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Popular Government

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

In this Issue:

Balancing Work and Family Needs

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ABC law

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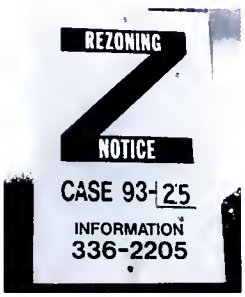

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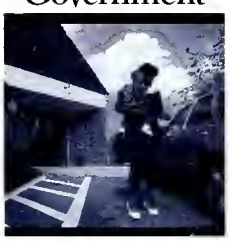

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On the cover At the end of her workday, Eva Womble, an employee at The University of North Carolina at Chapel Hill, picks up her son, Stephen, at a private day care center in Cary, N.C. A recent survey found public universities and state agencies more responsive to their employees' family needs than were other North Carolina government employers. Photograph by S. Exum.

Balancing Work and Family Needs in Government Workplaces in North Carolina

Florence Glasser

Women have always been vital to the North Carolina economy. In the past, women labored on family farms as well as in the home. Substantial numbers of women worked for pay in cotton mills, in tobacco factories, and as domestic workers.

Since the 1960s, North Carolina has seen sharply increasing numbers of women working outside the home. Though the percentage of female workers was only 34.2 in 1960, by 1990 the U. S. Census reported that almost half (46.2 percent) of the North Carolina work force was female.[1]

The most dramatic rise in the participation of women in the labor force has occurred among mothers. By 1990, in North Carolina, two-thirds of mothers of preschool children and four-fifths of mothers of school-age children were in the work force.

The government labor force has followed a similar pattern of demographic change. In fact, by 1990 in North Carolina, women made up a majority of the work force in five sectors of government: county, regional, state, school district, and community college.

The large female presence in the civilian and government labor force has immediate implications for personnel policies and benefit programs. Common experience teaches that women continue to bear disproportionately the burdens of child care and care for elderly parents, sometimes finding themselves "sandwiched" between generations. The package of benefits that most workers receive today was designed in the 1950s for a male worker whose wife stayed at home to care for their children. Today only 7 percent of American households fit that description.

Many private-sector employers have begun to reevaluate their personnel policies, recognizing that a single

The author is director of the North Carolina Work and Family Center of NC Equity in Raleigh, which published the report (Solving the Workplace Puzzle) *on which this article is based. Unless otherwise noted, all of the figures included here are adapted from those that appeared originally in the report.*

S. Exum

About two-thirds of mothers of preschool children are in the North Carolina work force.

uniform benefit package and traditional personnel policies do not respond to the needs of today's diverse work force—especially workers from dual-earner families, single-parent families, and families with responsibility for elderly relatives. They have begun to design innovative personnel policies that help all employees fulfill the dual responsibilities of work and family. These can be referred to as "family-supportive" policies. Fortune 500 companies adopt new family-supportive personnel policies for economic reasons. They report that they are particularly motivated by the need to retain productive, skilled, trained workers and recruit the most qualified new employees.[2]

What has government, the largest employer in the state, done to help its own employees balance work and family responsibilities? Has government been a model employer, encouraging the private sector to follow its lead?

In 1992 NC Equity, a private nonprofit public policy, education, and advocacy organization, polled personnel directors and interviewed employees in public-sector workplaces across the state on the current status of family-supportive personnel policies. The organization contacted 711 government agencies, and of these, 555 personnel directors (77 percent) responded. (See Figure 1 for a breakdown of these respondents by government sector.)

This article examines the results of that study, the Government As Model Employer (GAME), which was the first of its kind in the nation. It compares family-supportive personnel policies in different North Carolina government sectors, identifies the "family-friendliest" government workplaces, forecasts trends in work/family programs, and suggests next steps employers can take to respond to the needs of workers and their families. The article also includes candid comments from government workers themselves (see "In the Employees' Own Words," page 9), revealing a depth of frustration and stress related to work/family conflicts that supervisors and personnel directors often underestimate.

The Six-Decade Growth of Employment Benefits

Personnel policies and benefits are of critical importance to employees today. Over the last sixty years, there has been a dramatic increase in the value of benefits. In 1929 benefits constituted about 3 percent of total payroll; by 1989 the figure was 38 percent.[3] According to the United States Chamber of Commerce, that 38 percent translates into an average mean benefit of $5.56 per payroll hour or $11,527 per year per employee. These figures cover health insurance, vacation and sick leave, holidays, and retirement, as well as the employer's share of social security taxes.

Similarly, benefits substantially improve the value of compensation for government employees in North Carolina. At 42 percent of an average annual salary of $25,000 for state government employees in 1991,[4] for example, the value of benefits roughly equals that for both U.S. private-sector workers in 1989 and U.S. federal government workers in 1991.[5] Benefits generally constitute a greater proportion of the total compensation of low-wage employees. (See, for example, Figure 3.) The value of benefits for a teacher's assistant making $11,530 over ten months exceeds, on a percentage basis, that of a teacher making $29,390.

Not only has the value of benefits changed; so too has the nature of personnel programs and policies. In 1960

Figure 1
Representation of Government in the Survey

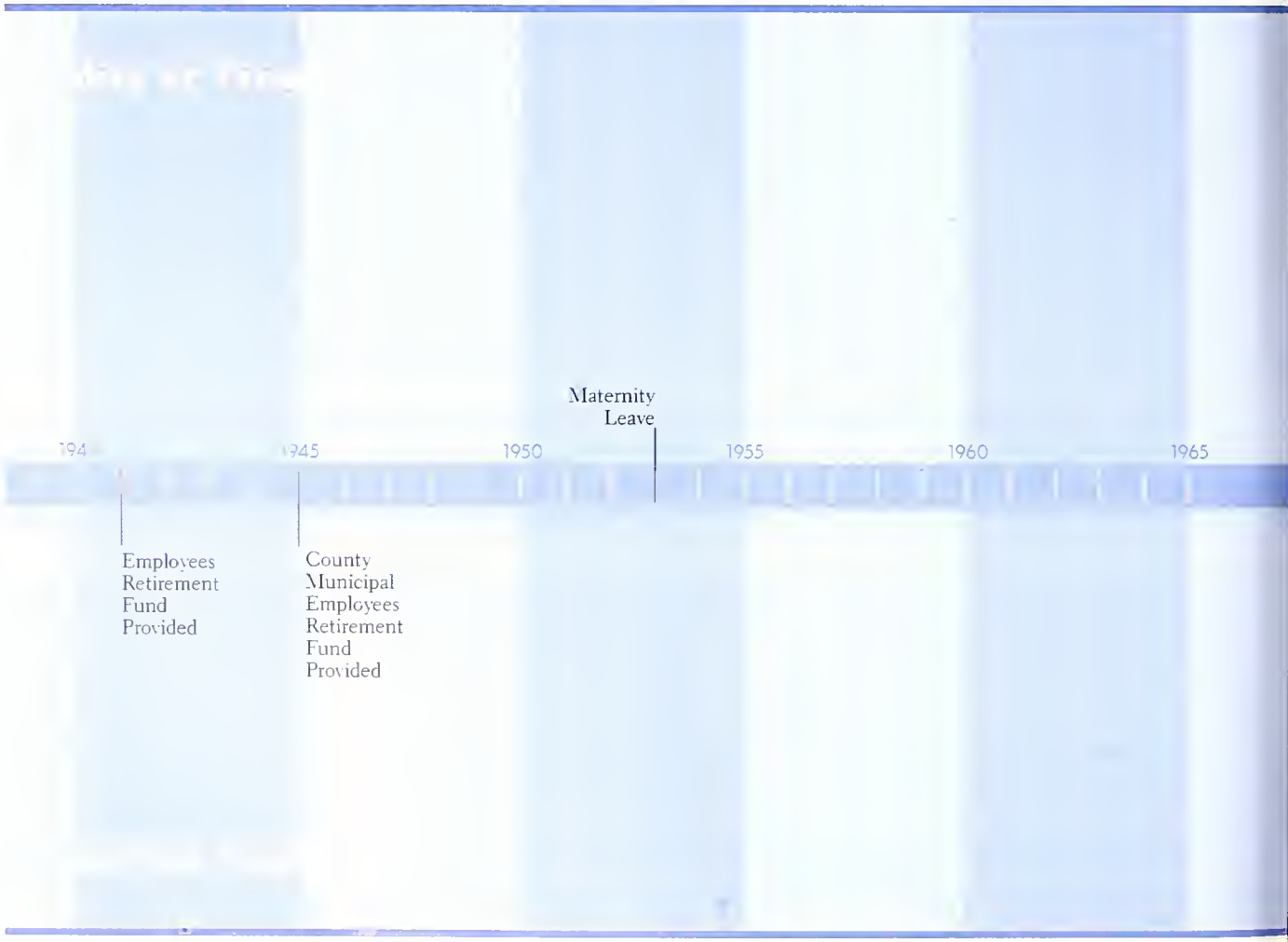
Level of Government	Number of Units Participating	Percent of Total Surveyed
Municipal	255	45.9%
County	70	12.6
Regional	38	6.8
State	23	4.1
School District	104	18.7
Community College	51	9.2
University	14	2.5
Total	555	100.0%

a standard package of benefits—retirement, health insurance, sick and vacation leave—provided basic needs for a homogeneous work force. Daily work schedules began at eight and ended at five o'clock. An increasingly diverse and more female work force called this basic model into question. New policies were needed that allowed choice, options, and flexibility for today's heterogeneous work force. Beginning about 1981, government employers in North Carolina began designing and introducing new, nontraditional personnel programs, policies, and benefits.[6] (See Figure 2.)

Prevalence of Family-Supportive Benefits in N.C. Public Employment

The GAME study showed that public universities and state government agencies offer more family-supportive programs than do other North Carolina government sectors, municipalities by far the fewest. Two explanations are offered to explain this disparity. First, the size of the organization may predict its effort to be family-supportive in that organizations with large numbers of employees are more likely to have a personnel department, personnel-planning capability, and formal programs for employees. A second factor is gender. Municipalities, which staff

Figure 2
Evolution of State Government Personnel Benefits



Note: Unless otherwise noted, all programs and legislation pertain to state government employees and teachers.
1. To be eligible for sick, vacation, and holiday benefits, part-time employees had to work at least 20 hours per week.

traditionally male jobs in sanitation, police, and fire departments, have only a 30 percent female work force, in sharp contrast to other government sectors.

The GAME survey identified thirty-three separate personnel policies that can be considered family-supportive and asked all personnel directors to indicate which options they offered employees. (See Figure 4.) These policies can be broken down into five major types: leave policies, flexible benefits, flexible work arrangements, dependent care, and information and counseling. For a summary of these policies, see "Family-Supportive Benefits—A Primer," page 8.

Leave Policies

Flexible leave policies are employed more frequently than are other family-supportive programs offered by government employers. Three new types of leave help employees with family responsibilities: family illness leave, parental leave, and voluntary shared leave.

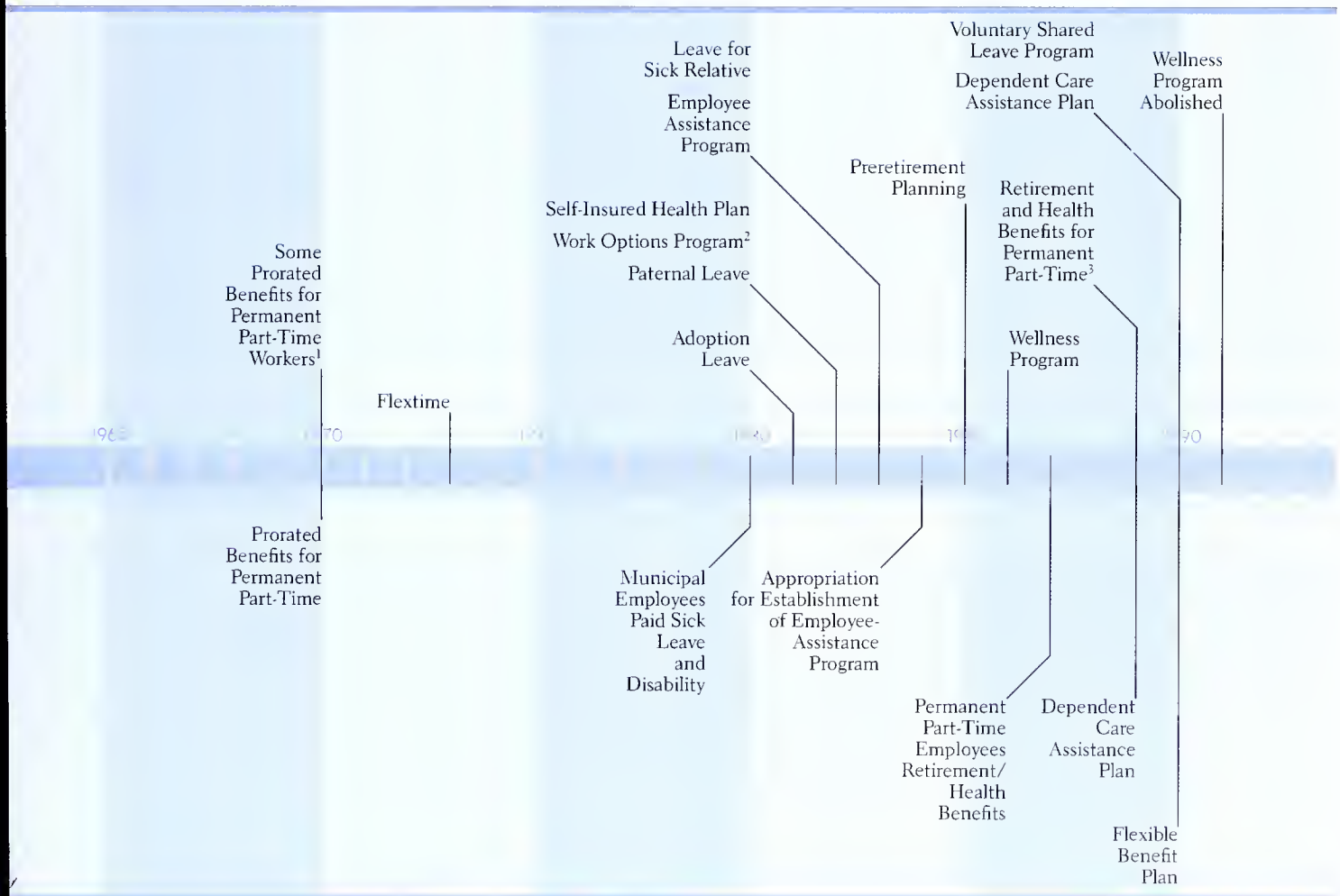
Figure 3
Total Compensation

Benefits Provided by Employer	10-Month Salaries		12-Month Salaries	
	Teacher	Teacher Assistant	Principal	Clerical
Salaries	$29,390	$11,530	$48,816	$17,268
Health insurance	1,625	1,625	1,625	1,625
Retirement*	2,830	1,135	4,807	1,700
Social security*	2,248	902	3,818	1,351
Holidays	1,078	423	1,627	576
Vacation**	1,861	730	3,092	1,094
Sick leave	980	384	1,627	576
Extended sick leave	919	n/a	n/a	n/a
Personal leave	92	n/a	n/a	n/a
Longevity**	n/a	259	1,098	389
Total compensation value	$41,023	$16,988	$66,510	$24,579
Percentage that benefits add to base salary	39.58%	47.34%	35.25%	42.34%

Source: North Carolina Department of Public Instruction, *Working in North Carolina Public Schools, A Look at Employee Benefits in 1991–92* (Raleigh, N.C.: Department of Public Instruction: Aug. 1991).

*Computed on base salary and longevity.

**15 to 20 years of service used to compute this benefit. Computations involving daily salary rates are based on a 30-day month.



2. The Work Options Program effectively expanded the flextime plan to include job sharing and more flexible hours.
3. To be eligible for retirement and health benefits, part-time employees had to work at least 30 hours per week.

Figure 4
Prevalence of Family-Supportive Programs in Government Agencies and a Comparison of Different Government Sectors (in Percent)

Programs and Policies	Rank	Percent of All Agencies Offering Program	Municipal	County	Regional	State	School District	Community College	University
Leave to Care for Sick Child	1	94.1	90.1	92.9	94.7	100.0	99.0	100.0	100.0
Leave to Care for Ailing Adult Family Member	2	90.4	86.0	85.7	91.7	100.0	96.1	98.0	100.0
Personal or Family Leave	3	83.1	73.6	82.6	89.5	95.5	100.0	80.4	100.0
Part-Time Work (Regular)	4	82.4	73.0	88.2	100.0	95.7	93.0	83.7	100.0
Health Insurance/Family Coverage	5	82.1	73.4	84.0	94.7	91.3	90.4	86.3	100.0
Leave for Parental Involvement in Child's School Activities	6	49.7	37.4	48.5	64.9	60.9	68.6	47.9	76.9
Parental Leave—Fathers	7	45.1	23.5	38.5	52.0	94.7	91.5	14.6	87.5
Flexible Spending Account/DCAP	8	37.1	21.4	45.7	47.4	87.0	44.7	41.2	92.9
Separate Maternity Leave	9	37.0	28.2	32.9	42.1	56.5	48.1	51.0	35.7
Employee Assistance Programs	10	36.5	22.4	37.6	71.1	100.0	39.4	26.0	99.0
Flextime	11	35.4	21.8	21.9	68.4	91.3	33.6	39.2	78.6
Wellness Programs	12	34.8	22.2	50.1	25.0	60.9	41.2	42.0	92.8
Graduated Return to Work	13	32.8	17.9	33.8	51.4	72.7	43.4	43.8	61.5
Cafeteria-Style Benefit Plan	14	30.9	20.8	34.3	39.5	21.7	56.7	29.4	0.0
Reimbursement for Child Care through Flexible Spending	15	25.1	11.8	31.9	27.0	65.2	44.6	3.9	92.9
Work/Family Seminars	16	24.7	9.3	25.4	43.3	34.8	42.5	36.0	57.1
Compressed Work Week	17	16.6	10.7	16.0	37.8	30.4	16.7	14.3	53.8
Job Sharing	18	16.4	7.9	23.2	11.1	77.3	18.8	10.2	53.8
Voluntary Shared Leave	19	14.7	5.9	13.2	18.9	100.0	5.0	12.0	100.0
Long-Term Care Insurance for Dependent Children	20	13.4	11.9	11.9	13.5	26.1	11.5	18.4	21.4
Flexplace/Work at Home	21	13.2	7.5	11.6	37.8	27.3	6.9	20.4	53.9
After-School/Summer Programs	22	13.1	2.0	7.4	0.0	0.0	54.2	6.0	35.7
On- or Near-Site Child Care Centers	23	8.9	0.0	4.4	0.0	4.4	25.3	27.5	35.7
Child-Care Resource and Referral	24	7.1	0.8	14.9	2.7	4.4	16.3	8.2	28.6
Elder-Care Referral and Information	25	5.3	0.8	14.5	28.6	4.4	1.9	2.0	14.3
Sick-Child-Care Reimbursement	26	4.8	5.3	2.9	8.1	8.7	1.0	9.8	0.0
Respite-Care Programs	27	3.7	0.4	10.3	27.0	0.0	1.0	2.0	0.0
Adult Day Care Programs	28	3.5	0.4	11.6	24.3	4.4	0.0	0.0	0.0
School Tuition/Scholarship Assistance	29	1.3	0.0	0.0	2.7	0.0	2.1	6.0	7.1
Caregiver Fairs	30	1.3	0.8	0.0	7.9	0.0	0.0	0.0	14.3
Adoption Assistance	31	1.1	0.0	6.1	2.7	0.0	0.0	2.0	0.0
Group Discounts with Child Care Centers	32	0.9	0.4	0.0	0.0	0.0	3.1	2.0	0.0
Child-Care Reimbursement: Business Travel	33	0.4	0.8	0.0	0.0	0.0	0.0	0.0	0.0

Family Illness Leave

Traditionally, employees have received paid vacation and sick leave. New policies allow employees time away from work to also deal with family matters. Ranking as the most common benefit (94 percent) is time off to care for a sick child, followed closely by leave to care for an ailing adult family member (90 percent). Employees may use accrued vacation or sick leave in a flexible way to address these family needs.

