PUBLISHED BY THE INSTITUTE OF GOVERNMENT ■ THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

Popular Government

WINTER 2003
VOL. 68, NO. 2
$9.00

NORTH CAROLINA'S RESOURCE FOR PUBLIC OFFICIALS

When May Your Employer Require You to Take a Drug Test?

Also

Paying Up Front for Waste Disposal

Ensuring Financial Auditors' Independence

Involving Stakeholders in Evaluations

¿Habla Usted Espanol? Cities' Options for Language Services

Popular Government

James Madison and other leaders in the American Revolution employed the term "popular government" to signify the ideal of a democratic, or "popular," government—a government, as Abraham Lincoln later put it, of the people, by the people, and for the people. In that spirit *Popular Government* offers research and analysis on state and local government in North Carolina and other issues of public concern. For, as Madison said, "A people who mean to be their own governors must arm themselves with the power which knowledge gives."

Popular Government (ISSN 0032-4515) is published three times a year by the Institute of Government. Address: CB# 3330 Knapp Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; telephone: (919) 966-5381; fax: (919) 962-0654; website: www.iog.unc.edu. Subscription: $20.00 per year + 7% tax for NC residents.

POSTMASTER: Please send changes of address to Eva Womble, Institute of Government, CB# 3330 Knapp Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; telephone: (919) 966-4156; fax: (919) 962-2707; e-mail: womble@iogmail.iog.unc.edu.

INSTITUTE of GOVERNMENT

Established in 1931, the Institute of Government provides training, advisory, and research services to public officials and others interested in the operation of state and local government in North Carolina. The Institute and the university's Master of Public Administration Program are the core activities of the School of Government at The University of North Carolina at Chapel Hill.

Each year approximately 14,000 city, county, and state officials attend one or more of the 230 classes, seminars, and conferences offered by the Institute. Faculty members annually publish up to fifty books, bulletins, and other reference works related to state and local government. Each day that the General Assembly is in session, the Institute's *Daily Bulletin*, available in print and electronically, reports on the day's activities for members of the legislature and others who need to follow the course of legislation. An extensive website (www.iog.unc.edu) provides access to publications and faculty research, course listings, program and service information, and links to other useful sites related to government.

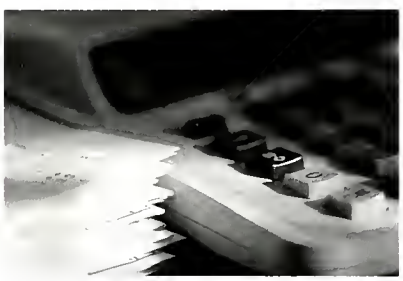
Support for the Institute's operations comes from various sources, including state appropriations, local government membership dues, private contributions, publication sales, and service contracts. For more information about the Institute, visit the website or call (919) 966-5381.

Popular Government

WINTER 2003 • VOLUME 68, NUMBER 2

Page 4

Page 17



Page 24

Page 29

ON THE COVER

Unlike most private employers, public employers may not freely test their employees for drugs. The courts have established rules that public employers must follow.

Study of Juvenile Representation in Delinquency Proceedings Under Way

The Bill of Rights is not for adults alone. So held the U.S. Supreme Court in 1967 in the case of *In re Gault*, in which the Court found grave disparities between the protections afforded to juveniles alleged to be delinquent and the rights of adults charged with committing a crime. *Gault* extended several parts of the Bill of Rights to juveniles, including the right to be represented by counsel. If a child and his or her parents cannot afford a lawyer, then one must be appointed for the child at state expense. The right to counsel may be the most important of the rights established by *Gault*. Without the assistance of knowledgeable and able counsel, a juvenile is ill equipped to enforce his or her other legal rights.

How have juveniles in North Carolina fared in the thirty-six years since *Gault*? Do they have adequate access to counsel? Are the services being provided by counsel effective? The questions are timely and important. The demands on today's juvenile counsel are enormous. They not only bear the responsibility of defending against allegations that the juvenile engaged in misconduct—much as a criminal lawyer would do in representing an adult charged with a crime—but they also must gather and present information about the juvenile's personal history, family situation, schooling needs, and community ties to assist the court in developing an appropriate, individualized disposition for the juvenile.

In an effort to enhance juvenile representation, North Carolina's Office of Indigent Defense Services (IDS) has obtained the assistance of two centers sponsored by the American Bar Association (ABA), the national Juvenile Justice Center in Washington, D.C., and the Southern Juvenile Defender Center at Emory University in Atlanta. IDS was created by the General Assembly in 2000 to manage the state's $70 million indigent defense budget and to oversee and improve the delivery of legal services to indigent defendants and others entitled to counsel at state expense. At IDS's request the two ABA centers will study the strengths and weaknesses of North Carolina's system of juvenile representation. The ABA will bear the cost of the centers' work.

According to Tye Hunter, executive director of IDS, "This project has great potential to aid us in determining the areas in which our juvenile justice system functions well and the areas in which we fail to provide adequate services to North Carolina's children."

