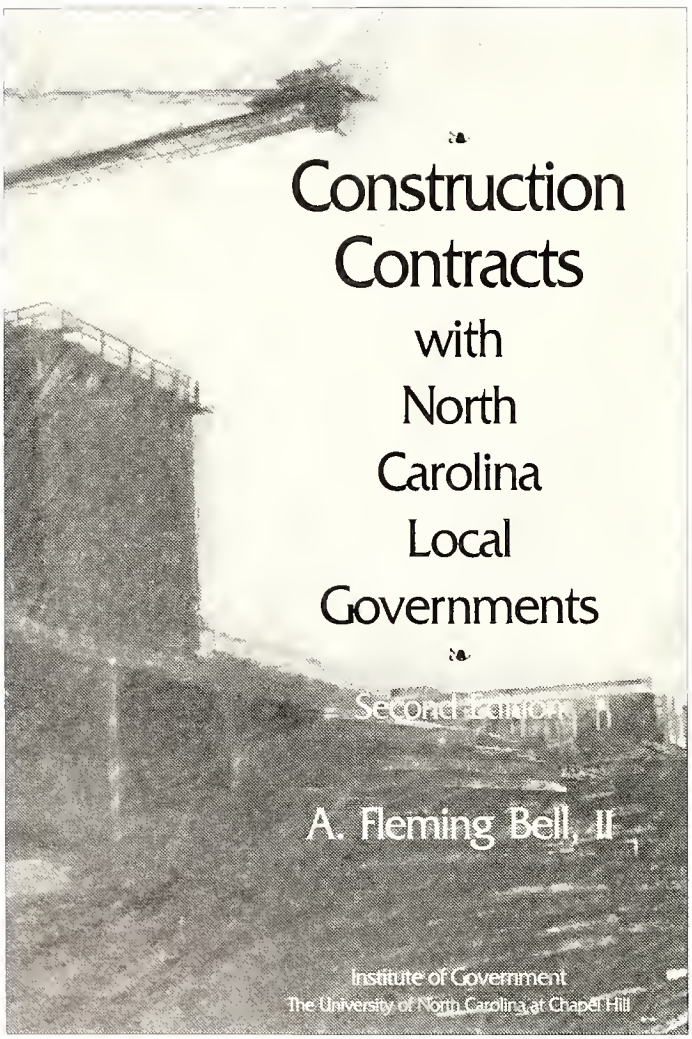
AT THE INSTITUTE

mostly they picked it up on their own. In a lot of instances, they were teaching the vendors how to run the machines when they came back."

While both Carver and Atwater are masters of printing, their skills are by no means limited to that trade. Carver has been known to repair equipment, create missing appendages for otherwise useless pieces of furniture, fix broken shoe heels, build bookshelves, and even beat eggs for Mrs. Coates's Christmas eggnog. In short, he's "helped to keep the Institute running smoothly and the faculty looking good," as John Sanders, director of the Institute, said at Carver's retirement ceremony. Atwater's abilities also venture beyond printing, from houseplant resuscitation to picture hanging. "Oh yes," said Atwater, laughing, "we hung lots of pictures. Then we'd probably have to move them somewhere else the very same day."

Carver and Atwater, both avid gardeners, are spending their newly found free time working outside and catching up on projects they haven't had the time to do in the past thirty-odd years. They said they are enjoying the time but miss the steady contact with Institute employees. They also are missed at the Institute, and not just for their expertise in so many areas. Andrews described the difference in the Print Shop this way: "On a business level we're all having to wear more hats, and each of us is having to pitch in and do more things. On a personal level, it's very different not having those personalities around us everyday."

—Liz McGeachy



Construction Contracts
with North Carolina Local Governments

Second Edition

A Fleming Bell, II

Staying informed about the special procedures that local governments must follow in making construction and repair contracts in North Carolina can be a difficult task. A guidebook is often needed to follow the changing "rules of the game," which are codified in several different chapters of the North Carolina General Statutes.

This newly revised and expanded edition of the popular *Construction Contracts with North Carolina Local Governments* is such a guide. It presents local government construction law in a readable format designed for quick reference. Formal and informal bidding are considered, as well as standards for awarding bids, bid withdrawals, multiple- and single-prime contracting, minority participation guidelines, and exceptions to the bid procedures. Performance and payment bonds and change orders are discussed, along with avoidance of favoritism in public contracts and specific requirements for designers of public buildings. Attorneys, city and county managers, purchasing officials, contractors, and others who need to know the procedural rules for local government construction contracts will all find it useful.

91.01 ISBN 1-56011-188-7

The book will be available by summer, 1991. For information on ordering the book, call the Institute of Government Publications Office at (919) 966-4119 or write to the following address: Publications Office–CC, Institute of Government, CB #3330 Knapp Building, UNC–CH, Chapel Hill, NC 27599-3330.

Off the Press

Carolina County, North Carolina **Comprehensive Annual Financial Report** for the fiscal year ended June 30, 19X1

Prepared by the Fiscal Management Section of the Department of State Treasurer and S. Grady Fullerton

This publication presents a model comprehensive annual financial report by a fictitious North Carolina county. The model gives guidance to North Carolina counties in the presentation of the annual reports, so should be of special interest to North Carolina county finance officers and independent C.P.A.s who audit their records. However, it should also be of benefit to city and special district finance officers and C.P.A.s of those local governments. The report was prepared by the Fiscal Management Section of the Local Government Commission and reviewed by senior staff members of the Government Finance Officers of the United States and Canada and a faculty member of the Institute of Government. [91.03] ISBN 1-56011-192-5. $28.00.

An Outline of Statutory Provisions Controlling Purchasing by Local Governments in North Carolina. 1990 Edition

Warren Jake Wicker

This booklet is designed to give local purchasing officials an easy-to-use guide to the chief statutory provisions affecting their work. It outlines in detail the requirements relating to the formal and informal contracting procedures, following the normal purchasing sequence. It also covers purchasing-related statutes that deal with conflicts of interest, gifts and favors, building contract requirements, the sale of property, and other aspects of contracting. Purchasing officials in cities, towns, counties, public schools, nonprofit hospitals, sanitary districts, and other political subdivisions will find the outline a helpful reference. [90.27] ISBN 1-56011-183-6. $4.00.

County Salaries in North Carolina **1991**

Compiled by Carol S. Burgess

Once a year since 1950 the Institute of Government has published the results of a survey of county salaries and personnel practices in North Carolina. The 1991 edition presents sixty-eight pages of information on salaries, work week and overtime policies, holidays, vacation and sick leave, and more. All major county positions are included, as well as other posts in which county officials have expressed interest. [90.31] ISBN 1-56011-187-9. $10.00.

Orders and inquiries should be sent to the Publications Office, Institute of Government, CB# 3330 Knapp Building, UNC–CH, Chapel Hill, NC 27599-3330. Please include a check or purchase order for the amount of the order plus 5 percent sales tax. A complete publications catalog is available from the Publications Office on request. For a copy, call (919) 966-4119

Popular Government
(ISSN 0032-4515)
Institute of Government
CB# 3330 Knapp Building
The University of North Carolina at Chapel Hill
Chapel Hill, North Carolina 27599-3330