Parental Leave

Family leave and parental leave are now mandated under the Family and Medical Leave Act of 1993.[7] Public employers (and private employers with fifty or more employees) are required to offer twelve weeks of unpaid leave in any twelve-month period to care for a newborn or newly adopted child; to care for a seriously ill spouse, child, or parent; or because of their own serious illness. Employees are guaranteed the same or an equivalent job upon return from leave. Employers must continue health insurance coverage during the leave. Employers can require employees to first use accrued paid vacation, personal, or sick leave.

The new federal law will require most government employers to rewrite their personnel policies regarding parental leave and leave for employee or family illness—

only 37 percent of the personnel directors who responded to the GAME survey reported already having a separate maternity leave policy; only 45 percent made fathers eligible for parental leave; and just 40 percent had a formal adoption leave policy that covered both male and female employees.

Voluntary Shared Leave

A voluntary shared leave program, created in 1992, may help new mothers by offering them paid leave. This option is offered by all the public universities and 91 percent of state government agencies polled but by only 8 to 10 percent of community colleges, regions, and counties and by virtually no school districts or municipalities.

This comparatively new program provides an opportunity for fellow employees to contribute unused vacation leave to a beleaguered employee, thus avoiding possible loss of income to that individual. A family member who is a state employee may contribute not only vacation leave but sick leave as well to another immediate family member who works for the state.

Shared leave may be helpful to employees who face serious medical problems following childbirth and who must be absent from work for at least twenty consecutive workdays. The program also is helpful to employees who face a crisis involving the serious or prolonged medical condition of a family member. The family member may be a spouse, parent, child (including step relations), or other dependent living in the employee's household.

Flexible Benefits

Flexible spending accounts are the fastest-growing family-supportive benefit offered by public-sector employers in North Carolina. In fact, 203 (37 percent of all those responding) government organizations reported that they offer a dependent care assistance plan (DCAP), allowing employees to reduce their salary, put those salary dollars in a special spending account, and pay their child's caregiver from that account. By using this method, these working parents pay less in taxes to both state and federal governments by paying income taxes only on the reduced salary; they thereby enjoy a pretax child-care benefit. DCAPs also can be used to pay for before- and after-school care; summer or holiday care; and day care for a disabled child, spouse, or a dependent parent who lives in the household of the employee. Almost all state government and university employees have an opportunity to customize their benefit packages through a DCAP; employees of municipal, county, or regional governments and community colleges are less likely to be able to offset their dependent-care expenses in this way.

A second and even more comprehensive flexible benefit plan is offered by an additional 170 (31 percent) survey respondents. Employees are able to choose from a broad array of benefit options, tailoring benefits to suit their needs. This "cafeteria benefit plan" includes a variety of benefit options such as hospitalization, dental insurance, supplemental life insurance, dependent life insurance coverage, and short-term disability insurance. The choice of how to spend the flexible credit value is left to the employee. For example, a female employee may opt out of the health insurance plan because her husband's health insurance plan covers her. She may apply the credit value to another option, thereby increasing the value of the benefit package for herself and her family.

Some government employers report that they offer both dependent care assistance plans and more comprehensive cafeteria plans. For example, local public schools offer the State Board of Education's DCAP, offering not only dependent-care spending accounts, but also health-care spending accounts.

Flexible Work Arrangements

Flextime

Flextime is available in about one-third of government agencies; however, only 10 percent of survey respondents reported that they have a formal stated flextime policy. Moreover more than a fifth of all agencies with flextime limited eligibility to 10 percent or fewer employees.

Considerable variation on this policy was found among government sectors, ranging from only 2 percent of municipalities and local school districts and 7 to 8 percent of counties and community colleges reporting formal flextime policies up to 37 percent of regional governments, 43 percent of universities, and 91 percent of state government agencies reporting formal flextime policies.

Marked variation also was found in the length of the "flexband" (the total number of minutes at the beginning, middle, or end of the day when employees can alter their work schedules). Employees of regional governments enjoyed the greatest flexibility in setting work schedules, with fourteen of twenty-three regional personnel directors reporting "total flexibility with no restriction." By comparison, school districts, not surprisingly, offered the fewest choices in altering work schedules, with about half reporting a flexband of only 15 to 59 minutes. On the other hand, about a third of universities have a flexband of 120 minutes or more.

Family-Supportive Benefits—A Primer

The new types of benefits, as they have developed, can be grouped into five general categories:

Leave or time off. Three new types of leave that employers increasingly are offering to employees are parental leave, family illness leave, and voluntary shared leave. *Parental leave* and *family illness leave* are subjects of the new federal Family and Medical Leave Act of 1993. With that congressional impetus—which requires public employers to offer up to twelve weeks unpaid leave for the arrival of a new child, for employee illness, or for illness in the family—these leaves are likely to become increasingly common. *Voluntary shared leave* programs permit employees to share accumulated leave time with other employees who have otherwise exhausted theirs.

Flexible benefits. *Cafeteria-style benefit* packages are replacing the old single uniform benefit plan. A cafeteria plan allows employees to choose from an array of options that suit the needs of their families. Usually, these plans offer a core set of traditional benefits as well as several options that may be used to expand traditional benefits (such as supplemental retirement options) or to take advantage of totally new benefits (such as child-care assistance). Employers are able to offer a greater number of benefits than they would if everyone got full advantage of everything. *Flexible spending accounts* and *dependent care assistance plans* are specific types of flexible benefits. They allow employees to use pretax salary dollars to pay for benefits. The employee may direct that certain amounts of his or her income go for payment of health insurance premiums, for example. Or, under a dependent care assistance plan, the employee may direct a portion of pretax salary into an account from which the employer then reimburses the employee for child- or elder-care expenses.

Flexible work arrangements. Flexible work arrangements allow employees to choose work schedules that help them balance their work and family responsibilities. *Flextime* permits an employee to choose, within limits, when to start and stop work, fitting in the required number of work hours in a day. *Compressed work weeks* allow employees to work the same number of total hours per week over fewer days. *Flexplace* allows employees to work at home or at a satellite work site. They can communicate with the central office—or one another—by computer, fax, or telephone. *Part-time work (including job sharing) with benefits* makes it possible for a person to spend a greater proportion of his or her time on family matters while retaining some or all of the benefits of full-time employment.

Dependent care. Child care is an economic issue for employers. Employees cannot come to work, or cannot work productively, if their children are not properly cared for. Employer *child-care assistance programs* may include providing resources for locating child care, on-site or near-site centers, summer camp and after-school programs, sick-child arrangements, reimbursement of child-care costs related to business travel, and group discounts with child care centers. Elder care is becoming an economic issue as the population ages. According to a 1988 United States House of Representatives report, the average American woman will spend seventeen years raising children and eighteen years helping aged parents. *Elder-care assistance programs* may include elder-care referral, respite care, and adult day care.

Information and counseling. Employers are offering a number of occupational health and mental health programs to reduce employee stress, improve productivity, and reduce health-care insurance costs. *Employee-assistance programs* include individual assessment, counseling, referral, and treatment aimed at improving the worker's productivity. The first of these programs focused on substance abuse problems, but many have been expanded to cover family and financial problems. *Wellness programs* may involve health education, stress management, health screening, and early detection of health problems. They emphasize the importance of exercise, good nutrition, and giving up alcohol and tobacco. *Work/family seminars* help employees find solutions to work/family conflicts. Family members often are included.

Compressed Work Weeks

Only 4 percent of respondents reported having a formal policy that allowed compressed work weeks as a work schedule, but 13 percent have ad-hoc or informal arrangements. Prevalence rates were significantly higher for university, state, and regional than for other levels of government.

Flexplace

Only one government workplace reported a formal policy allowing employees to work at home, but 13 percent said that flexplace was allowed on an ad-hoc or negotiated basis. Again, there is wide variation among levels of government, with more than half of public universities reporting an informal flexplace program compared to only 6 to 8 percent of school districts and municipalities reporting the program.

Part-Time Work

Permanent part-time work became available in North Carolina state government agencies as long ago as 1970, making it one of the oldest family-supportive initiatives. Most personnel directors reported that their agencies offered part-time work opportunities: 46 percent under a formal policy and 36 percent negotiating such opportunities on an individual basis.

In state government, job sharing—by definition, part-time—is an important option; 59 percent reported that these opportunities were made available on a negotiated basis, and an additional 18 percent of state agencies cited a formal policy on the subject. This is largely the result of the state's Work Options Program initiated in 1982. A coordinator is specifically charged with the responsibility of assisting agencies in "identifying positions which may be filled on a job sharing basis."

The availability of a part-time schedule allows many people to work who could not otherwise. However, because employers often do not value part-time employees as highly as they do full-time workers, many employers do not offer part-timers all the benefits enjoyed by full-time employees. Those who work less than thirty hours per week often receive none at all. For example, 96 percent of all government employers provide no health insurance to employees working fewer than twenty hours a week, and two-thirds provide no health insurance to those working fewer than thirty hours a week. Similar figures were reported for retirement benefits, with life insurance and disability insurance even less likely to be covered.

For employees working thirty to thirty-nine hours, however, a clear majority (58 percent) of respondents reported full heath insurance benefits, and an additional 9 percent provide prorated health insurance benefits for this group. Fairly similar figures were reported for retirement benefits, but when it comes to life insurance and disability insurance, 47 percent and 57 percent, respectively, do not offer these benefits even for their "almost full time" workers.

Part-time workers are also far less likely to receive such benefits as paid holidays, paid time off for illness, and maternity leave/parental leave—again with the more-than-thirty-hour group having the best chance of obtaining these benefits.

Dependent Care

Child-care and elder-care programs are the least common family-supportive initiatives. Strangely, while almost all agencies allow employees time off to care for a sick child or an ailing adult family member, North Carolina government employers are very hesitant to provide financial assistance to offset caregiving expenses during work hours. They are reluctant to provide or sponsor child-care or elder-care services for family members of employees. However, as mentioned earlier, government employers increasingly offer dependent care assistance plans that help make child care affordable to government workers.

Child Care

Increasingly, private-sector employers have recognized child care as an economic issue, because parents cannot come to work unless their children are cared for. Job performance and productivity are adversely affected if parents come to work worried about the quality and affordability of their child-care arrangements.

Public-sector employers in North Carolina agree that child care is a source of work/family conflict. An overwhelming majority of survey respondents said that both preschool and school-age child care represent either a major issue or a significant problem for some employees. (See Figures 5 and 6.)

Yet only 13 percent of all agencies polled provide some type of after-school program or summer camp arrangement, only 9 percent offer on- or near-site child care centers for children of employees, and less than 1 percent contract with local child care centers for group discounts for employees. Still fewer (0.4 percent) consider reimbursing parents for child care, even when it is required for business travel. Not surprisingly, school districts (54 percent) offer more after-school and summer programs to employees' children

In the Employees' Own Words

The following excerpts are taken from NC Equity interviews with government employees. While the work/family issues discussed are largely the same as those identified by personnel directors in the GAME survey, as well as those that have surfaced in many national research studies, the contrast between employees' and personnel directors' perceptions of the extent of some problems is striking.

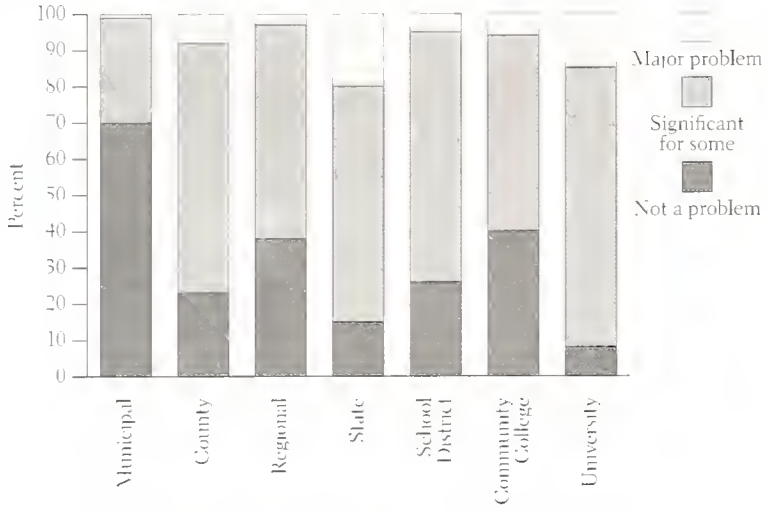
On Childbirth and Infant Child Care:

I drive to work and have to be there by ten of four in the morning. Every day I get my girl and my baby child up and take them two houses away to my mother's house. She puts my girl on the school bus and looks after my baby until I come home. It works out okay. But. . . . I had fluid on my lungs and heart trouble after I had the baby. I had kidney trouble too and the doctors told me not to work and to stay in bed. I used up my vacation time. I used up my sick leave. My father gave me some of his leave time but I still went a couple weeks with no pay. It was real hard.

—A housekeeper in a public university

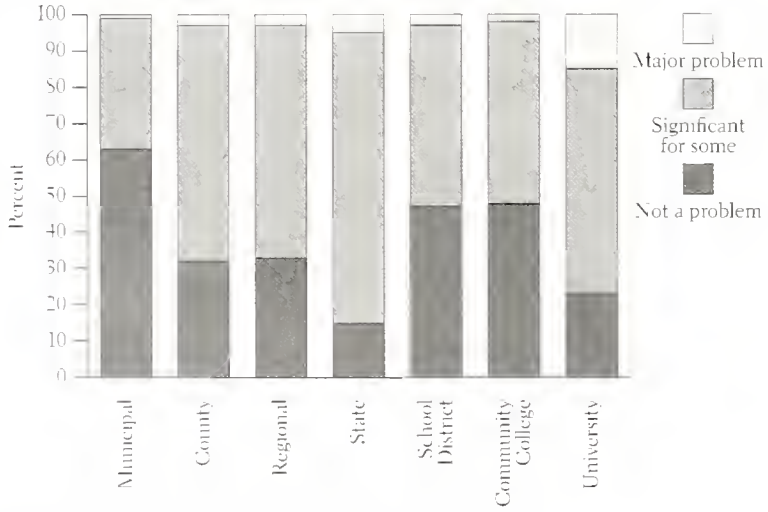
Continued on page 13

Figure 5
Empoyees' Preschool Child-Care Problems:
How Government Employers See the Issue



Note: Some figures may not total 100% due to rounding.

Figure 6
Employees' School-Age Child-Care Problems:
How Government Employers See the Issue



Note: Some figures may not total 100% due to rounding.

than do other levels of government, with only 2 percent of municipalities and no state agencies or regional governments providing this benefit.

Only 7 percent of respondents offer employees help in locating child-care arrangements. More universities, counties, and school districts offer child-care referral assistance (29 percent, 15 percent, and 16 percent, respectively) than do other levels of government.

There is not much variation when it comes to reimbursing parents for child-care costs when children are sick during working hours—it is rare across the board, with only about 5 percent of all agencies offering this assistance (community colleges lead in this benefit, with only 10 percent, trailed by school districts with 1 percent, and no universities).

Elder-Care Assistance

Government employers provide even less assistance for their employees' elder-care needs than they do for their child-care problems. Regional governments lead the way (29 percent) in offering elder-care referral services, while fewer than 5 percent of state agencies and fewer than 2 percent of community colleges, municipalities, and school districts refer employees with these needs to community agencies.

Regional governments, which largely represent councils of government and mental health agencies, also lead the way in providing other elder-care services, accounting for roughly half of the nineteen government agencies reporting adult day care services and half of the twenty agencies providing respite care. Only counties reported a similar level of commitment to employees with these needs, with seven providing respite-care services, and eight providing adult day care.

Information and Counseling

Employee-assistance programs have become an important personnel program at government workplaces throughout North Carolina, with 37 percent of personnel directors reporting that their agencies offer the program—and 72 percent of these extending the services to employees' family members. These programs are offered by all state government agencies, nearly all universities, and 71 percent of regional governments (trailed by 22 percent of municipalities). However, when these programs are offered, they are better utilized by municipal and regional government employees than by other government workers.

Wellness programs similarly are found in roughly a third of government workplaces, with great variation among levels of government: universities lead the way with 92 percent, and municipalities lag behind with 21 percent. (State government terminated its wellness program in 1986, five years after its inception.) Units offering wellness programs find them heavily utilized, with more than 50 percent participation reported by a majority of municipalities and regional governments.

Work/family seminars are growing in popularity. About one-fourth of government employers offer them: more than half of universities and almost half of regional governments and school districts, again trailed by municipalities at 9 percent.

Comparing Different Government Sectors

NC Equity established three criteria that agencies had to meet to be counted among the "family-friendliest" government employers in North Carolina: prevalence of family-supportive policies, comprehensiveness of the policies, and level of utilization by employees.

Prevalence

NC Equity counted the number of specific family-supportive policies employers offered and assigned each employer to a "commitment category." Employers offering fewer than six programs were categorized as demonstrating "low commitment," up to the category of "fully committed" with thirty-six or more programs.

Of the 555 governments responding to the GAME survey, 11 percent were termed fully committed, 28 percent were highly committed; 26 percent each had average commitment and low/moderate commitment; and 8 percent had low commitment.

Among the sectors of government surveyed, universities were most likely to be "fully committed" on the prevalence scale, with nearly two-thirds falling in this category and almost a third falling into the "high" and "average" commitment categories. State government took second place with just over half assessed as "fully committed" and almost a third considered "highly committed." Trailing the list were municipalities, accounting for forty-six of the forty-seven governments that fell into the "low commitment" category.

Comprehensiveness

To measure the balance of an employer's work/family offerings, NC Equity looked to see whether each employer had at least one initiative in each of the following five categories: 1) information and counseling, 2) dependent care assistance, 3) flexible benefit program, 4) formal flexible work arrangements policy, and 5) part-time work opportunities with benefits.

Based on this definition of comprehensiveness, again universities offer the most comprehensive family-supportive personnel packages; every university surveyed fulfilled the criteria. Three-quarters of state government agencies also achieved this level. (See Figure 7.)

Figure 7
Comprehensiveness of Family-Supportive Programs

Level of government	Number of Agencies with Comprehensive Work/Family Programs	Total Number of Survey Participants	Percentage of Respondents with Comprehensive Work/Family Programs
Municipality	46	255	18
County	28	70	40
Region	22	38	58
State	17	23	74
School Districts	48	104	46
Community Colleges	20	51	39
Universities	14	14	100
Total	195	555	35%

Utilization

Prevalence statistics do not necessarily reflect the true availability of family-supportive programs. Some employees may not be eligible under a given policy; or mid- and upper-level managers may not approve of an employee's participation; or the program's cost to the employee may be so high that it is unaffordable; or, perhaps most important of all, employees may not even know the program exists or *how* to obtain its benefits.

In fact, the GAME survey found utilization rates for many programs extremely low. Because a low utilization rate could be attributable to the newness of a program rather than to a lack of motivation or effort on the part of administrators, the survey counted a program to an employer's credit unless the agency was unable to report even the slightest amount of utilization.

The survey found some family-supportive programs heavily utilized: flextime, an important work-schedule option, is especially well utilized in state government agencies. More than three-quarters of their departments reported that 90 percent or more of their employees choose the hours during which they begin and end their workday, compared to only a handful of community colleges, universities, and school districts that could make that claim.[9] (Clearly it is more difficult for educators to vary their work schedules than it is for other government employees.)

The Most Family-Friendly Government Workplaces

The Government As Model Employer survey used three criteria to determine which government agencies in this state can be considered the most family-supportive workplaces in North Carolina: prevalence of specific work/family initiatives, comprehensiveness of the programs offered, and level of utilization.

Listed below are those government employers that have met these criteria, demonstrating exceptional commitment to helping employees fulfill both work and family responsibilities.

Municipal
Town of Chapel Hill
City of Elizabeth City
City of Fayetteville
Town of Madison

County
Bladen County
Camden County
Catawba County
Henderson County
Mecklenburg County
Rowan County
Transylvania County

Region
Lee/Harnett Area Mental Health Authority
Lumber River Council of Government
Piedmont Area Mental Health Authority
Pitt County Area Mental Health Authority
Rockingham County Area Mental Health Authority
Smoky Mountain Area Mental Health Authority
Surry Yadkin Area Mental Health Authority
Wilson-Greene Area Mental Health Authority

State
Department of Agriculture
Department of Community Colleges
Department of Cultural Resources
Department of Economic and Community Development
Department of Human Resources
Department of Justice
Employment Security Commission
Office of State Auditor
Office of State Personnel

Local School Districts
Alamance County Schools
Bertie County Schools
Caldwell County Schools
Clay County Schools
Davie County Schools
Hendersonville City Schools
Lenoir County Schools
Pitt County Schools
Winston-Salem/Forsyth County Schools

Universities
Appalachian State University
East Carolina University
North Carolina State University
University of North Carolina–Chapel Hill
University of North Carolina–Charlotte
University of North Carolina–General Administration
University of North Carolina–Greensboro
University of North Carolina Hospitals
Western Carolina University

Honorable Mention
The City of Asheville

While state government leads the way in making work schedules flexible, that is not the case when flexible benefit plans are offered. The survey discovered a dramatic difference in utilization of flexible benefit plans offered by different levels of government. Participation by 50 percent or more employees was more likely in a municipal, county, or regional government or a community college than in a state agency, local school district, or university.

One explanation for low utilization of some flexible benefit plans may be in the limited number of options that employees can choose under these plans. Numerous employees interviewed by NC Equity offered a second explanation: poor marketing of the fairly complex program by the Florida-based contractor that administers it.

Utilization rates for information and counseling programs are also low in state government and in universities; they are highest for municipalities, counties, and regions. Because state agencies are dispersed across North Carolina, and because universities have the largest work forces, they have the most difficulty in communicating with workers about their information and counseling programs. Almost three-quarters of universities and half of state agencies reported less than 10 percent utilization of their wellness programs; 83 percent of universities and 60 percent of state agencies reported that only 1 to 5 percent of their employees participate in work/family seminars; and in half of all universities and three-quarters of state agencies, utilization of employee-assistance programs was at 3 percent or less.

Next Steps

The NC Equity study provides the first assessment of how well government employers are responding to the family needs of their employees. How does your personnel package compare to those offered by other public-sector employers? For those who want to enhance their family-supportive benefit offerings, NC Equity offers four steps to take.

1. Acknowledge Employees' Work-Family Conflict.

   First, acknowledge the fact that there is nobody home to handle family problems and that workers have dual responsibilities to family and to work. Many managers still believe that employees should leave family problems at home, and many employees have remained silent about the guilt and concern they feel in shirking family responsibilities. A tacit agreement between manager and worker controls; in return for the employer's paycheck, the

worker does not mention family problems while on the job. Even though four-fifths of working women are of reproductive age, few of the employers surveyed have written clear, comprehensive maternity leave policies.

Employers should:

- allow women to make the transition back to work after childbirth gradually.
- support fathers who choose to stay at home following the birth of a baby, or, as Dupont Corporation's Faith Wohl has suggested, "De-wimp parental leave."
- provide part-time work opportunities and flexible work schedules for those who choose to combine family and career.
- recognize that many workers have elder-care responsibilities.
- recognize that workers will be more loyal and productive if employers accommodate more fully their needs that conflict with work.
- throw out the old tacit agreement that separates the two spheres of life: work and family. Replace it with a new agreement that is explicit and family supportive.

2. Get Support from the Top.

Leadership is essential. The governor, county and city managers, presidents of community colleges and universities, and superintendents of schools must be fully committed to family-supportive policies. Elected officials and senior decision-makers must be involved. Some private-sector companies have adopted a credo or policy statement legitimizing this effort, including Mobil Corporation, whose vice president sent a letter on the subject to each employee. This example can be replicated by public-sector employers.

3. Get Support from Managers.

"Family policy in this country is in the hands of front-line managers," said Fran Rodgers, president of Work-Family Directions, a nationally recognized Boston-based program contractor. Government employees in this state agree. As one employee said: "Some supervisors just don't get it. They are afraid of looking inequitable in handling employees and so they don't respond to work/family conflict. And there is no support from the top to do anything."

Many managers and supervisors resist programs that challenge the way work has been scheduled and workplaces have been organized. They prefer that employees work standard schedules under direct supervision. This resistance has been overcome in many workplaces through effective management-training programs, supervisor involvement in personnel program planning, and recognition of exemplary managers who champion family-supportive practices.

4. Involve Employees.

"Why did it take two Boy Scouts to help the old lady get across the street?"

"Because she didn't want to go."

If programs are going to help employees, employees must be involved in personnel planning. Currently, few government employers can describe the demographics of their work force. It is vital to collect such basic information as the age of workers, percentage of women (see Figure 8), the number of single-parent and dual-career–family workers, the age of dependent children, spouses, or elderly relatives. In most sectors this information simply does not exist. Perform needs assessments; use focus groups and employee surveys before personnel programs are designed and practices changed. Failure to plan can lead to program failure.

Equally as important as designing new program initiatives is letting employees know that the programs exist. Too often communication about personnel policy is restricted to new-employee orientation sessions. Helping employees understand the value and nature of their benefits is good for employees and employers alike. Pioneering employers improve communication with workers through the use of handbooks, training sessions, and newsletters. Aggressive outreach strategies are particularly important for large government organizations with workers dispersed throughout the state. Unknown, underutilized programs are ineffective and costly. Once programs are in place, they should be evaluated by employees to see how well they have been designed and implemented. Programs can then be fine tuned to better serve employee needs.

Forecasting Trends

The GAME survey represents only a snapshot in time. What about the future? Will personnel policies continue to change as the needs of the work force

Continued from page 9

On Sick and Emergency Child Care:

When my children were little I put them in day care. . . . They got a lot of infections. . . . My supervisor was flexible and understanding but his supervisor wasn't. Every time my child was sick I needed a doctor's note and then even that wasn't enough. Once I was "written up" for absenteeism. It scared me and it took a long time before that bad evaluation letter was removed from my file.

–A government worker

The telephone is a big issue. A woman I work with was told by her supervisor not to talk on the phone so much. Her teenage boy was having a lot of problems but she had to tell him she couldn't talk while at work and would talk to him after she got home. By the time she got there the boy had committed suicide.

–A government worker

On Elder Care:

My father needed chemotherapy at Duke for lung cancer, and I am the only child living close enough to take him. I had to use my sick leave to take him, sometimes on emergency basis, and when he died, I needed to use days. I was down to five days and now come to work sick in order to bank days. Elder care is definitely a problem.

–A teacher

Figure 8
Gender Composition of Government Work Force

	Percentage Employing More than 50% Women	Percentage Employing 50% or Fewer Women
Municipality	3.2	96.8
County	94.1	5.9
Region	100.0	0.0
State	60.9	39.1
School Districts	99.0	1.0
Community Colleges	84.3	15.7
Universities	38.5	61.5

change? Which government sectors will lead the way? In what direction will personnel policy go?

Prediction One

NC Equity predicts that state government and universities will continue to lead the way in pioneering new work/family programs and expanding current offerings.

Given the fact that size of an organization seems to be an indicator of its level of family-supportive policies, these large organizations are most likely to expand their work/family agenda. This prediction is also supported by the survey response. When asked to forecast the likelihood of their agency adopting or expanding a family-supportive policy in 1992, more state government and university personnel directors responded affirmatively than did other government personnel directors.

Prediction Two

However, employees of municipalities, counties, and regions will continue to better utilize those work/family programs that are offered than will other government workers.

The GAME survey discovered that utilization of a variety of family-supportive programs is highest for municipalities, counties, and regions. Since these units cover a more limited geographic area, it is not surprising to see a high participation rate.

Prediction Three

Flexible leave and flexible benefits will continue as the most widely offered family-supportive policies.

Leave policies dominate the top 25 percent of the currently most popular and prevalent programs, and flexible benefits are rapidly growing in popularity. Leave policies and flexible benefit plans share a common feature: neither requires a direct outlay of taxpayer dollars to underwrite the cost of the program. In these days of fiscal restraint and tight budgets, it is not difficult to predict that government employers will try to satisfy their employees' need for new programs without incurring additional expense.

Moreover, survey respondents predicted that flexible benefit plans were slated for increased activity in the coming year. Those who said their organizations were likely to adopt or expand their flexible benefit plans included 38 percent of school districts, 24 percent of regional governments, 15 percent of counties, and 14 percent of state government.

Prediction Four

Dependent-care initiatives will continue to lag behind other family-supportive personnel options.

Despite the fact that government employees cited child-care problems as a significant issue and a source of work/family conflict, less than 10 percent of government employers currently offer such popular child-care programs as on- or near-site child care centers, child-care resource and referral programs, or group discounts with child care centers in the community. And despite employees' concern for elderly relatives, only 5 percent of government agencies currently offer help to employees seeking community services for elderly relatives. Because of tight government budgets, this area of family-supportive benefits may continue to lag behind other family-friendly initiatives.

Prediction Five

Governments will continue to add family-supportive policies to their personnel packages.

Currently women constitute the majority of government work forces in five of the seven levels of government. The labor pool is shrinking, and women will be a major source of tomorrow's work force. The Hudson Institute has predicted that two out of three new jobs will be filled by a woman.[9] Given the fact that in the GAME survey, gender is another indicator of family-supportive personnel policies, NC Equity forecasts that government employers will continue to reevaluate existing personnel policies and create more family-friendly workplaces. Moreover, it predicts that an increasing number of government employers will designate a work/family coordinator within personnel departments with the express responsibility of planning and implementing family-supportive policies. ❖

Notes

1. Bureau of the Census, *U.S. Census of Population, 1960: Vol. I: Characteristics of the Population: Part 35, North Carolina* (Washington, D.C.: Government Printing Office, 1963), Table 115, page 35-396; Bureau of the Census, *U.S. Census of Population and Housing for North Carolina, 1990* (CPH-4-35)(Washington, D.C.: Government Printing Office, 1993), 43. The percentages cited in the text are calculated on the actual numbers of men and women in the work force. All work force statistics cited in this section are from these sources unless otherwise noted.

2. Families and Work Institute, *The Corporate Reference Guide to Work Family Programs* (New York: Families and Work Institute, 1991), 14.

3. U.S. Chamber Research Center, U.S. Chamber of Commerce, *Employee Benefits—Survey Data from Benefit Year 1989* (Washington, D.C.: U.S. Chamber of Commerce, Dec. 1990), 21.

4. North Carolina Department of Public Instruction, *Working in North Carolina Public Schools, A Look at Employee Benefits in 1991–92* (Raleigh, N.C.: Department of Public Instruction: Aug. 1991).

5. U.S. Merit Systems Protection Board, *Balancing Work Responsibilities and Family Needs: The Federal Civil Service Response* (Washington, D.C.: U.S. Merit Systems Protection Board, Nov. 1991), 9.

6. Florence Glasser, *Solving the Workplace Puzzle: Fitting Work and Family Together in Government Workplaces of North Carolina* (Raleigh, N.C.: NC Equity, 1992), 22 (Figure 12). Note: *Solving the Workplace Puzzle* is the complete report on the GAME survey, and all statistics provided hereafter are taken from this report. Copies can be purchased by mail by writing to NC Equity, 505 Oberlin Road, Suite 100, Raleigh, NC 27605. Cost is $15.00 each, including postage and handling.

7. Pub. L. No. 103-3, 29 U.S.C. §§ 2601 through 2654.

8. Only five community colleges, three universities, and one school district reported that 90 percent or more of their employees use flextime.

9. William B. Johnston and Arnold E. Packer, *Workforce 2000: Work and Workers for the Twenty-first Century* (Indianapolis, Ind.: Hudson Institute, 1987).

Lead Poisoning in Young Children: What Is North Carolina Doing about the Problem?

Dumont Clarke IV

The new homeowners are busy with heat guns, power sanders, sandpaper, and scrapers, refurbishing with loving care that wonderful old house with the ten-foot ceilings. They are also filling the air and coating the floor with microscopic particles of lead, innocently poisoning their two-year-old girl.

Across town, an eighteen-month-old boy's mother knows that his habit of putting things in his mouth is dangerous, but even with the peeling paint this is the best house she can afford. And the landlord says that to get rid of that old paint would cost more than the house is worth.

These children are in jeopardy of joining an estimated 16,000 North Carolinians under six years old with dangerously high blood lead levels.[1] It has long been known that children are particularly susceptible to the toxic effects of lead. At high blood levels, lead causes coma, convulsions, and even death in humans. But medical research done since 1970 has shown adverse effects on children's health even at very low blood lead levels.

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Deteriorating lead-based paint is the most common cause of lead poisoning in children.

These include decreased intelligence (reflected in lower IQ scores) and slower neurobehavioral development. The effects can manifest themselves in school-age children as hyperactivity, attention deficit, reading disability, and vocabulary deficits.[2]

Mankind has used lead, because of its marvelous physical and chemical properties, throughout the history of civilization, and it has always been dangerous. The modern industrial era has seen a sharp increase in the use of lead and its dispersal in the environment—and a corresponding increase in its threat to public health. Children are exposed from many different sources, including lead-contaminated soil and dust, drinking water, parental occupations and hobbies, and air and food. Since lead was eliminated as an additive to gasoline in the U.S. in the late 1970s, the most widespread and dangerous source of lead contamination is lead-based paint.

Cases of severe lead poisoning typically result from children eating small chips of lead-based paint or chewing on protruding surfaces covered with such paint. Children who tend to eat nonfood substances are thus at the greatest risk of severe lead poisoning. Lead-contaminated dust, however, when it is ingested or inhaled, is the most common source of elevated levels of lead in children's blood. The conclusion of recent studies is that lead-based paint, particularly when it is deteriorating, is a primary source of high lead levels in household dust.[3]

With the passage of the Lead-Based Paint Poisoning Prevention Act in 1971, the federal government began limiting the lead content of new residential paint.[4] But millions of houses and apartments throughout the United States contain—on both the exterior and interior surfaces—old lead-based paint. In 1990 the United States Department of Housing and Urban Development estimated that about 3.8 million homes with young children in them have either nonintact (deteriorating) lead-based paint or high levels of lead in the household dust.[5]

Although children living in or around old, dilapidated inner-city or rural housing are probably, as a group, at the highest risk of experiencing lead poisoning, elevated blood lead levels are found in children from all socioeconomic backgrounds. A not uncommon lead poisoning scenario involves expensive but uncontrolled renovations of older houses by parents of young children. Adults and children both breathe in the lead dust in the air; and particles accumulate on the floor, which young children can ingest via normal hand-to-mouth behavior. Close behind uncontrolled remodeling as a potential toxic hazard are window wells and the soil around the foundation of a residence painted with exterior lead-based paint. The Centers for Disease Control (CDC), a unit of the Public Health Service in the United States Department of Health and Human Services, has described childhood lead poisoning as "one of the most common pediatric health problems in the United States today and [one that] is entirely preventable."[6] Last year Congress enacted the Residential Lead-Based Paint Hazard Reduction Act to address this problem more comprehensively than does the 1971 act. (See "1992 Federal Law" on page 18.)

A person's exposure to lead is generally quantified by measuring lead in the person's blood, expressed as the number of micrograms of lead per deciliter of whole blood (µg/dL). Over the last fifty years, the blood lead level considered to indicate lead toxicity has shifted progressively downward from a level above 60 µg/dL. In 1985 the CDC set the threshold for medical and environmental intervention at a blood lead level of 25 µg/dL or greater.[7] In 1991, to take into account more recent scientific evidence, the CDC recommended an overall goal of reducing the lead levels in children's blood to below 10 µg/dL. At the same time, the CDC replaced its former all-purpose definition of lead poisoning with a multi-tiered definition. The CDC recommended the following:[8]

- That all children with blood lead levels of 20 µg/dL or higher receive medical evaluation and that the sources of lead in their immediate environments be cleaned up
- That all children with blood lead levels of at least 15 but less than 20 µg/dL receive individual case management and more frequent screening, and that the sources of lead in their immediate environments be cleaned up if blood lead levels persist in that range
- That children with blood lead levels of at least 10 but less than 15 µg/dL not receive individual case management, but that the presence of large numbers of such children in a particular community trigger communitywide environmental interventions and nutritional and education programs

One result of this progressive shift downward over the last thirty years has been an enormous expansion in the total number of children identified as adversely affected by lead poisoning.

In its 1991 statement, the CDC concluded that "[t]he persistence of lead poisoning in the United States, in light of all that is known [about the sources and pathways of lead exposure and about ways of preventing this exposure], presents a singular and direct challenge to public health authorities, clinicians, regulatory agencies, and society."[9] The purpose of this article is to examine North Carolina's regulatory response to this challenge.

1992 Federal Law

In October 1992 President Bush signed the Housing and Community Development Act of 1992 (Pub. L. No. 102-550), which includes as Title X the Residential Lead-Based Paint Hazard Reduction Act of 1992. Title X is a comprehensive reworking of the federal government's approach to dealing with lead-based paint in housing in the United States. During the next several years as its various provisions take effect, Title X will prompt significant changes in efforts to prevent lead poisoning.

Although a complete analysis of Title X is well beyond the scope of this article, a brief summary of some of its more significant provisions is in order.

Lead-Based Paint Hazard

Recognizing that the mere presence of lead-based paint does not always pose an immediate hazard, Title X introduces a new concept: *lead-based paint hazard.* This term is defined to include conditions that are believed to pose the greatest risk of harmful lead exposure for children:

> [A]ny condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the Administrator of the Environmental Protection Agency.

Required Risk Assessments

Title X requires risk assessments in most federally owned, insured, and assisted housing by certain specified dates. The purpose of the assessments is to determine and report the existence, nature, severity, and location of lead-based paint hazards.

Short-Term and Long-Term Abatement

Building on the concept of lead-based paint hazard, Title X changes the strategy for preventing lead poisoning from full and permanent abatement of all *lead-based paint* in federally owned, insured, and assisted housing to a more subtle standard of reduction of *lead-based paint hazard*, using either short-term or long-term interventions. Short-term interventions are abatement methods designed not to eliminate but simply to reduce lead exposure by correcting lead-based paint hazards and stabilizing the remaining lead-based paint through containment, repainting, specialized cleaning, and other short-term solutions. Long-term interventions involve more permanent abatement techniques such as removal of the lead-bearing substrate or encapsulation of the painted surface.

Training and Certification in Abatement Industry

With the goal of fostering the development of a qualified and well-trained abatement industry, Title X establishes strict requirements for certification and licensing of abatement contractors, for accreditation of trainers, and for licensing of laboratories. State programs for licensing and certification must meet minimum national standards; if states fail to establish such programs, the federal government will act to establish the standards.

Disclosures in Sales of Certain Privately Owned Housing

In addition to requiring lead hazard reduction in government-owned, -assisted, and -subsidized housing, Title X for the first time addresses lead-based paint hazards in privately owned housing. It does so indirectly by imposing disclosure requirements on owners of certain private housing and by giving prospective purchasers and lessees certain rights that are designed to bring market forces to bear.

Effective October 1995, anyone selling or leasing a house constructed before 1978 will have to provide the purchaser or lessee with an information pamphlet about lead hazards, disclose to the purchaser or lessee the presence of any known lead-based paint or any known lead-based paint hazards in such housing, provide the purchaser or lessee any lead hazard evaluation report available to the seller or lessor, and permit the purchaser or lessee a ten-day period to conduct a risk assessment or inspection of the housing for the presence of lead-based paint hazards. All of the above must be done before the purchaser or lessee is obligated under any contract to purchase or lease the housing.

To ensure that the rights of purchasers of pre-1978 housing are observed, Title X requires that every contract for the purchase and sale of any interest in pre-1978 housing must contain a specified lead warning statement and a statement signed by the purchaser or lessee that he or she has read such statement, received

a lead hazard information pamphlet, and had the opportunity before becoming bound under the contract to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

The warning statement must contain the following text printed in large type on a separate sheet of paper attached to the contract:

> Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Title X provides for the award of treble damages in a civil suit against any seller or lessor who knowingly violates the foregoing disclosure provisions.

Guidelines for Renovations of Privately Owned Housing

Title X addresses lead-based paint hazards caused by uncontrolled renovations in privately owned housing. It requires the administrator of the Environmental Protection Agency (EPA) to promulgate guidelines for renovation and remodeling activities that may create a risk of exposure to dangerous levels of lead and to disseminate the guidelines to persons engaged in such renovation and remodeling. By October 1996, the administrator of the EPA must develop regulations for renovation or remodeling activities in any housing constructed prior to 1978.

Subsidies and Education

Title X also increases the authorization for federal subsidies to reduce lead-based paint hazards in low-income private housing and mandates an expanded federal public education and information campaign about lead poisoning.

Prevalence of Lead Poisoning in Young Children in North Carolina

During 1989, when a very limited screening program was conducted but which is the most recent year for which complete follow-up data are available, the Division of Laboratory Services in North Carolina's Department of Environment, Health and Natural Resources (DEHNR) reported sixty-eight children in North Carolina under six years old with blood lead levels greater than 25 µg/dL.[10]

Preliminary data from a greatly expanded screening program conducted in North Carolina during the six-month period from November 1, 1992, through April 30, 1993, were recently made available. During this period, the Division of Laboratory Services in DEHNR and the Wake County Health Department conducted initial direct blood lead level analyses of blood samples drawn by local health departments and certain private clinics from 20,732 children from one through five years old. The results were as follows:[11]

Blood Lead Level (µg/dL)	Number of Children	Percent of Total
Less than 10	16,534	79.8
10 or greater	4,198	20.2
Total	20,732	100.0
15 or greater	672	3.2
20 or greater	218	1.1
25 or greater	80	0.4

The mean blood lead level of these 20,732 children was 7.4 µg/dL. The total does not include any children whose blood samples were analyzed by private laboratories. During the six-month period, one private laboratory alone reported 1,028 total screenings to DEHNR. The mean blood lead level of these samples was 4.8 µg/dL.

North Carolina's Lead Poisoning Prevention Program

A lead poisoning prevention program, funded entirely from federal grant monies, has existed in North Carolina since 1983. That program was established administratively within DEHNR, and is currently housed in the Preventive Services Branch of the Children and Youth Section of the Maternal and Child Health Division. It was not until 1989 that the General Assembly adopted An Act to Provide for the Prevention and Control of Lead Poisoning in Children, referred to in this article as the Lead Poisoning Prevention Law.[12] In this law, the

General Assembly set broad policy parameters and directed the Commission for Health Services of DEHNR (the Commission)[13] to adopt, within those parameters, specific rules for the prevention and control of lead poisoning in children.

The rules the Commission subsequently adopted establish a program of limited scope that focuses on finding children with elevated blood lead levels, treating them, and requiring abatement of the environmental lead hazards that caused or contributed to their condition. This so-called "secondary prevention" approach has been taken by most states and local governments that have adopted laws concerning lead poisoning.[14] Secondary prevention generally serves only to mitigate the consequences of lead poisoning, not to prevent it.[15] Primary prevention—reducing exposure to lead before a child's blood level becomes elevated—is preferable but much more costly and socially disruptive.[16]

Definitions of Key Terms

The Commission's rules contain a set of definitions of the following key terms.[17]

Elevated blood level. Because a child's elevated blood level is the triggering event for DEHNR investigations described below, the meaning of that term is perhaps the most critical. The Commission's original definition was intended to keep North Carolina law in step with changing CDC definitions, and thus it adopted the CDC standard by reference. The Commission defined elevated blood level as follows:

> [A] blood lead level of 25 µg/dL or greater, or that level as determined in the most recent standards as established by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control.

After the CDC in 1991 abandoned its single standard of 25 µg/dL and established a multi-tiered definition, the Commission deleted its reference to the CDC standard. This effectively freezes, for now, the definition of lead poisoning at 25 µg/dL or greater for purposes of North Carolina's prevention program.

Lead hazard. The Commission's rules provide measurable criteria to identify a lead hazard:

> [T]he presence of readily accessible, lead-bearing substances measuring one (1.0) milligram per square centimeter or greater by X-ray fluorescence analyzer or 0.5% or greater by chemical analyses (AAS); or 500 ppm or greater in soil; or 50 parts per billion or greater in drinking water.

As used in this definition, *readily accessible* is defined as "capable of being chewed, ingested, or inhaled by a child under 6 years of age."

Abatement. When a lead hazard is identified as the source of an elevated blood lead level, it must be eliminated or controlled through a process called abatement. The Commission's rules provide the following definition of *abatement*: "the elimination *or control* of a lead hazard by methods approved by DEHNR" (emphasis added). This formulation of the definition to include *control* as well as *elimination* of a lead hazard gives flexibility to DEHNR and the owner of property where a lead hazard is identified as the source of an elevated blood lead level. There are currently several competing approaches to abatement of lead hazards with no clear consensus among environmental health experts on the preferred approach. (See "The Hazards of Lead Abatement" on page 21.)

Reporting of Elevated Blood Lead Levels

The Commission's rules require all North Carolina laboratories that perform blood lead tests to report elevated blood lead levels in children younger than six years of age and in children whose age is unknown at the time of testing.[18] The effectiveness of this reporting requirement, of course, depends on how many tests the labs perform—which in turn depends on how many tests are ordered by health practitioners. The CDC currently recommends that virtually all children should be screened for lead poisoning, with those having the highest probability of exposure being given the highest priority for testing.[19] Some states, including Massachusetts and California, have in recent years adopted laws requiring mass screening of children; these laws are already in effect or will be implemented in the near future.[20]

By contrast, the Commission's rules require screening only when DEHNR has a reasonable suspicion that a child younger than six years old has an elevated blood lead level.[21] The Commission does not define "reasonable suspicion," and it is not clear on what basis DEHNR might become suspicious. Except at very high blood lead levels, lead poisoning manifests few symptoms or symptoms that are hard to diagnose, facts that prompted the authors of a 1987 article to refer to lead poisoning as a "silent" epidemic.[22] Only by testing a child's blood for lead level can it be determined whether the child is a victim of lead poisoning.

On August 3, 1992, North Carolina's state health director—the state's chief public health officer—issued a document entitled "Minimum Recommendations for Lead Poisoning Prevention." These require that all

The Hazards of Lead Abatement

Many methods of eliminating or controlling lead hazards resulting from lead-based paint are themselves hazardous, exposing a building's occupants, neighbors, and abatement workers to high levels of lead contamination.

Unlike some states, North Carolina does not prescribe any specific clean-up methods in abatement work. It prescribes results rather than methods: the identified lead hazard, as a result of abatement work, must be reduced to specified minimum levels. [N.C. Admin. Code tit. 15A, Ch. 18A § .3105(e).] For example, the abatement plan must provide that lead levels in floor dust in a dwelling with lead-based paint will be reduced to fewer than 200 micrograms per square foot, and lead in windowsill dust will be reduced to fewer than 500 micrograms per square foot. Though it doesn't *require* specific methods, North Carolina does *prohibit* the use of some especially hazardous techniques (see Methods of Abatement, right).

Ironically, a North Carolina property owner renovating an old building is free to use any of the prohibited methods, so long as the owner has not been notified of a lead hazard. Only owners under notification from DEHNR or a health department are prohibited from using the hazardous removal methods.

This is an obvious cause for concern. The Centers for Disease Control, in its 1991 *Statement on Preventing Lead Poisoning in Young Children*, said:

> Remodeling or repainting homes with lead-based paint should be considered just as hazardous as abatement. Whenever lead-based paint must be disturbed by sanding, scraping, heating or other forms of abrasion, the same precautions should be taken for remodeling or repainting as for abatement itself.

This suggests that any program seriously aimed at preventing lead poisoning should require a conspicuous HAZARD warning to appear on all permits issued for renovation and rehabilitation of structures built before 1978. Eventually, however, this will become a moot issue: the new federal lead poisoning prevention law requires adoption of regulations by October 1996, for renovating older buildings. (See "1992 Federal Law" on page 18.)

Methods of Abatement

Commonly Accepted Methods	Prohibited Methods
• Removing contaminated items, such as windows and doors covered with lead-based paint, and disposing of them in a landfill	• Uncontrolled water blasting
• Encapsulating the lead-based paint with a thick liquid coating that bonds to the painted surface	• Using a heat gun to heat the paint above 800° Fahrenheit
• Enclosing the lead using such materials as gypsum wallboard or plywood paneling; or using aluminum, wood, or vinyl exterior siding	• Sandblasting
• Removing the paint using various stripping methods	• Using methylene chloride-based solutions to strip the paint on site

Note: Commonly accepted methods listed here come from Office of Policy Development and Research, U.S. Department of Housing and Urban Development, *Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress* (Feb. 19, 1990): 2–17. Prohibited methods listed here come from the Commission's rules.

children seen at local health departments for check-ups and all Medicaid-eligible children seen by private providers be screened for blood lead level at least once before they are six, without regard to risk determination. The director also recommended that "ideally, children should be tested between 12 and 24 months of age, or upon their first entry to the health-care system at a later age."[23] See page 19 for data from the first six months of this expanded screening program.

This target population represents only a small portion of the children at risk of lead poisoning in North Carolina.[24] The director's memorandum describes this segment, however, as "a sub-population with a high risk for lead exposure and high priority for screening." Focus upon this group is "our first major step towards universal screening in accordance with CDC recommendations."

Environmental Investigation

When DEHNR receives a laboratory report of an elevated blood lead level in a child younger than six years old, the Commission rules require that DEHNR investigate the child's environment to find the lead hazard, which is most frequently deteriorated lead-based

paint in an old residence, school, or day-care center.[25] When DEHNR identifies the lead hazard, it commonly delegates its legal authority in the case to the local health department, which then must notify, in writing, both the owner or manager of the offending building and all its residents or occupants.[26]

Lead Hazard Abatement

The written notice to the property owner or manager must include recommendations for abatement of the lead hazard. After receiving notification, the owner or manager must submit to the health department in writing within fourteen days a plan describing the means of abatement to be used to reduce to legally acceptable minimums the lead exposure of the building's occupants. DEHNR (or the local health department) must approve the plan before it is put into effect. Abatement work must be completed within sixty days of approval of the plan. If the owner fails to submit an abatement plan, DEHNR is required to issue an abatement order.

As previously noted, DEHNR delegates authority to local health departments to require and monitor abatement of lead hazards that DEHNR has discovered. DEHNR also delegates to local health departments the responsibility to provide medical case management for children with elevated blood lead levels. These are both critical components of North Carolina's lead poisoning prevention program. Though DEHNR provides technical help, the effectiveness of these components depends heavily on the expertise and resources available at the local level.

As part of its technical help, DEHNR has prepared a set of abatement guidelines. When it delivers a report to a local health department giving the results of a DEHNR investigation and delegating authority for future action, it also delivers a copy of these guidelines. The guidelines are then given to the property owner to satisfy the requirement that the written notice to the owner include recommended methods of abatement. Because these guidelines do not have the official status of rules of the Commission or of the local health board, it may be difficult to enforce compliance with them.

Verification

DEHNR is required to verify by *visual inspection* that the approved abatement plan has been completed. DEHNR may but *is not required to* measure residual lead dust and the lead level in the soil or drinking water. With such wide discretion afforded by the Commission's rules and the limited resources generally available to most local health departments, it is likely that only visual inspection will be employed to verify completion of abatement work.[27]

Cost of Abatement

The cost of abating lead hazards varies tremendously according to the quantities and types of building components involved and the methods of abatement used. For example, abatement costs will be lower in structures with only exterior lead-based paint and higher in structures with both exterior and interior lead-based paint. Further, removing the paint costs more than encapsulating or enclosing it. The United States Department of Housing and Urban Development estimates the mean one-time cost of encapsulating the lead-based paint in a contaminated house at $5,453 and the cost of removing it at $7,704.[28] Undoubtedly, many low-income property owners will not be able to afford the cost of abatement.[29]

Enforcement of Lead Poisoning Prevention Law

Some property owners, most likely those owning dilapidated rental property, can be expected to refuse to perform the abatement work voluntarily. In such instances, if negotiations with the property owner are unsuccessful, the local health department will need to resort to some form of judicial process to enforce an abatement order. Neither the Lead Poisoning Prevention Law nor the Commission's rules provide any special means of enforcing these orders. The local health department will therefore have available to it only the general remedies established by the state's Public Health Law.[30]

To further complicate matters, local health departments may be reluctant to use legal process to enforce an abatement order involving rental property if the landlord threatens to retaliate by evicting tenants or abandoning the property, since the cost of abatement may in some instances exceed the value of the property.

Conclusions

North Carolina's lead poisoning prevention program remains in its infancy and will be limited in its effectiveness until adequate funds are appropriated by the state or made available through federal grants. Because of the significant responsibilities that DEHNR has given to local health departments, it is essential for the state to appropriate significant revenues to support local work.

Though an expansion budget request prepared by DEHNR for the 1993–94 budget biennium was not included in the budget the governor submitted to the current North Carolina General Assembly, the secretary of DEHNR is considering a proposal to allocate up to $2.2 million in federal grant funds to support lead poisoning prevention over the next three years. By comparison, the total expenditures for the lead poisoning prevention program by DEHNR in fiscal year 1991–92, which consisted entirely of federal grant funds from various sources, were $131,971.

Perhaps the most heartening sign of progress is the new screening program established by the state health director. Not only should this program help identify children who are currently affected by lead poisoning and result in medical follow-up for them, it will enable DEHNR to collect more reliable data on the prevalence of elevated blood lead levels in North Carolina children; DEHNR can then use this data to support applications for additional federal grant funds.

Since private physicians are the primary health-care providers to young children in North Carolina, their participation in any program to prevent lead poisoning will be critical to its success. The Lead Poisoning Prevention Law and the Commission's rules, however, currently do little to promote or encourage the participation of these physicians.

Unlike legislation in many other jurisdictions, North Carolina's Lead Poisoning Prevention Law does not mandate an educational publicity program to inform the general public and key target groups, particularly parents of young children, of the dangers of lead poisoning. Teachers, social workers, and other human service providers could be other target groups for information about the dangers and sources of lead and about some of the simple methods of reducing the risk of lead poisoning.

Another notable absence in the Commission's rules is a system to ensure the training, licensure, and quality control of private abatement contractors and to protect the safety of workers performing abatement. The lack of such a system may make North Carolina ineligible for federal grant funds recently made available for the cost of performing lead hazard abatement in low-income, privately owned dwellings.[31] To be eligible for such funds, cities and states must have a workable system for certifying contractors to do the abatement work. In cooperation with the Occupational Safety and Health Resources Center at the University of North Carolina at Chapel Hill, DEHNR began offering, in September of 1992, a series of training seminars for private lead hazard abatement contractors.

Finally, given the serious adverse effects of elevated blood lead levels on the health of young children, the state's secondary prevention approach may need to give way to a program of primary prevention. Such a program would reduce children's exposure to lead and prevent lead poisoning, rather than simply identifying children already suffering from elevated levels of lead in their blood. At a minimum, the current program will require reevaluation in light of the far-reaching provisions of the new federal lead poisoning prevention legislation. ❖

Notes

1. This estimate is the author's and is based on the most recent data available from blood lead screenings conducted between November 1, 1992, and April 30, 1993.

2. See, e.g., Herbert L. Needleman et al., "The Long-Term Effects of Exposure to Low Doses of Lead in Childhood: An 11 Year Follow-up Report," *New England Journal of Medicine* (April 1990): 8.

3. Office of Policy Development and Research, U.S. Department of Housing and Urban Development (HUD), *Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress* (Feb. 19, 1990) (herinafter HUD, *Workable Plan for Abatement*).

4. Pub. L. No. 91-695, 84 Stat. 2078 (1971). Lead was used for many years as an additive to paint to increase its durability, hiding ability, and brilliance.

5. HUD, *Workable Plan for Abatement*, 1–2.

6. Centers for Disease Control, U. S. Department of Health and Human Services, *A Statement on Preventing Lead Poisoning in Young Children (1991)* (hereinafter *1991 CDC Statement*).

7. Centers for Disease Control, U. S. Department of Health and Human Services, *A Statement on Preventing Lead Poisoning in Young Children (1985)* (hereinafter *1985 CDC Statement*).

8. *1991 CDC Statement*, 2.

9. *1991 CDC Statement*, 1. The U.S. Department of Health and Human Services has set as an objective the elimination of elevated blood lead levels in children in the United States by the year 2010. An interim goal, specified as a national health objective for the year 2000, is to reduce to no more than 500,000 the number of children in the nation from six months to five years old who have blood lead levels between 15 µg/dL and 25 µg/dL; and to no more than zero the number of children in that age group with blood lead levels of 25 µg/dL and above. Public Health Service, U.S. Department of Health and Human Services, *Healthy People 2000: National Health Promotion and Disease Prevention Objectives* (1991).

10. Robert D. Brewer et al., "The Prevention of Childhood Lead Poisoning in North Carolina," *North Carolina Medical Journal* (April 1992): 150. Eight (12.5 percent) of the sixty-four patients for whom treatment information was available had elevated blood lead levels requiring hospitalization for medical intervention to remove lead from their blood. Environmental

investigations of the environments of the patients indicated that deteriorated lead-based paint, which was identified in the homes of forty-three of the affected children, was the most common source of lead exposure.

11. These data were provided to the author by Edward Norman, M.P.H., public health epidemiologist with North Carolina's childhood lead poisoning prevention program.

12. The Lead Poisoning Prevention Law, as amended in 1991 to clarify the authority of DEHNR to require abatement of lead poisoning hazards in dwellings, schools, and day-care facilities, is codified at N.C. Gen. Stat. § 130A-131.5.

13. Formerly known as the State Board of Health, the Commission for Health Services has the authority and duty to adopt rules to protect and promote the public health. N.C. Gen. Stat. § 130A-29. Rules adopted by the Commission are enforced by DEHNR and local health directors.

14. Michele Gilligan and Deborah Ann Ford, "Investor Responses to Lead-Based Paint Abatement Laws: Legal and Economic Considerations," *Columbia Journal of Environmental Law* 12 (1987): 267; Environmental Defense Fund, *At a Crossroads: State and Local Lead Poisoning Prevention Programs in Transition* (Environmental Defense Fund, 1992).

15. Mark R. Farfel, "Reducing Lead Exposure in Children," *Annual Review of Public Health* 6 (1985): 334. Secondary Prevention, also sometimes called the "health approach," involves using a jurisdiction's available resources exclusively to find children at risk from elevated blood lead levels, to treat those children, and to require abatement of the lead hazards that caused or contributed to the elevated blood lead level. Under this approach abatement of the lead hazard occurs only in those housing units or other facilities in which a child with elevated blood lead levels, which are detected, resides or visits frequently.

16. Farfel, "Reducing Lead Exposure," 334. A jurisdiction adopting the primary prevention approach, also sometimes called the "housing approach," uses its resources systematically—or following certain priorities—to inspect dwellings, day-care facilities, and schools and require abatement of any lead poisoning hazard regardless of the presence of a child or the status of his health. Although it is the preferred public health approach, the effectiveness of a lead poisoning prevention program incorporating the primary prevention approach will depend to a great extent on the level of appropriations made for the program by the legislative body of the particular jurisdiction.

17. N.C. Admin. Code tit. 15A, Ch. 18A § .3101.

18. N.C. Admin. Code tit. 15A, Ch. 18A § .3102. Requiring only laboratories—and not physicians and other health-care providers—to report elevated blood lead levels leaves some serious gaps in the reporting scheme. For example, a laboratory not located in North Carolina analyzing (for the presence of lead) a blood specimen drawn by a physician from a child residing in North Carolina would not be obligated to comply with the reporting requirement. Also, monitoring compliance by privately operated laboratories is a difficult, if not impossible, task. One remedy for both gaps in coverage would be to require physicians and other health-care providers as well as private laboratories to report all cases of elevated blood lead levels known to them. Such a requirement would result in some multiple reporting of the same cases that would have to be screened out, but would ensure complete reporting of elevated blood levels as well as serve as a check on noncompliance with the reporting requirement by private laboratories.

19. *1991 CDC Statement*, 39–40.

20. The Childhood Lead Poisoning Prevention Act of 1991 adopts the so-called universal screening approach to preventing lead poisoning advocated in the *1991 CDC Statement*. Cal. Health & Safety Code § 372.2. This legislation requires the Department of Human Services to adopt before July 1, 1993, regulations establishing a standard of care, at least as stringent as the most recent CDC screening guidelines, by which all children under six years of age shall be evaluated for risk of lead poisoning by health-care providers during each child's periodic health check-up. The standard of care must provide that, upon evaluation, those children determined to be at risk for lead poisoning, according to the regulations adopted, will be screened for elevated blood lead levels.

21. N.C. Admin. Code tit. 15A, Ch. 18A § .3103.

22. Conservation Law Foundation of New England, Inc., *A Silent and Costly Epidemic: The Medical and Educational Costs of Childhood Lead Poisoning in Massachusetts* (1987).

23. This document also recommends that direct blood lead measurement will be "the screening test of choice," replacing the less sensitive erythrocyte protoporphyrin test previously used as the primary screening method. It also directs that capillary specimens of blood, which can be taken with less trauma to a child than venous samples, are adequate for the initial screening test, provided that precautions are taken to minimize the risk of contamination of the blood sample.

24. The Division of Laboratory Services in DEHNR has recently acquired a Perkins Elmer Model 4100ZL Zeeman Atomic Absorption Spectrometer, which will allow it to do direct blood lead level analysis of capillary samples drawn by local health departments in response to the state health director's minimum recommendations. Using this new instrument, the Division of Laboratory Services originally expected to be able to perform an average of 120 blood lead tests per working day, or approximately 28,000 per year. A significant percentage of this total would be repeat testing of children with previously reported elevated blood lead levels. Recent reports indicate the division is performing a substantially greater number of blood lead tests per day than it originally anticipated.

25. Environmental investigations are conducted by (1) using a portable electronic instrument called an X-ray fluorescence analyzer, which can measure the concentration of lead in paint and by (2) collecting specimens of paint and soil for subsequent chemical analysis by the environmental sciences laboratory in the Division of Laboratory Services. DEHNR has recently acquired a sufficient number of new X-ray fluorescence analyzers to place one unit in each of its regional offices, where environmental health specialists currently employed by DEHNR will be trained in their use.

26. *Managing agent* is defined in the Commission's rules to mean "any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased." N.C. Admin. Code tit. 15A, Ch. 18A § .3101(8).

27. This makes even more notable the absence from the Commission's rules of a system to assure the training,

licensure, and quality control of private lead hazard abatement contractors and protect the safety of workers performing abatement.

28. HUD, *Workable Plan for Abatement*, 4–13.

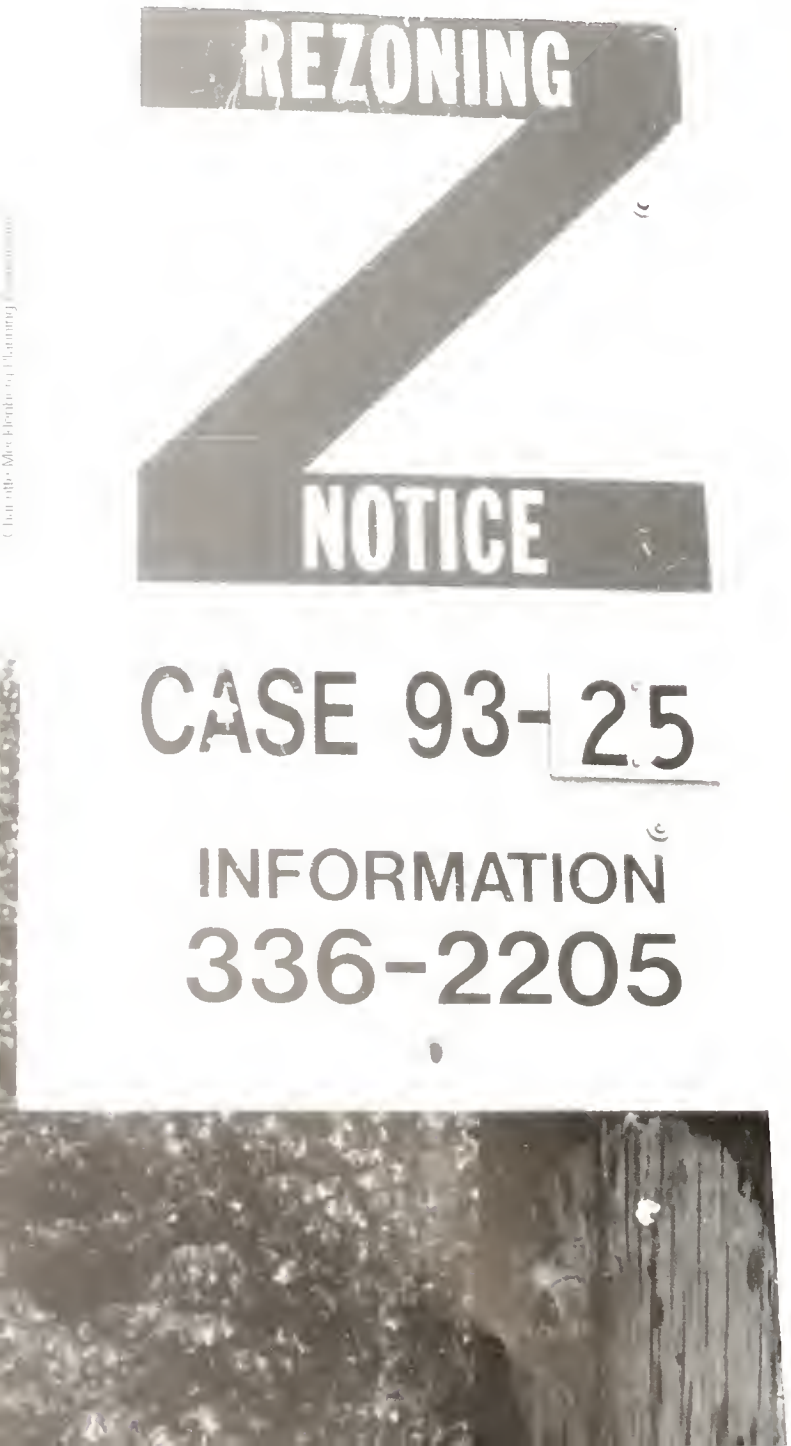
29. Recognizing this dilemma, some states with comprehensive lead poisoning prevention programs have moved to create income tax credits for abatement expenses and establish special loan and grant programs. Massachusetts, for example, offers a nonrefundable tax credit for what it calls "deleading expenses," a credit that is limited to $1,000 per unit or the actual cost of deleading, whichever is less. Mass. Gen. Laws Ann. ch. 62, § 6. Unfortunately, property owners in North Carolina who are required to abate a lead hazard will find the entire cost of abatement falls on them, as there are no tax credits available or special grant or loan programs in existence.

30. Since the cost to the local health department of bringing either a civil or criminal enforcement action under the provisions of the Public Health Law is high, requiring the assistance of other local officials or the hiring of a private attorney to bring the action, local health departments can be expected to negotiate extensively with property owners before resorting to legal process to enforce an abatement order. The strength of the local health department's negotiating position, however, is principally a function of the remedies that would be available should the health department ultimately have to take legal action against the property owner. The local health department's position could be strengthened, for example, by giving the local health director the authority to impose administrative penalties for failure to comply with an abatement order.

31. VA-HUD-Independent Agencies 1992 Appropriations Bill, Pub. L. No. 102-139 (1991).

Zoning Hearings: Knowing Which Rules to Apply

David W. Owens



Highly visible, bright yellow signs are posted at or near the site of a proposed rezoning in Charlotte.

Armed with petitions, lapel pins, and lawyers, 200 agitated citizens crowd into the courthouse to voice their objection to a proposed rezoning. They have been writing and calling the county commissioners ever since the notice of the hearing appeared in the local paper a few weeks ago. How should this hearing be conducted? Must everyone be allowed to speak for as long as he or she wants? May the board consider the strong personal opinions it is about to hear? What about the petitions and the calls the commissioners got last week? If the board decides on a compromise that gives petitioners only part of what they want, is another hearing required? When it comes time to make a decision, does the board have to justify its conclusion?

Consider another situation. On the same night, a few miles away, a city council is holding a hearing on a special-use permit application for a controversial project. This hearing room is also packed with angry neighbors, and the council members have to struggle with most of the same questions, plus a few more. Does everyone who speaks need to be under oath? Does there have to be a transcript of the hearing? Since the city's zoning ordinance calls for this decision to be made by the city council instead of a board of adjustment, can informal procedures be used?

The answers are different in these two situations. They illustrate the two different types of zoning hearings, which have different purposes and rules of conduct. Because both types are commonly called "public hearings," the difference is confusing to those attending as well as those conducting the hearings.

Zoning decisions can profoundly affect landowners, neighbors, and the entire community—often with a significant impact on property values, the character of neighborhoods, and even the future quality of community life—so the law imposes special requirements to

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assure the opportunity for full and open discussion of proposed zoning decisions. These requirements go well beyond what is required for most other city and county ordinances.

This article distinguishes the two main types of zoning hearings and lays out the ground rules for how each should be conducted.[1]

Types of Zoning Decisions

Local governments are called upon to make myriad zoning decisions, ranging from a planning board's decision to recommend adoption of an initial zoning ordinance to a zoning enforcement officer's decision to issue a notice of violation when the terms of the ordinance have not been followed.

Two types of zoning decisions—*legislative* and *quasi-judicial*[2]—require formal public hearings.

- Legislative zoning decisions affect the entire community by setting general policies applicable through the zoning ordinance. They include decisions to adopt, amend, or repeal the zoning ordinance (including the zoning map).
- Quasi-judicial decisions involve the application of zoning policies already established in the ordinance to individual situations—for example, variances, special- and conditional-use permits (even if issued by the governing board), appeals, and interpretations. Quasi-judicial decisions involve two key elements: the finding of facts regarding the specific proposal and the exercise of some discretion in applying predetermined policies to the situation.

Advisory zoning decisions, such as review of a rezoning petition by a county planning board, do not require a formal hearing. Nor do administrative decisions, such as staff issuance of permits for permitted uses, initial ordinance interpretations, and initiation of enforcement actions.

Types of Proceedings

Government uses two different types of proceedings to formally obtain comment on proposed zoning decisions: *legislative hearings* and *evidentiary hearings*. Legislative hearings are sessions mandated by statute or ordinance to secure citizens' comments on a specific policy proposal. Legislative hearings must be conducted in a fair, orderly manner so as to allow citizen opinion to be expressed directly to those making zoning policy decisions. Evidentiary hearings are an even more formal means of gathering evidence before a decision is made

Courtesy Celebration Station

In 1991 developers petitioned the Greensboro city council to rezone the property shown above and grant a conditional-use permit to allow the building of a large entertainment complex, Celebration Station, on land adjacent to I-40 previously zoned for institutional use. The zoning board denied the petition, but the city council approved the project on appeal.

In 1992 the Raleigh city zoning board ordered the Neuse Baptist Church to remove a large flag flying in front of the church building (shown here with pastor, M. L. Walters, Jr.) because it violated an ordinance controlling commercial flags. The church appealed, and eventually the city council amended the zoning ordinance to allow the flag.

Gary Allen/Raleigh *News and Observer*

Table 1
Key Differences between Legislative and Evidentiary Zoning Hearings

	Legislative	Evidentiary
Notice of Hearings	Both newspaper notice and mailed notice to owners and neighbors are required.	Only notice to parties to the matter is required unless ordinance mandates otherwise.
Speakers at Hearings	Number of speakers, time for speakers can be reasonably limited.	Witnesses presenting testimony can be limited to relevant evidence that is not repetitious.
Evidence	None is required; members are free to discuss issue outside hearing.	Substantial, competent, material evidence must be put in the record; witnesses are under oath, subject to cross-examination; no discussion of the case outside the hearing is allowed.
Findings	None are required.	Written findings of fact are required.
Records	Regular minutes are satisfactory.	Detailed record of testimony is required; clerk should retain all exhibits during period of potential appeal.

in the application of a zoning ordinance to an individual situation. These hearings are much like a court proceeding—witnesses present testimony, exhibits are submitted, detailed minutes are kept, and a formal written decision is rendered. Legislative hearings are required for legislative zoning decisions, while evidentiary hearings are required for quasi-judicial zoning decisions.

Both types of hearings are open to the public and are intended to solicit comments, but they have different standards for the notice required prior to the hearing, as well as for who can speak, what issues are appropriately raised, the formality with which the hearing must be conducted, and the records that must be maintained.

Why Are There Different Rules?

Matters certainly would be simpler if there were just one generic "zoning hearing" that could be used whenever a city or county was required to hold a public hearing on a rezoning, a special-use permit, or a variance. Local officials could learn one set of rules and follow them for all zoning hearings. But that is not the way things work, and there are good reasons that different requirements must be followed for different types of zoning hearings.

Because legislative zoning decisions such as a rezoning have such widespread impact, the state statutes authorizing local government zoning require broad public notice of the proposed decision. The policy choices in a zoning ordinance affect landowners, neighbors, business and industry, and all citizens concerned about the future character of the community. The statutes encourage full public discussion and deliberation before these decisions are made and leave substantial discretion in the hands of local elected officials regarding what these public policies should be.

In quasi-judicial zoning decisions (such as a variance petition), on the other hand, while the hearing and deliberation must be open to the general public, the focus is on gathering relevant evidence and protecting the rights of the specific parties before the board. No new policies affecting the entire community are being created, so there is no need to broadly solicit public opinion. But since the rights of the parties are being determined, the courts have imposed fairly strict requirements to assure an impartial decision based solely on legitimately acquired and considered evidence. The courts further require a clear rationale for the decision, because any appeal of the local board's decision to superior court will not result in a new hearing on the facts—the courts must use the record developed before the local board. An expeditious judicial review ensures that these required protections of individual rights have been observed.

These different types of considerations result in different statutory and constitutional due process requirements for the various types of zoning decisions. The purpose of a hearing on a legislative zoning decision is to gather public opinion; the purpose of a hearing on a quasi-judicial zoning decision is to gather evidence. Therefore different types of notice are required, and different types of hearings are conducted. (See Table 1 for a summary of differences between legislative and quasi-judicial zoning decisions.)

When to Apply Both Sets of Rules

Local governments imposing special- or conditional-use district zoning must be especially attentive to these differences, because such district zoning involves *simultaneous* application of a legislative zoning decision (the

rezoning to a new zoning district with no permitted uses, only special uses) and a quasi-judicial zoning decision (the decision on the special-use permit for a particular project). Therefore both types of hearings are required, and the local government must exercise particular care in observing whichever rules apply to each stage of its decision making.

Rules for Zoning Hearings

Informal Public Meetings

A local government may decide that it is advisable to hold informal public meetings on zoning issues prior to conducting the required legislative or evidentiary hearing. These may be held for a variety of purposes: to gather public opinion prior to an update of the zoning ordinance or the land-use plan, to discuss potential policy changes, to explain a new provision of the ordinance, or to discuss a particularly controversial project or policy. They may be conducted by the governing board, the planning board, staff, or a neighborhood advisory group.

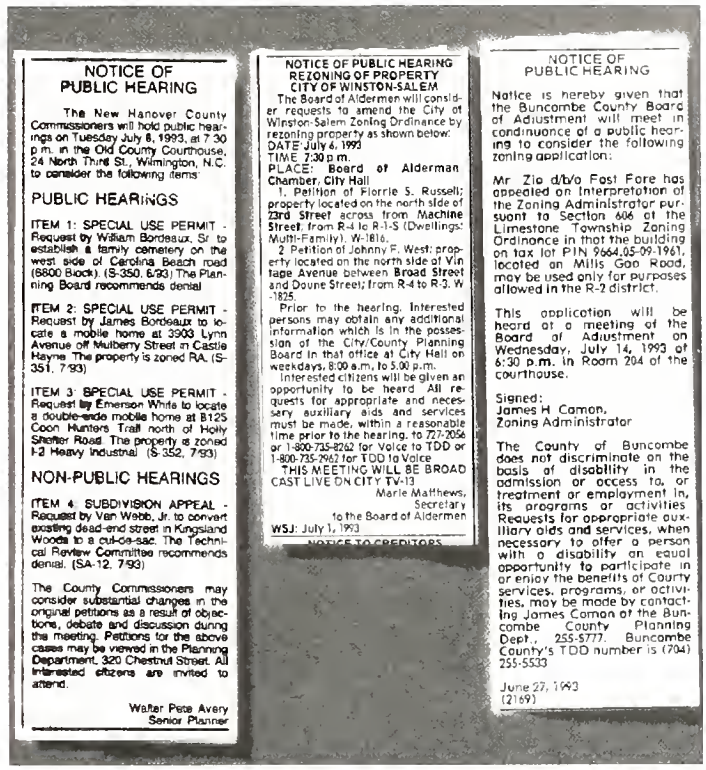
An informal public meeting is just that. It is not a formal hearing; it is not mandated by statute. While it needs to be conducted in a fair and reasonable manner, it is not subject to the legal restrictions that apply to the legislative and evidentiary hearings discussed below.[3] So the local government is free to set whatever reasonable ground rules it chooses for publicizing and conducting these public meetings.

Legislative Hearings

As mentioned above, state statutes and court decisions have established some detailed rules for hearings on legislative zoning decisions, which must be followed whenever a zoning ordinance is adopted, amended, or repealed. The requirements for notice of the hearing, its speakers, the information presented, and when an additional hearing is required are set out below.

Requirements for a Hearing

Since its adoption in 1923, North Carolina's zoning enabling statute has mandated a formal public hearing prior to the adoption or amendment of a zoning ordinance, as well as prior to repeal of zoning.[4] This hearing must be held by the governing board; a hearing by the planning board alone is not sufficient.[5] The hearing may be conducted as part of the governing board's regular meeting or it may be held as a special meeting at a separate time and place. The planning board may also hold



NOTICE OF PUBLIC HEARING

The New Hanover County Commissioners will hold public hearings on Tuesday July 6, 1993, at 7:30 p.m. in the Old County Courthouse, 24 North Third St., Wilmington, N.C. to consider the following items:

PUBLIC HEARINGS

ITEM 1: SPECIAL USE PERMIT - Request by William Bordeaux, Sr. to establish a family cemetery on the west side of Carolina Beach road (6800 Block). (S-350, 6/93) The Planning Board recommends denial.

ITEM 2: SPECIAL USE PERMIT - Request by James Bordeaux to locate a mobile home at 3903 Lynn Avenue off Mulberry Street in Castle Hayne. The property is zoned RA. (S-351, 7/93)

ITEM 3: SPECIAL USE PERMIT - Request by Emerson White to locate a double-wide mobile home at 8125 Coon Hunters Trail north of Holly Shelter Road. The property is zoned I-2 Heavy Industrial. (S-352, 7/93)

NON-PUBLIC HEARINGS

ITEM 4: SUBDIVISION APPEAL - Request by Van Webb, Jr. to convert existing dead-end street in Kingsland Woods to a cul-de-sac. The Technical Review Committee recommends denial. (SA-12, 7/93)

The County Commissioners may consider substantial changes in the original petitions as a result of objections, debate and discussion during the meeting. Petitions for the above cases may be viewed in the Planning Department, 320 Chestnut Street. All interested citizens are invited to attend.

Walter Pete Avery
Senior Planner

NOTICE OF PUBLIC HEARING
REZONING OF PROPERTY
CITY OF WINSTON-SALEM

The Board of Aldermen will consider requests to amend the City of Winston-Salem Zoning Ordinance by rezoning property as shown below:
DATE: July 6, 1993
TIME: 7:30 p.m.
PLACE: Board of Alderman Chamber, City Hall

1. Petition of Florrie S. Russell; property located on the north side of 23rd Street across from Machine Street; from R-4 to R-1-S (Dwellings: Multi-Family). W-1816.

2. Petition of Johnny F. West; property located on the north side of Vintage Avenue between Broad Street and Doune Street; from R-4 to R-3. W-1825.

Prior to the hearing, interested persons may obtain any additional information which is in the possession of the City/County Planning Board in that office at City Hall on weekdays, 8:00 a.m. to 5:00 p.m.

Interested citizens will be given an opportunity to be heard. All requests for appropriate and necessary auxiliary aids and services must be made, within a reasonable time prior to the hearing, to 727-2056 or 1-800-735-2962 for Voice to TDD or 1-800-735-2962 for TDD to Voice.

THIS MEETING WILL BE BROAD CAST LIVE ON CITY TV-13

Marie Matthews,
Secretary
to the Board of Aldermen

WSJ: July 1, 1993

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Buncombe County Board of Adjustment will meet in continuance of a public hearing to consider the following zoning application:

Mr. Zie d/b/o Fast Fare has appealed an interpretation of the Zoning Administrator pursuant to Section 606 of the Limestone Township Zoning Ordinance in that the building on tax lot PIN 9664.05-09-1961, located on Mills Gap Road, may be used only for purposes allowed in the R-2 district.

This application will be heard at a meeting of the Board of Adjustment on Wednesday, July 14, 1993 at 6:30 p.m. in Room 204 of the courthouse.

Signed:
James H. Carnon,
Zoning Administrator

The County of Buncombe does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. Requests for appropriate auxiliary aids and services, when necessary to offer a person with a disability an equal opportunity to participate in or enjoy the benefits of County services, programs, or activities, may be made by contacting James Carnon of the Buncombe County Planning Dept., 255-5777. Buncombe County's TDD number is (704) 255-5533.

June 27, 1993
(2169)

Public hearings on a legislative zoning decision are usually advertised in legal ads in the classified section of the newspaper.

formal public hearings, but it is no longer required by state law to do so.[6]

Newspaper Notice

A local government must publish notice of the governing board's required public hearing on the proposed adoption, amendment, or repeal of a zoning ordinance. G.S. 160A-364 for cities and G.S. 153A-323 for counties require that the notice be published in a newspaper of general circulation in the community once a week for two successive calendar weeks, with the first notice being published not less than ten nor more than twenty-five days prior to the hearing. The advertisement is usually run as a legal ad in the classified section of the newspaper, but some local governments purchase larger display ads to provide more prominent notice. While news stories about forthcoming zoning hearings are also common, they cannot take the place of the formal advertisement. Likewise, publication in a homeowners' association newsletter or other informal publication is permissible but may not substitute for newspaper publication. State statutes do not require posting of a sign on the site of a proposed rezoning, although a number of zoning ordinances add that requirement.

The published notice must be sufficiently detailed to allow a citizen to determine what is being proposed and

Table 2
Summary of Requirements for Mailed Notice of Proposed Zoning Classification Actions

Triggered by:	Zoning classification action
Sent to:	Owner of parcel and abutting parcels, as shown on county tax listing
How mailed:	First class
Exceptions:	Not required for total rezonings of entire jurisdiction (but even here must be sent to any property that is put in less intensive zone)
Verification:	Certification to governing board of mailing to be provided by person making the mailing

whether he or she would be affected." This does not mean that it must contain a legal description of the property affected,[8] nor that the text of the proposed ordinance be published.[9] But enough detail must be printed to let a person know the nature of the zoning change being proposed and to clearly describe the property involved (for example, by giving the street address). Just listing the ordinance number with the date and time of the hearing will not suffice; the court of appeals held such a notice to be inadequate.

> By reading the notice, even the most diligent owner of property . . . would have no reasonable cause to suspect that his property might be affected by the City's contemplated amendment to its ordinance. To be adequate, the notice of public hearing required by G.S. 160A-364 must fairly and sufficiently apprise those whose rights may be affected of the nature and character of the action proposed.[10]

Individual Mailed Notice

In 1985 the General Assembly amended G.S. 153A-343 and 160A-384 to require individual mailed notice to those parties most directly affected by certain legislative zoning decisions: "zoning classification actions." In 1987 this provision was amended to exempt the total rezoning of an entire community from the mailed-notice requirement. This exemption was itself modified in 1990 to require mailed notice in total rezonings if the rezoning involves "down zoning" or zoning to a less intense use.[11] (See Table 2.)

Most aspects of the mailed-notice requirement are clear. The notice should include the same information contained in the published notice, should advise persons of the proposed zoning change, and should be mailed in time for receipt a reasonable time before the hearing. The mailed notice need only be made by first-class mail. It does not have to be registered or return-receipt mail. Some zoning ordinances go beyond this to require certified mail, and some zoning offices do so as a matter of office policy, but that is not required by statute. Also, the notice is to be mailed to the owners as identified by the county tax records; an updated title search is not required. If there are no tax maps available for the area, the mailed-notice requirement does not apply.[12]

All rezonings that amend zoning district boundaries require mailed notice. In general, it is also required for the application of new overlay zones, the application of zoning to new extraterritorial areas, and the initial adoption of zoning. Mailed notice usually is not required for most routine zoning text changes, since they do not affect the basic zoning classification of property.[13]

The mailed notice also must be sent to all "abutting" property owners. As a matter of practice, some cities send a mailed notice to all who would qualify to sign a protest petition whether or not they have technically abutting parcels of land. This generally includes the owners of both the property being rezoned and the property within 100 feet (excluding abutting rights-of-way) of that property.

The statute does not require the local government to do the mailing if it is not initiating the rezoning. Several zoning ordinances place much of the administrative and cost burden on the party requesting a rezoning, by requiring that person to provide a certificate that the mailing was done *or* to provide stamped, addressed envelopes to the local government to deposit in the mail. Many other local governments require that a list of those to be mailed notices be provided as part of any petition for a rezoning.

The mailed-notice requirement has been subject to more modification by local legislation than any other mandated zoning procedure. Given the high cost of individual mailings when a substantial rezoning is proposed, eighty-five local governments have sought and received legislative relief. The most common modification has been to substitute publication once a week for four weeks of a large display advertisement in a local newspaper in lieu of mailed notices.[14]

Speakers and Evidence

Public hearings on legislative zoning decisions must be conducted in a fair and impartial manner, but the formalities of an evidentiary hearing—oaths, exhibits, cross-examinations, avoiding gathering evidence outside of the hearing, and the like—need not be observed. After all, with these hearings the governing board is receiving comments, not hearing evidence.

The general statutory guidance for legislative public hearings is G.S. 160A-81 for cities and G.S. 153A-52 for counties. The statutes allow the governing board to

> adopt reasonable rules governing the conduct of the public hearing, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

Therefore reasonable rules can be established to limit the number of speakers and the amount of time each speaker is given, provided that the hearing is conducted in a fair and reasonable fashion. An example is provided in *Freeland v. Orange County*,[15] in which 500 citizens attended the required public hearing on the adoption of zoning for the Chapel Hill township. The chair allotted one hour each to the proponents and opponents of the zoning ordinance, with each side also having fifteen minutes for rebuttal. Some sixteen proponents and fifteen opponents were heard. By a show of hands, it appeared that those at the hearing were opposed to the adoption of zoning by a four-to-one ratio. About 200 persons indicated that they wished to speak but were not allowed to because of the time limitation. The court upheld this procedure, ruling that the legislative intent was to mandate a hearing and provide a "fair opportunity" for those in attendance to present their views. The governing board is allowed, however, to establish an "orderly procedure" for the hearing, as "[t]he General Assembly did not contemplate that all persons entertaining the same views would have an unqualified right to iterate and reiterate these views in endless repetition."[16]

Given that the purpose of a legislative hearing is to broadly solicit public opinion, there is no problem with receiving petitions, hearing personal opinions, or with board members' talking to members of the public about the issue prior to the hearing. This is an important distinction between a legislative hearing and an evidentiary hearing. Also, unlike evidentiary hearings, no written findings of fact or explanation of the decision is required.

Additional Hearings

A question frequently arises as to whether readvertisement and rehearing are required if changes are made in the proposed ordinance at or after the hearing. The general rule is that an additional hearing is required only if there are substantial changes in the proposal after the initial notice.

A 1971 case, *Heaton v. City of Charlotte*, set the standard for determining whether an additional hearing is required. The court held:

> Ordinarily, if the ordinance or amendment as finally adopted contains alterations substantially different (amounting to a new proposal) from those originally advertised and heard, there must be additional notice and opportunity for additional hearing. However, no further notice or hearing is required after a properly advertised and properly conducted public hearing when the alteration of the initial proposal is insubstantial. Alteration of the initial proposal will not be deemed substantial when it results in changes favorable to the complaining parties. Moreover, additional notice and public hearing ordinarily will not be required when the initial notice is broad enough to indicate the possibility of substantial change and substantial changes are made of the same fundamental character as contained in the notice, such changes resulting from objections, debate and discussion at the properly noticed initial hearing.[17]

In this instance, the court noted that the notice was broad enough to indicate that changes might be made, the changes were consistent with the fundamental character of the noticed proposal, and the changes were made as a result of comments received at the hearing. This led the court to conclude that an additional hearing "could have resulted only in repetitive statements by the same parties or parties similarly situated. . . . The very purpose of the public hearing was to guide the City Council in making changes in the original proposal consistent with the views reflected at the public hearing. This is exactly what was done."[18] So, if in response to comments raised at the hearing the city council rezones less land than was requested or rezones it to a less intense category, a new hearing generally is not required.

Occasionally lengthy legislative zoning hearings are recessed and continued at a subsequent meeting. In this situation no additional public notice is required. G.S. 153A-52 and 160A-81, the general provisions on public hearings, specifically allow hearings to be continued without further advertisement.[19]

Many zoning ordinances limit additional hearings after a decision is made on a rezoning proposal by establishing a minimum waiting period between consideration of rezoning proposals. A typical provision would be that once a rezoning petition has been considered for a particular parcel, no additional rezoning petitions will be considered for a set period, most frequently six or twelve months. These mandatory waiting periods have been upheld by the courts.[20]

Blair Orrell/Durham Herald-Sun

Crowd outside Orange County Courthouse is protesting a proposed zoning special-use permit to allow a move to Hillsborough by PHE, a mail-order adult products company.

Evidentiary Hearings

It is important to remember the purpose of evidentiary zoning hearings. Unlike legislative hearings, they are not designed to solicit broad public opinion about how the board should vote on the matter before it. Rather, they provide an opportunity for the board to gather the facts it needs to apply policies already set in the ordinance. Therefore, while the notice requirements are not as broad, the standards on gathering evidence are much more strict than they are for legislative hearings.

Requirements for a Hearing

Quasi-judicial zoning decisions arise in those situations where the decision maker must investigate facts, draw conclusions from them, and exercise some element of discretion in applying standards that previously have been set in the zoning ordinance to a specific situation. This includes decisions on variances, special- and conditional-use permits, and appeals of administrative determinations. These decisions may be made by the governing board, the board of adjustment, or the planning board, depending upon how the individual zoning ordinance involved is structured.

The courts have held that the constitutional requirements of due process mandate that all fair trial standards be observed when quasi-judicial zoning decisions are made, no matter which local board is making the decision. This includes an evidentiary hearing with the right of the parties to offer evidence, cross-examine adverse witnesses, inspect documents, have sworn testimony, have the decision based only on evidence that is properly in the hearing record, and have written findings of fact supported by competent, substantial, and material evidence.[21]

Notice of Hearings

The notice requirements for an evidentiary zoning hearing are narrower than those for a legislative rezoning hearing. The purpose of the notice for these evidentiary hearings is not to let the entire community know about a proposed policy being debated but to alert those most directly affected about an opportunity to present relevant facts to those who are applying a policy already set in the ordinance. This is true even though there may be broad public interest in the outcome of the decision.

Still, the constitutional guarantees of due process must always be observed: the parties to the matter must be given reasonable notice of the hearing. Thus an individual mailed notice to the applicant and any affected party who has requested notice must be provided. It is also a good idea to provide individual mailed notice to adjacent property owners, even though it may not be legally required. However, the detailed newspaper notice and individual mailed-notice provisions in the zoning enabling statute do not apply to evidentiary hearings for quasi-judicial zoning decisions. Some local governments have voluntarily put these same requirements into their

zoning ordinances for evidentiary hearings, and once in the ordinance those notice requirements are binding.

Speakers and Evidence

The principal difference between legislative and evidentiary hearings arises in how speakers and evidence are handled. Since the purpose of an evidentiary hearing is to carefully gather relevant facts to aid in decision making, restrictions on what can be heard and how it can be heard are applied to these hearings. These standards apply to *any* board making a quasi-judicial zoning decision, even the governing board. This places a particular burden on city councils and county boards of commissioners, which are usually more accustomed to conducting less formal hearings on legislative matters.

In the leading case on this subject, *Humble Oil & Refining Co. v. Board of Aldermen*, which involved the denial of a special-use permit for a gas station by the governing board in Chapel Hill, Justice Susie Sharp set forth the key requirements for an evidentiary zoning hearing:

> Notwithstanding the latitude allowed municipal boards, . . . a zoning board of adjustment, or a board of aldermen conducting a quasi-judicial hearing, can dispense with no essential element of a fair trial: (1) The party whose rights are being determined must be given the opportunity to offer evidence, cross-examine adverse witnesses, inspect documents, and offer evidence in explanation and rebuttal; (2) absent stipulations or waiver such a board may not base findings as to the existence or nonexistence of crucial facts upon unsworn statements; and (3) crucial findings of fact which are 'unsupported by competent, material and substantial evidence in view of the entire record as submitted' cannot stand.[22]

If critical factual findings in a quasi-judicial zoning matter are based on unsworn testimony or hearsay evidence, the decision may be overturned by the courts and the matter sent back for a new hearing.[23] If all the parties agree, however, the right to have witnesses under oath may be waived.[24]

A question arises occasionally as to whether attorneys need to be under oath when making a presentation in an evidentiary hearing. If the attorney is just summarizing evidence presented by others and making legal arguments for his or her client, there is no need to be under oath. On the other hand, if the attorney is offering evidence directly, he or she would need to be sworn like any other witness. The court tolerates but strongly discourages an attorney from serving both as a witness and an advocate in the same case.[25] Likewise, if the city or county staff is presenting evidence to the board in an evidentiary hearing, they should also be under oath.

Oaths for witnesses testifying at these evidentiary hearings may be administered by the chair of the board or any notary.[26] Witnesses may affirm rather than swear. All individuals likely to testify can be administered the oath together at the beginning of the hearing in order to expedite matters. If this is done, each witness should be reminded of the oath at the outset of his or her testimony.

Additional rules apply to assure that evidentiary hearings are conducted fairly. All of the parties to an evidentiary hearing have a right to know all of the evidence being considered by the board. Therefore it is improper for a board member to discuss the case or to individually gather evidence outside the hearing. If a board member has prior or specialized knowledge about a case, that should be disclosed to the rest of the board and the parties during the hearing.[27] Also, it is inappropriate in an evidentiary hearing to consider nonexpert personal opinions or hearsay testimony.

At the conclusion of an evidentiary hearing, the board making the decision must adopt written findings of the facts upon which it is basing its decision. This contrasts with legislative zoning decisions, where no findings are required—those decisions are left to the sound discretion of the governing board, and the board is not required to explain why it made a particular decision. But since the purpose of an evidentiary hearing is to produce well-documented evidence to support a decision, the parties are entitled to know what the board concluded are the facts. Any judicial review of the decision is based on the facts as determined by the board making the decision, so the courts also need to know what the board concluded. This is done by requiring written findings of fact.

Since any subsequent judicial review is based on the record established in this hearing, it is important to keep detailed records of evidentiary hearings. Sound recording or a verbatim transcript of these hearings is not required.[28] Many boards do make audio tapes of these hearings in case a transcript is later desired. However, handwritten records and detailed summary of the testimony received are acceptable. Special care should be taken to ensure that the clerk to the board retains exclusive custody of any exhibits presented. The exhibits and record of testimony should be retained for at least the period within which a judicial challenge can be filed—thirty days after notice of the decision is filed and communicated to the parties—and the matter resolved.

Additional Hearings

With quasi-judicial land-use decisions, such as variance requests and special-use permits, the doctrine of res judicata applies, and a board may not reopen and rehear

a case previously decided."[29] There is an exception if there is some material change in conditions, such as a new road being constructed at the site, additional development near the site over time, and the like.[30] Also, appeals of quasi-judicial zoning decisions go directly to the courts. It is not appropriate to seek a second evidentiary hearing before a different local board, such as appealing a board of adjustment decision to the governing board.

Conclusion

Zoning hearings can be controversial, emotional, and confusing. Often the stakes are high for everyone involved. It is therefore important that these hearings be conducted in a fair and lawful manner. This requires that the local government body responsible for the hearing always keep in mind what type of zoning decision is involved, what type of hearing is required for that type of decision, and what the ground rules for that hearing are.[31]

It is also important that this information be communicated clearly to the participants in the hearing. Landowners, neighbors, and citizens need to understand what these rules are and why they exist in order to participate effectively in zoning decisions. Each zoning hearing should open with a brief explanation of the rules that must be followed and their purpose. A written summary of the hearing ground rules can also be provided in advance to the parties to the hearing.

There will never be complete agreement on how zoning decisions should come out, and there will always be rooms full of people eager to make their strong opinions known to the boards making these decisions. However, the boards' being mindful of the standards for conducting zoning hearings fairly and clearly communicating these standards to all involved will help make zoning hearings more understandable, more efficient, and fair for all concerned. ❖

Notes

1. A more detailed discussion of the legal issues addressed in this article can be found in the author's forthcoming Institute of Government publication, *Legislative Zoning Decisions: Legal Aspects*. The book will be available in summer 1993.

2. In many respects this distinction is similar to the distinction between rule-making decisions and contested case decisions under the state's Administrative Procedures Act, G.S. Ch. 150B.

3. The open meetings statute does apply to these meetings and should be observed. *See* G.S. 143-318.9 to -318.18. Where a majority of the members of a board, council, or committee gather to conduct business or to deliberate, notice of the meeting must be provided and it generally must be open to the public.

4. The statutes that mandate hearings, G.S. 153A-323 and 160A-364, explicitly refer to adoption and amendment of zoning ordinances. The court has held that this also includes repeal of zoning provisions. Sofran Corp. v. City of Greensboro, 327 N.C. 125, 393 S.E.2d 767 (1990); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

5. Keiger v. Board of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972). *See* G.S. 153A-344 and G.S. 160A-387.

6. Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516, *rev. denied*, 295 N.C. 550, 248 S.E.2d 727 (1978). The county zoning statute does require a mandatory referral of a proposed zoning amendment to the planning board, but it is not required to hold a hearing. A number of zoning ordinances, however, still require planning board hearings; others provide for joint planning board and governing board hearings on rezoning proposals. If the zoning ordinance itself requires a formal planning board hearing, it must be held and should generally follow these rules for a legislative hearing.

7. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961); Walker v. Town of Elkin, 254 N.C. 85, 118 S.E.2d 1 (1960); Capps v. City of Raleigh, 35 N.C. App. 290, 241 S.E.2d 527 (1978). These cases held that actual personal notice of a proposed rezoning is not constitutionally required nor is it sufficient to substitute for compliance with statutory requirements.

8. *Capps*, 35 N.C. App. at 290, 241 S.E.2d at 527.

9. Though not explicitly required by the statute, a copy of the full text of the proposed ordinance or amendment should be available for public inspection at the time the notice is published.

10. Sellers v. City of Asheville, 33 N.C. App. 544, 549, 236 S.E.2d 283, 286 (1977). By contrast, in *In re* Raynor, 94 N.C. App. 91, 379 S.E.2d 884, *rev. denied*, 325 N.C. 546, 385 S.E.2d 495 (1989), the court upheld the adequacy of a notice that stated its purpose was "to consider proposed zoning and proposed long-range land use plans within the area recently added to the Town's extraterritorial jurisdiction." The notice went on to provide a "rough description" of the area affected, using major streets as boundaries.

11. The legislature has also extended this mailed-notice requirement to some land-use regulations other than zoning. G.S. 143-214.5(d) requires cities and counties that adopt water-supply watershed protection ordinances under their general police powers to use the mailed-notice provision if the ordinance imposes requirements more stringent than the statewide minimum standards adopted by the Environmental Management Commission.

12. Frizzelle v. Harnett County, 106 N.C. App. 234, 416 S.E.2d 421, *rev. denied*, 332 N.C. 147, 419 S.E.2d 571 (1992). In this case, however, the ordinance itself required mailed-notice and posting, which was not done.

13. Note that a zoning text change that substantially changes the range of permitted uses in a district can have the same practical effect as a map change and in those instances may be covered.

14. Many of the modifications are of only temporary duration. This trend of local modification is continuing. Some thirteen bills were introduced in the 1993 General Assembly to

provide mailed-notice exceptions to thirty-three local governments. A bill is also pending that would extend these alternatives to mailed notice to all local governments.

15. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

16. *Freeland*, 273 N.C. at 457, 160 S.E.2d at 286.

17. Heaton v. City of Charlotte, 277 N.C. 506, 518, 178 S.E.2d 352, 359–60 (1971).

18. *Heaton*, 277 N.C. at 518–19, 178 S.E.2d at 360. *See also* Walker v. Town of Elkin, 254 N.C. 85, 118 S.E.2d 1 (1960); *In re* Issuance of CAMA Permit to Worthy, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

19. Also, G.S. 160A-71(b1) provides that regular and special meetings of the governing board may be recessed or adjourned to reconvene at a time and place certain (the comparable county provision, G.S. 153A-40, contains a similar provision for regular county board meetings). G.S. 143-318.12(b)(1) in the state's open meetings law provides that if the time and place for reconvening are set in the properly noticed original meeting, no additional public notice is required.

20. See George v. Town of Edenton, 294 N.C. 679, 242 S.E.2d 877 (1978); Nelson v. City of Burlington, 80 N.C. App. 285, 341 S.E.2d 739 (1986); Clark v. City of Charlotte, 66 N.C. App. 437, 311 S.E.2d 71 (1984).

21. Humble Oil & Refining Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974); Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

22. *Humble Oil & Refining Co.*, 284 N.C. at 470, 202 S.E.2d at 137 (citations omitted).

23. *See, e.g., Jarrell*, 258 N.C. at 476, 128 S.E.2d at 879; Brummer v. Board of Adjustment, 81 N.C. App. 307, 343 S.E.2d 603, *rev. denied*, 318 N.C. 413, 349 S.E.2d 590 (1986).

24. Craver v. Board of Adjustment, 267 N.C. 40, 147 S.E.2d 599 (1966); Burton v. New Hanover County Board of Adjustment, 49 N.C. App. 439, 271 S.E.2d 550, *cert. denied*, 302 N.C. 217, 276 S.E.2d 914 (1981); Carter v. Town of Chapel Hill, 14 N.C. App. 93, 187 S.E.2d 588, *cert. denied*, 281 N.C. 314, 188 S.E.2d 897 (1972).

25. Robinhood Trails Neighbors v. Board of Adjustment, 44 N.C. App. 539, 261 S.E.2d 520, *cert. denied*, 299 N.C. 737, 267 S.E.2d 663 (1980). *See also* Rule 3.2, Rules of Professional Conduct of the North Carolina State Bar. This rule prohibits a lawyer from testifying as a witness in a case he or she is handling unless the testimony relates solely to an uncontested matter, is related to legal fees, or if refusal to testify would work a substantial hardship on the client because of the distinctive value of the lawyer in the particular case.

26. A standard oath may be used, such as, "Do you swear (or affirm) that the evidence you give shall be the truth, the whole truth, and nothing but the truth, so help you God?"

27. Crump v. Board of Education, 326 N.C. 603, 392 S.E.2d 579 (1990). It is important to distinguish personal knowledge, which can be considered if disclosed, from personal bias, which disqualifies a member from participation. Personal bias is present if the member has a fixed opinion that is not susceptible to change regardless of the evidence presented. Also, in Rice Assoc. v. Town of Weaverville Bd. of Adjustment, 108 N.C. App. 346, 423 S.E.2d 519 (1992), the court held that participation of a member with bias does not invalidate the decision if the applicant is not entitled to a permit under any circumstances.

28. Burton v. New Hanover County Board of Adjustment, 49 N.C. App. 439, 271 S.E.2d 550, *cert. denied*, 302 N.C. 217, 276 S.E.2d 914 (1981). The court of appeals has noted that while a verbatim transcript is not required, its presence would facilitate appellate review. *In re* City of Raleigh Parks and Recreation Dept., 107 N.C. App. 505, 421 S.E.2d 179 (1992).

29. Little v. City of Raleigh, 195 N.C. 793, 143 S.E. 827 (1928). *See also In re* J. H. Carter Builder, Inc., 95 N.C. App. 182, 381 S.E.2d 889, *rev. denied*, 325 N.C. 707, 388 S.E.2d 458 (1989) (rehearing by board of adjustment six weeks after original vote, made because chair wished to change his vote after reviewing the minutes, held improper because there had been no substantial change in the facts, evidence, or conditions).

30. *In re* Broughton Estate, 210 N.C. 62, 185 S.E. 434 (1936).

31. There are other important differences in how legislative and quasi-judicial zoning decisions are made beyond the differences in hearings discussed in this article. For example, there are different standards on conflicts of interest, voting majorities required, creation of vested rights, imposition of conditions, and the time limits for seeking judicial review.

Ben F. Loeb, Jr.

You cannot legally buy a beer, a fifth of vodka, or any other alcoholic beverage in Clay County. Who decided that? In Little River Township in Moore County, you can get a Scotch and soda at a bar, but there are parts of the county where you cannot order a glass of wine with dinner. Who decided that? You can buy a drink in a beautification district in the state—but only if it was created between May 1984 and June 1990. Who decided that?

Sixty years ago the law was clear. No alcohol could be sold in North Carolina. The Eighteenth Amendment to the United States Constitution prohibited the manufacture or sale of alcoholic beverages anywhere in the United States, and the Turlington Act[1] wrote that prohibition into state law.

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But after Prohibition was repealed by the Twenty-first Amendment, effective December 5, 1933, North Carolina moved cautiously to reintroduce the legal sale of alcoholic beverages. The basic system in place today—known as local option—was devised and implemented between 1935 and 1977. In general, that system has provided that the voters of each county and town decide what alcoholic beverages legally may be sold there. What the voters approve, the drinkers may buy.

The local option system is becoming increasingly complex. It was at its purest form in the 1930s; since as early as 1941, however, it has been continually refined and modified in many ways. Today, in numerous locations across the state, alcoholic beverages of various types are available without a specific authorizing vote of the people.

The rise and fall of local option reflects a tension between state authority and local control that is played out

in education, in taxation, in land-use controls, and in scores of other issues. Devised in an era when a majority of citizens viewed alcohol consumption as immoral, the local option system has come under increasing pressure as that view has been modified. To contemplate the system's future, it is helpful to understand its past and its present.

1937 ABC Act

In 1935, in the first session of the North Carolina General Assembly after the repeal of Prohibition, the legislature authorized "liquor elections" in sixteen counties.[2] The Turlington Act, which was not repealed, remained in force except as modified by these local votes.

The first statewide act—appropriately named the Alcoholic Beverage Control Act of 1937 (the "1937 ABC Act")—became law approximately two years later.[3] Setting up a pure local option system, it expressly provided that no liquor store could be established in any county until there was a vote "for county liquor control stores." These stores were limited to selling beverages containing more than 21 percent of alcohol—in other words, hard liquor and fortified wine (wine with brandy added). No provision was made for the sale of malt beverages and light wines in ABC stores, and that remains the law to this day. Also, while a county could establish ABC stores inside cities, no provision was made for citywide elections or city-owned stores. That was to come later, at first by local acts concerning a single city.

1939 Beverage Act

The next major statewide legislation—the Beverage Control Act of 1939 (the "1939 Beverage Act")—provided for the manufacture and sale of malt beverages and wine.[4] It authorized on-premises sales at such establishments as restaurants and hotels, and, for off-premises consumption, sales at grocery stores and other sites; city and county governing boards made the decisions as to the issuance of retail beer and wine licenses. But in 1947 the General Assembly added *election provisions*.[5] Under the provisions of the 1947 act, county residents could vote for the retail sale of wine or beer or both. If the vote was successful, sales could be made anywhere in the county including within municipalities. However, if the county residents voted against the sale of beer or wine or both, then any city with a population of at least 1,000 residents could hold its own election on these questions. This explains how numerous "wet" municipalities were created in "dry" counties.

While the 1937 ABC Act dealt primarily with the sale of hard liquor, and the 1939 Beverage Act (as supplemented in 1947) dealt with the sale of wine and malt beverages, both acts were consistent in providing for local option elections. No community had to allow the sale of any beverage alcohol whatsoever if it did not elect to do so.

1941 Fortified Wine Control Act

A deviation from local option came as early as 1941 with the passage of the Fortified Wine Control Act.[6] It provided for the sale of "sweet wines"—defined as having an alcohol content of 14 to 20 percent, a type of fortified wine—in hotels, Grade A restaurants, drugstores, and grocery stores in any county "in which the operation of alcoholic beverage control stores is authorized by law."[7] Thus, retail sales of fortified wines by certain private businesses became legal in any county having ABC stores, even if the residents of that county had voted against the sale of wine.

1967 Brown-Bagging Act

The 1937 ABC Act authorized the purchase of alcoholic beverages at government-owned stores but did not specify where these beverages could be possessed or consumed. Initially most people limited their consumption to private residences, a practice allowed even under the Prohibition-era Turlington Act. Over the years people became somewhat bolder and began taking their alcoholic beverages with them to clubs, social events, and even restaurants. They often carried the beverages in a brown paper bag, and this practice gradually became known as "brown-bagging." Brown-bagging continued and spread until the mid-1960s, apparently unimpeded by state or local law enforcement agencies. On January 11, 1966, however, the North Carolina attorney general ruled that the Turlington Act was still in full force and effect in dry counties,[8] and the possession of liquor outside the home in those counties was unlawful.

The General Assembly moved quickly to clarify the matter with what was referred to at the time as the Brown-Bagging Act.[9] This act authorized the possession and consumption of alcoholic beverages in private residences and related places (such as a hotel or motel room), in social establishments (where members could have their own individual liquor lockers), and in such locations as restaurants. Social establishments and restaurants needed state-issued permits, but hotels, motels, and the like did not. Social establishments could qualify for a

permit wherever located, but permits could be issued only for those restaurants located in a county that had at least one ABC store. Thus, any county (or municipality) that had voted for ABC stores had also authorized brown-bagging in restaurants. In addition, brown-bagging in social establishments was permitted *statewide* even in a county that had voted against beer, wine, and ABC stores.

For better or worse, people were getting more than they had voted for.

1977 Liquor by the Drink

The brown-bagging law satisfied the public for a relatively short period of time. Soon there was a clamor for "liquor-by-the-drink"—that is, hard liquor to be sold one drink at a time in clubs, restaurants, and elsewhere. During the 1970s North Carolina had become an in-migration state, with people coming here from all over the country (and the world). For most of these new arrivals the practice of carrying one's whiskey around in a brown paper bag appeared a bit antiquated. Also, the absence of liquor-by-the-drink put our travel industry at a competitive disadvantage with other coastal states. Thus, in 1977 the General Assembly passed "[a]n act to allow cities and counties with ABC stores to vote on the sale of mixed beverages."[9] Henceforth, "in any county or city where ABC stores have been established, an election may be called on the question of whether the on-premises sale of mixed beverages should be allowed in social establishments and restaurants." While considerably liberalizing North Carolina's liquor laws, the liquor-by-the-drink act retained the principle of local option in the sense that no city or county could have mixed beverages without an election on the question. In other words, the voters were getting exactly what they had voted for or against.

Local Option at Work

With the passage of the liquor-by-the-drink law, North Carolina's local option system of beverage control was basically in place. (See Table 1, compiled by the state ABC commission in Raleigh, for a listing of which beverages can be sold in each county as of February 12, 1993, to see how the system works in practice.) Ashe County, for example, has never voted for the legal sale of any kind of alcoholic beverage. However, a municipality (West Jefferson) located in that county has voted for sales of malt beverages and unfortified wine for off-premises consumption.[10] Orange County presents a completely different situation. There malt beverages, unfortified wine, ABC stores, and mixed beverages have all been voted in on a countywide basis. Therefore, there has never been an occasion for a municipal election on any of these questions.

Moore County presents an interesting exception to an otherwise fairly logical statewide system of local option based on city and county elections. In 1935 ABC stores were established in Pinehurst and Southern Pines by petition in the townships in which they were located—without an election of any kind.[12] Decades later the General Assembly authorized township elections in any county in which ABC stores had been established by petition.[13] Since this authorization applied to Moore County (and only to Moore County) elections on beer, wine, and the like could be held on a township level rather than on a city or county basis.[14] Thus, Little River Township has beer, wine, and mixed beverages although located in a county that has never voted for *any* alcoholic beverages. (See Table 1.)

Change in the 1980s

With a few exceptions, such as Moore County, the local option system based on city or county elections stayed basically intact until the 1980s. In 1981 the General Assembly rewrote the liquor control law as contained formerly in Chapter 18A of the General Statutes into a new Chapter 18B. While this rewrite was for the most part simply a recodification, significant provisions were added with respect to local option. For example, G.S. 18B-603(c) now provides that when there is a successful ABC store election the state ABC commission may issue on- and off-premises fortified and unfortified wine permits in that jurisdiction regardless of any wine election to the contrary.[15] And subsection (d) of G.S. 18B-603 provides that, in the event of a successful mixed beverage election, the commission may issue on-premises malt beverage and wine permits (for establishments with a mixed-beverage permit) regardless of any other election or local act concerning sales of those kinds of beverages.

These provisions of G.S. 18B-603 have some interesting results (see Table 1). More than fifteen cities and at least one county (Cumberland) have on-premises sales of malt beverages because they have authorized the sale of mixed beverages even though apparently no successful on-premises malt beverage elections were ever held.[16] More than fifty cities and a few counties have legal sales of unfortified wine because they voted for ABC stores. Thus, in Cherokee County, the towns of Andrews and

Murphy have on- and off-premises sales of unfortified wine because they voted for ABC stores, not because they had a successful unfortified wine election. In a way, this all makes sense. Why prohibit the sale of beer in a restaurant that sells hard liquor, or prohibit the sale of wine by stores and restaurants in a community that has voted to have ABC stores? Still, getting wine and beer when the vote is for mixed beverages is not consistent with the principle of local option. Of course, the matter easily could be resolved simply by rewording the ballot to make it clear that the vote is for beer and wine as well as mixed beverages (or for wine as well as ABC stores).

Local ABC Acts

The local option system has been modified in recent years by the General Assembly's increased willingness to write into the General Statutes provisions that have effect in only one or two particular locations. The practice of writing legislation of such local effect into the state's general law stems from Section 24, Article II, of the North Carolina Constitution, which prohibits *local acts regulating trade*. The North Carolina Supreme Court in two landmark decisions has held that while the operation of ABC stores is a governmental activity, the sale of alcoholic beverages by privately owned establishments constitutes "trade." The effect of these decisions is to uphold local acts concerning ABC stores but to find local acts regulating privately owned establishments to be unconstitutional,[17] creating the necessity to put essentially local acts into the General Statutes. Examples of G.S. Chapter 18B provisions that are of very local application include the following:

- G.S. 18B-600(e2), which provides for ABC elections in certain generically described *ski resorts*. This statute probably was enacted originally for the benefit of Sugar Mountain and Beech Mountain but by now may include other ski resorts as well. (See Avery County in Table 1.)
- G.S. 18B-600(f), which provides for *township* elections, apparently in Moore County only.
- G.S. 18B-600(g), which provides for a *beautification district* ABC election in any county where ABC stores have been approved, if the beautification district was created after May 1984 and prior to June 30, 1990. This probably was passed for the benefit of a beautification district in Dare County.
- G.S. 18B-600(e3), which provides for *small town mixed-beverage elections* in any town with at least 200 registered voters and located in a county bordering the Neuse River and Pamlico Sound that "has not approved the sale of mixed beverages and that county has only one city that has approved the sale of mixed beverages." This probably describes Minnesott Beach in Pamlico County.
- G.S. 18B-603(e), which authorizes mixed beverages at *airports* located in dry counties when the airport is operated by a city that has mixed beverages, and the airport services planes that board at least 150,000 passengers annually. The intended beneficiary of this provision may have been the Asheville airport.
- G.S. 18B-603(f2), which, as amended and expanded in 1992, provides for ABC permits for certain *special ABC areas*. A special ABC area is defined by G.S. 18B-101(13a) to include an area that borders on another state, located in a county where ABC stores are permitted in one or more cities, and which meets certain other enumerated requirements. This provision was originally for the benefit of a private association in Alleghany County, but, as amended, might apply to numerous counties bordering other states.
- G.S. 18B-603(h), which authorizes ABC permits for *sports clubs* located (a) in any county in which the sale of malt beverages, wine, mixed beverages, and ABC stores have been allowed in at least six cities, or (b) in any county adjacent to that county in which an ABC system has been allowed and which borders on the Atlantic Ocean, or (c) in certain counties having a city with mixed beverages if bordering on another state. This subsection was originally intended to make it possible for golf clubs in Brunswick County to secure malt beverage, wine, and mixed-beverage permits, but now may apply to Pender and Rockingham counties as well.
- G.S. 18B-1006(K), which was added in 1992, to authorize ABC permits for private clubs in certain described dry counties (probably Montgomery and Randolph).

Cumulatively, these local-type acts add further complexity and variation to the basic local option system.

The Future of Local Option

While North Carolina's local option system of control (as conceived in the 1930s and 1940s) may not have totally outlived its usefulness, there are indications that the time may have come to consider other means of controlling the use and misuse of beverage alcohol. As the system has evolved, at least some alcoholic beverages are available in almost all areas of the state from Murphy to Manteo. (See Cherokee County and Dare County in

Continued on page 42

Table 1
Alcoholic Beverages Authorized for Sale in North Carolina, by County and City

Legend

X	On- and off-premises sales are authorized.
O	Sales of that beverage are prohibited.
X Off	Sales for off-premises consumption only are authorized.
*	Off-premises sales only are authorized, except for hotels, motels, and restaurants (which can sell for on-premises consumption).
†	Sales of that beverage are allowed because the area has had a successful ABC store election. *18B-603(c)*
‡	On-premises sales of that beverage are allowed because there has been a successful mixed beverage election. *18B-603(d)*

Note: The letters "A," "B," and "C" apply only to the specialized situation in Moore County, and an explanation of their meaning is omitted for the sake of simplicity. "R" refers to on-premises sales of beer in restaurants and applies only to the city of Columbia in Tyrrell County.

Jurisdiction	Malt Beverages	Unfortified Wine	Fortified Wine	ABC Stores	Mixed Beverages
Alamance	X	X	O	O	O
Burlington	X	X	X	X	X
Gibsonville	X	X	X	X	X
Graham	X	X	X	X	O
Alexander	O	O	O	O	O
Taylorsville	X Off	X	X	X	O
Alleghany	X	X	O	O	O
Sparta	X	X	X	X	O
Anson	O	O	O	O	O
Ansonville	X Off	O	O	O	O
Morven	X Off	O	O	O	O
Polkton	X Off	X Off	O	O	O
Wadesboro	X	X †	X	X	O
Ashe	O	O	O	O	O
West Jefferson	X Off	X Off	O	O	O
Avery	O	O	O	O	O
Banner Elk	X * ‡	X †	X	X	X
Beech Mountain	X * ‡	X †	X ‡	O	X
Elk Park	X Off	O	O	O	O
Seven Devils	X *	X	X ‡	O	X
Sugar Mountain	X	X	X ‡	O	X
Beaufort	X	X	X	X	O
Belhaven	X	X	X	X	X
Washington	X	X	X	X	X
Bertie	X	X	X	X	O
Bladen	O	O	O	O	O
East Arcadia	X	X	O	O	O
Elizabethtown	X *	X †	X	X	O
White Lake	O	X †	X	O	O
Brunswick	X	X	X	X	X
Bald Head Island	X	X	X	O	X
Belville	X	X	X	X	O
Boiling Spring Lakes	X	X	X	X	O
Bolivia	O	O	O	O	O
Calabash	X	X	X	X	X
Caswell Beach	X	X *	O	O	O
Long Beach	X	X	X	X	X
Navassa	X	X	X	X	X
Ocean Isle Beach	X Off ‡	X †	X	X	X
Shallotte	X Off	O	X	X	O
Southport	X	X	X	X	X
Sunset Beach	X * ‡	X	X	X	X
Yaupon Beach	X Off ‡	X	X	X	X
Buncombe	X	X	O	O	O
Asheville	X	X	X	X	X
Black Mountain	X	X	X	X	O
Burke	O	O	O	O	O
Morganton	X *	X	X	X	O
Cabarrus	O	O	O	O	O
Concord	X Off	X †	X	X	O
Mount Pleasant	X Off	X †	X	X	O
Caldwell	O	O	O	O	O
Granite Falls	O	X †	X	X	O
Lenoir	X Off	X	X	X	O
Camden	X	X	X	X	O
Carteret	X	X	X	X	O
Atlantic Beach	X	X	X	X	X
Beaufort	X	X	X	X	X
Cape Carteret	X	X	X	X	X
Cedar Point	X	X	X	X	X
Emerald Isle	X	X	X	X	X
Indian Beach	X	X	X	X	X
Morehead City	X	X	X	X	X
Pine Knoll Shores	X	X	X	X	X
Caswell	X	X	X	X	O
Catawba	X	X	X	X	O
Conover	X	X	X	X	X
Hickory	X	X	X	X	X
Newton	X	X	X	X	X
Chatham	X *	X †	X	X	O
Pittsboro	X	X	X	X	O
Siler City	X *	X †	X	X	O
Cherokee	O	O	O	O	O
Andrews	X Off	X †	X	X	O
Murphy	O	X †	X	X	O
Chowan	X	X	X	X	O
Clay	O	O	O	O	O
Cleveland	O	O	O	O	O
Kings Mountain	X *	X	X	X	O
Shelby	X Off	X	X	X	O
Columbus	O	O	O	O	O
Bolton	X	X	X	X	O
Brunswick	O	X †	X	X	O
Chadbourn	X *	X †	X	X	O
Fair Bluff	X Off	X †	X	X	O
Lake Waccamaw	X Off	X †	X	X	O
Tabor City	X *	X	X	X	O
Whiteville	X	X	X	X	O
Craven	X	X	X	X	X
Cumberland	X * ‡	X †	X	X	X
Fayetteville	X	X	X	X	X
Hope Mills	X Off ‡	X Off †	X	X	X
Spring Lake	X Off ‡	X Off ‡	X	X	X
Currituck	X	X	X	X	O
Dare	X	X	X	X	O
Duck	X	X	X	X	X
Kill Devil Hills	X	X	X	X	X
Kitty Hawk	X	X	X	X	X
Nags Head	X	X	X	X	X
Davidson	O	O	O	O	O
High Point	X	X	X	X	X
Lexington	X Off ‡	X †	X	X	X
Thomasville	X Off	X Off	O	O	O
Davie	O	O	O	O	O
Cooleemee	X *	X	X	X	O
Duplin	O	O	O	O	O
Faison	X Off	X †	X	X	O
Greenevers	X Off	X Off	O	O	O
Kenansville	X * ‡	X † ‡	X	X	X
Rose Hill	X *	X	O	O	O
Wallace	X	X †	X	X	O
Warsaw	X Off	X	X	X	O
Durham	X	X	X	X	X
Edgecombe	X	X	X	X	O
Rocky Mount	X	X	X	X	X
Tarboro	X	X	X	X	X
Forsyth	X	X	O	O	O
Clemmons	X	X	X	X	X
Kernersville	X	X	X	X	X
Winston-Salem	X	X	X	X	X
Franklin	X	X	O	O	O
Bunn	X	X	X	X	O
Franklinton	X	X	X	X	O
Louisburg	X	X	X	X	X
Youngsville	X	X	X	X	O

Jurisdiction	Malt Beverages	Unfortified Wine	Fortified Wine	ABC Stores	Mixed Beverages
Gaston	O	O	O	O	O
Bessemer City	X	X †	X	X	O
Cherryville	X Off	X †	X	X	O
Gastonia	X Off ‡	X	X	X	X
Gates	X	X	X	X	O
Graham	O	O	O	O	O
Granville	X	X	X	X	O
Greene	X	X	X	X	O
Guilford	X	X	X	X	X
Gibsonville	X	X	X	X	X
Greensboro	X	X	X	X	X
High Point	X	X	X	X	X
Jamestown	X	X	X	X	X
Halifax	X	X	X	X	O
Weldon	X	X	X	X	X
Harnett	O	O	O	O	O
Angier	X	X †	X	X	O
Coats	X Off	X	X	X	O
Dunn	X	X †	X	X	O
Erwin	X	X	O	O	O
Lillington	X Off	X	X	X	O
Haywood	O	O	O	O	O
Canton	X Off	X	X	X	O
Maggie Valley	X	X †	X	X	X
Waynesville	X	X †	X	X	O
Henderson	O	O	O	O	O
Fletcher	X * ‡	X	X	X	X
Hendersonville	X * ‡	X Off †	X	X	X
Laurel Park	X	X	X	X	X
Hertford	X	X	X	X	O
Ahoskie	X	X	X	X	X
Hoke	X Off	X †	X	X	O
Hyde	X	X	X	X	O
Iredell	X	X	O	O	O
Mooresville	X	X	X	X	O
Statesville	X	X	X	X	X
Jackson	O	O	O	O	O
Sylva	X *	X †	X	X	O
Johnston	O	X †	X	X	O
Benson	X	X	X	X	O
Clayton	X Off	X †	X	X	O
Four Oaks	X Off	X	X	X	O
Kenly	X Off	X †	X	X	O
Selma	X	X	X	X	O
Smithfield	X	X †	X	X	O
Jones	X	X	X	X	O
Lee	O	O	O	O	O
Broadway	X	X	O	O	O
Sanford	X	X †	X	X	X
Lenoir	X	X	X	X	O
Kinston	X	X	X	X	X
Lincoln	O	O	O	O	O
Lincolnton	X Off	X †	X	X	O
McDowell	O	O	O	O	O
Marion	X Off	X †	X	X	O
Macon	O	O	O	O	O
Highlands	X Off	X †	X	X	O
Madison	O	O	O	O	O
Hot Springs	X Off	X Off	X	O	O
Martin	X	X	X	X	O
Mecklenburg	X	X	X	X	X
Mitchell	O	O	O	O	O
Montgomery	O	O	O	O	O
Biscoe	X Off	X †	X	X	O
Candor	X Off	X Off	O	O	O
Mount Gilead	X	X	X	X	O
Troy	X Off	X	O	O	O
Moore	O	O	O	O	O
Aberdeen	X	X	X	X	X
Cameron	X Off	X Off	O	O	O
Carthage	X * ‡	X †	X ‡	X	X
Country Club of North Carolina	B	B	B	O	X
Foxfire Village	X	X	X	O	X
Little River Tnsp	A B	A B	A B	O	A
McNeill Tnsp	B	B	B	O	X
Mineral Springs Tnsp	B	B	B	O	X
Pine Bluff	C	C	C	O	A
Pinehurst	X	X	X	X	X
Sandhills Tnsp	A B	A B	A B	O	A
Seven Lakes	B	B	B	O	X
Southern Pines	X	X	X	X	X
Vass	B	B	B	O	X
West End	B	B	B	O	X
Whispering Pines	X	X	X	O	X
Nash	X	X	X	X	O
Rocky Mount	X	X	X	X	X
New Hanover	X	X	X	X	X
Northampton	X	X	X	X	O
Onslow	X	X	X	X	X
Orange	X	X	X	X	X
Pamlico	X	X	X	X	O
Oriental	X	X	X	X	X
Pasquotank	X	X	X	X	O
Elizabeth City	X	X	X	X	X
Pender	X *	X	X	X	O
Perquimans	X	X	O	O	O
Hertford	X	X	X	X	O
Winfall	X	X	X	X	O
Person	X	X	X	X	O
Pitt	X	X	X	X	O
Greenville	X	X	X	X	X
Polk	O	O	O	O	O
Columbus	X *	X *	X *	X	X
Tryon	X	X	X	X	X
Randolph	O	O	O	O	O
High Point	X	X	X	X	X
Liberty	X	X	X	X	O
Randleman	X Off	X †	X	X	O
Richmond	X	O	O	O	O
Hamlet	X	X	X	X	O
Rockingham	X	X	O	O	O
Robeson	O	O	O	O	O
Fairmont	X Off	X †	X	X	O
Lumberton	X *	X *	X	X	O
Maxton	X Off	X †	X	X	O
Pembroke	X Off	X †	X	X	O
Red Springs	X Off	X †	X	X	O
Rowland	X Off	X †	X	X	O
Saint Pauls	O	X †	X	X	O
Rockingham	X	X	O	O	O
Eden	X	X †	X	X	O
Madison	X	X	X	X	O
Reidsville	X	X	X	X	X
Rowan	X	X	X	X	O
East Spencer	X	X	X	X	X
Salisbury	X	X	X	X	X
Rutherford	O	O	O	O	O
Lake Lure	X ‡	X †	X	X	X
Rutherfordton	X Off	X †	X	X	O
Sampson	O	O	O	O	O
Clinton	X Off	X †	X	X	O
Garland	X Off	X †	X	X	O
Newton Grove	X	X †	X	X	O
Roseboro	X Off	X †	X	X	O
Scotland	X Off	X †	X	X	O
Laurinburg	X Off ‡	X †	X	X	X
Stanly	O	O	O	O	O
Norwood	X Off	X Off	X	X	O
Stokes	X	X	O	O	O
Walnut Cove	X	X	X	X	O
Surry	X	X	O	O	O
Dobson	X	X	X	X	O
Elkin	X	X †	X	X	O
Mount Airy	X	X	X	X	O
Swain	O	O	O	O	O
Bryson City	X Off ‡	X †	X	X	X
Transylvania	O	O	O	O	O
Brevard	X Off	X	X	X	O
Rosman	X	X	X	O	O
Tyrrell	X	X	X	X	O
Columbia	X R	O	O	O	O
Union	O	O	O	O	O
Indian Trail	X Off	X Off	O	O	O
Marshville	X *	X	O	O	O
Monroe	X Off	X †	X	X	O
Stallings	X Off	X Off	O	O	O
Waxhaw	X Off	X †	X	X	O
Weddington	X Off	X Off	O	O	O
Wingate	X Off	X Off	O	O	O
Vance	X	X	X	X	O
Henderson	X	X	X	X	X
Wake	X	X	X	X	X
Warren	X	X	X	X	O
Washington	X	X	X	X	O
Watauga	O	O	O	O	O
Beech Mountain	X * ‡	X	X ‡	O	X
Blowing Rock	X *	X †	X	X	X
Boone	X *	X	X	X	O
Seven Devils	X *	X	O	O	X
Wayne	O	X †	X	X	O
Fremont	X	X †	X	X	O
Goldsboro	X	X	X	X	X
Walnut Creek	X	X	X	X	X
Wilkes	X	X	O	O	O
North Wilkesboro	X	X	X	X	X
Wilkesboro	X	X	X	X	X
Wilson	X	X	X	X	O
Wilson	X	X	X	X	X
Yadkin	O	O	O	O	O
Yancey	O	O	O	O	O

Source: Compiled by the Department of Commerce, North Carolina Alcoholic Beverage Control Commission, Raleigh, N.C.

Continued from page 39

Table 1.) Only six small counties (Clay, Cleveland, Graham, Mitchell, Yadkin, and Yancey) prohibit all retail sales of alcoholic beverages. But even in those counties, there may very well be some areas where alcoholic beverages are available (as through "local-type" acts or otherwise, as described above). Numerous other counties have not approved the sale of any beverages on a countywide basis, but they are available in cities or elsewhere. Harnett County, for example, has never voted in favor of any alcoholic beverages, but beer and wine are available in five of its municipalities (four of which also have ABC stores). Ours is now a local option system with ever fewer local options.

One possibility for change would be to more closely scrutinize the types of establishments that can qualify for ABC permits. Under current provisions of G.S. Chapter 18B, most outlets of major hamburger chains could qualify for some kind of ABC permit. In fact, some of these outlets could qualify for a full range of ABC permits, including mixed beverages. Of especial concern are establishments that have a reputation for rowdiness, including intoxication, affrays, and the presence of illegal drugs.

Another possible change in the current local option system would be to grant to local governments greater power to use their zoning authority to control the location and number of retail ABC establishments. By current law, the General Assembly has delegated to the state the exclusive authority to determine the fitness of applicants and premises for ABC permits.[18] As that law has been interpreted,[19] local governments are severely restricted in regulating locations of ABC establishments through their zoning powers. A bill introduced in the 1993 General Assembly would increase local zoning authority in this regard.[20] Or, in the alternative, the statutes could be amended to give cities and counties more say with regard to who may obtain (or keep) an ABC permit. Currently local governments can object formally to the issuance of a permit, but the final decision rests with the state ABC commission.

A third alternative would be to eliminate local option, thus making the entire state wet for all beverages. Table 1 would not exist. The citizens of North Carolina may be perfectly content to rely primarily on regulation at the state level. When the local option system was implemented more than half a century ago, substance abuse was limited almost exclusively to alcohol. Today the public seems to be much more concerned about the health and crime problems associated with the illegal distribution and use of controlled substances. ❖

Notes

1. 1923 N.C. Pub. L. ch. 1.
2. Pasquotank, Pitt, Beaufort, Martin, Halifax, Edgecombe, Carteret, Craven, Onslow, Wilson, Greene, Lenoir, Warren, Vance, Franklin, and Nash. 1935 N.C. Pub. L. ch. 493.
3. 1937 N.C. Pub. L. ch. 49.
4. 1939 N.C. Pub. L. ch. 158, art. VI. An earlier attempt to deal with this subject was made by the 1937 General Assembly [1937 N.C. Pub. L. ch. 127].
5. 1947 N.C. Sess. Laws ch. 1084.
6. 1941 N.C. Pub. L. ch. 339.
7. 1941 N.C. Pub. L. ch. 339, sec. 6.
8. Letter to Sam Johnson, dated January 11, 1966.
9. 1967 N.C. Sess. Laws ch. 222.
10. 1977 N.C. Sess. Laws ch. 1138.
11. The maximum alcoholic content of unfortified wine is currently set at 17 percent, while fortified wine may consist of up to 24 percent of alcohol by volume. See G.S. 18B-101.
12. 1935 N.C. Pub. L. ch. 493, sec. A.
13. G.S. 18B-600(f).
14. As would otherwise be the case under G.S. 18B-600(f).
15. This provision was originally contained in G.S. 18A-38(F).
16. See, for example, the malt beverages column for Banner Elk and Beech Mountain in Avery County.
17. Gardner v. Reidsville, 269 N.C. 581, 153 S.E.2d 139 (1967); Smith v. County of Mecklenburg, 280 N.C. 497, 187 S.E.2d 67 (1972).
18. G.S. 18B-901.
19. *In re* Application of Melkonian, 85 N.C. App. 351, 355 S.E.2d 503 (1987), *cert. denied*, 320 N.C. 631, 360 S.E.2d 91 (1987).
20. SB 61, 1993 General Assembly, Reg. Sess.

At the Institute

Institute Faculty Members Volunteer Time to Estonia's Young Democracy

In the United States it seems a big deal to change from a Republican to a Democratic administration, or vice-versa. The scope of change in former Communist countries is of an entirely different order.

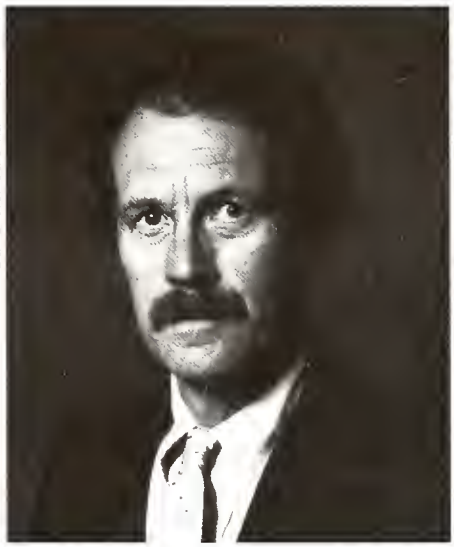
Capitalist free enterprise cannot operate under the same governmental structures that supported centralized planned economies. Democratic civic involvement is incompatible with old systems of governmental administration that focused on control of the citizenry. People in Hungary and Russia and Poland are determined to achieve freedom of speech, freedom of religion, and freedom to engage in profit-making activity, but their immediate job is to put into place the machinery of government to foster these freedoms.

What system fosters an independent judiciary? If these countries are to have private ownership of property, how can they efficiently and fairly tax it? If local government is really to exercise authority, what is to be its relationship to the central authority?

Unlikely as it seems, from faraway North Carolina the Institute of Government is playing a role for several of these governments. First, a book by faculty members William A. Campbell and David M. Lawrence, *North Carolina City and County Privilege License Taxes*, was translated into Romanian. And then came an invitation from the officials in Estonia, a Baltic republic, to assist Tartu University in setting up for Estonia an institute much like this one. That invitation came in part through the work of McNeill Smith, a Greensboro lawyer who has been the liaison in Estonia for the American Bar Association's Central and Eastern European Law Initiative.

Dan Sears/Carolina News Services

A. Fleming Bell, II



Dan Sears/Carolina News Services

David M. Lawrence

With private funding, Lawrence and Institute colleague A. Fleming Bell, II, will visit Estonia in June to explore possibilities for cooperation.

"With the benefit of that experience," says Institute of Government Director Michael R. Smith, "the Institute will make judgments about how it can serve the interests of democracy in Eastern Europe—on a very limited basis—without detriment to its program of service to North Carolina."

—Robert P. Joyce

Students in Environmental Teaching Honor Heath

At the end of the spring semester, students in the Department of Environmental Sciences and Engineering at The University of North Carolina at Chapel Hill awarded Institute of Government faculty member Milton S. Heath, Jr., the Newton Underwood Memorial Award for excellence in teaching.

Heath has taught environmental law and policy courses to Chapel Hill graduate students since 1961. He also teaches a companion course in the School of the Environment at Duke University.

Like all Institute faculty members, Heath teaches mainly in typical Institute short courses designed to meet the practical needs and tight schedules of North Carolina public officials; his fields are natural resources law and environmental protection law.

But, also like many of his Institute colleagues, Heath apparently enjoys the change of pace involved in teaching regular semester-long courses in UNC degree-granting programs. Several other faculty members at the Institute recently have taught in campus departments, including Stephen Allred, Kurt J. Jenne, David M. Lawrence, and A. John Vogt in the political science department's masters of public administration program; William A. Campbell, Anne M. Dellinger, and Lawrence again in the law school; David W. Owens in the Department of City and Regional Planning; and Jeffrey S. Koeze in the School of Public Health.

—Editors

Lynch Retires from Institute of Government

Ronald G. Lynch, a specialist in law enforcement administration, retired from the Institute of Government faculty in early 1993.

Lynch brought to the Institute a rare combination of practical experience in his field (he was at one time an executive in the police department in Dade

Ronald G. Lynch

County, Florida, and was chief of police in Lakewood, Colorado) and legal training (he earned his law degree from the University of Miami).

During his twenty-one years at the Institute, Lynch sponsored seminars and schools in effective management, including an annual Police Executive Development Program, and consulted on management matters with virtually every local jurisdiction in North Carolina. During the last several years, a major management consulting project with the State Bureau of Investigation occupied about half his time. As the management faculty on the Institute grew, Lynch worked closely with psychologists and organizational specialists to expand the Institute's management training offerings.

He is now a chief officer in the Orange County sheriff's office in Orlando, Florida. *—Editors*

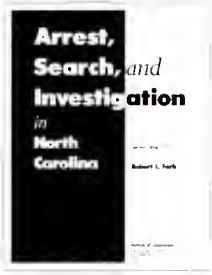
N. C. Bar Association Honors Mesibov

The North Carolina Bar Association this spring honored Institute of Government faculty member Laurie L. Mesibov with its Distinguished Service Award for service in education law. The presentation was made at the annual meeting of the bar association's Education Law Section, whose membership comprises most North Carolina lawyers working in the education law field.

Mesibov, a former public school teacher, has specialized in education law at the Institute since 1984. The award citation made reference to her teaching (she sponsors both the annual school attorneys conference and the annual school board law conference), to her writing (she is editor of the *School Law Bulletin* and the author of many articles on education law), and to her role as counselor by telephone, letter, and visit to hundreds of school attorneys, superintendents, principals, and other administrators. She is an expert in many areas of education law, especially in special education, school governance, curriculum, and academic matters, and the state School Budget and Fiscal Control Act.

Mesibov received her A.B. in history with distinction from Stanford, where she was inducted into Phi Beta Kappa, and her J.D. from the School of Law at The University of North Carolina at Chapel Hill. She is currently an associate professor of public law and government. *—Editors*

Off the Press



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