Teams of national and in-state experts will visit several counties in North Carolina from January through March 2003 to observe court proceedings and

Courtesy of ABA Juvenile Justice Center

interview judges, attorneys, and other participants in the juvenile court system. In-state representatives include faculty from UNC Chapel Hill's Institute of Government and Duke University's and North Carolina Central University's law schools, members of the district court bench, and attorneys who regularly represent juveniles in North Carolina's courts. Written surveys also will be circulated statewide to gather additional information about juvenile representation.

The ABA has conducted such studies in several other states, including Georgia, Kentucky, Louisiana, Texas, and Virginia. (More information about them can be obtained from the ABA's website, www.abanet.org/crimjust/juvjus/pubs.html.)

The report is projected to be completed by spring or early summer 2003. For more information, contact Danielle Carman, assistant director of IDS, e-mail Danielle.M.Carman@nccourts.org, or John Rubin of the Institute of Government, e-mail rubin@iogmail.iog.unc.edu. Or visit the IDS website, at www.ncids.org, where the report will be posted.

School Receives Grant to Promote Partnerships in Community Improvement

The Jessie Ball duPont Fund has awarded the School of Government a grant to develop techniques that will help local leaders in business, philanthropy, government, and nonprofits identify ways to collaborate in addressing pressing community problems. Through interviews, focus groups, and conversations, School of Government personnel hope to learn about the challenges these sectors face in working together. They then will design ways to encourage cross-sector dialogue—for example, through training exercises and other written materials.

New Law Expands State Authority to Act in Event of Bioterrorism

The anthrax letter attacks of fall 2001 prompted legislators and public health officials throughout the United States to evaluate whether their state laws would support an effective response to a public health threat caused by a bioterrorist attack. Many states began their efforts by reviewing the Model State Emergency Health Powers Act, a draft law designed to serve as a template for new state laws establishing or clarifying the role and the power of public health systems in emergencies. (The model act is available on the Internet at www.publichealthlaw.net.)

Public health officials in North Carolina undertook such a review in winter 2001–02, comparing the provisions of the model act to existing state laws and considering how the public health system's legal duties or authorities should be changed or expanded to allow for an appropriate response to bioterrorism.

The review revealed that North Carolina had in place some of the fundamental legal tools for responding to a public health threat caused by bioterrorism. For example, the state's communicable disease laws required physicians and others to report known or suspected communicable diseases and conditions, thus allowing public health officials to detect cases or outbreaks of diseases that could indicate an occurrence of an attack with a biological agent. State law also required all people to comply with communicable disease control measures and authorized public health officials to issue isolation or quarantine orders when necessary to contain the spread of disease.

However, considerably less legal authority existed to support a public health response to a threat caused by nuclear or chemical agents. Moreover, the state's public health laws did not provide authority for some activities that would aid early detection of a bioterrorist act. For example, the laws did not authorize public health officials to test property for possible contamination by nuclear, biological, or chemical agents, and they did not make clear that health care providers could report information about suspicious symptoms and syndromes, as well as specific diseases, to public health officials.

In October 2002 the North Carolina General Assembly enacted a law giving public health officials new powers and duties to address some of the issues uncovered by the review. Session Law 2002-179 builds on existing public health laws governing communicable disease control and the abatement of public health nuisances and imminent hazards. Some portions of the new law are loosely based on the model act, but the law does not adopt the model act or embrace all its provisions.

- Among other things, the new law grants new powers to the state health director to order tests and investigations to determine whether a public health threat exists because of bioterrorism. The new powers are available only when bioterrorism is suspected.
- gives public health officials new access to information about symptoms, syndromes, and trends that could indicate a public health threat caused by bioterrorism. The new law also authorizes, and in limited circumstances requires, health care providers to make reports to public health officials when they detect suspicious symptoms, syndromes, and trends.
- creates new, explicit legal protections for people who are affected by certain public health orders, such as quarantine orders confining them to their homes or orders closing property for public health investigations. Such orders are time-limited and in some circumstances subject to review by a court.
- addresses planning and communication among state agencies that are likely to have a role in responding to a bioterrorist attack.

Health Law Bulletin No. 79, *New North Carolina Public Health Bioterrorism Law*, by Jill Moore, summarizes the key provisions of the new law. It is available through the School of Government's Publication Sales Office, telephone (919) 966-4119, or on the Internet at https://iogpubs.iog.unc.edu/.

Gordon Whitaker, Lydian Altman-Sauer, and Margaret Henderson make up the School of Government team for the undertaking, called the Public Intersection Project. "The interests of organizations intersect when they share common concerns," said Whitaker. "Unfortunately, local leaders often fail to recognize their shared concerns or to see people in other sectors as potential partners in community betterment."

The project builds on the team's previous efforts to strengthen nonprofit-government relationships. It also complements and supplements the School of Government's ongoing work with local communities across the state to close the academic achievement gap between white and minority students in elementary and secondary schools. This ongoing work is a collaboration with Dean Duncan at the School of Social Work and the Z. Smith Reynolds Foundation.

For more information, contact Henderson, telephone (919) 966-3455, e-mail mindfullconsult@mindspring.com.

Safety versus Privacy:

When May a Public Employer Require a Drug Test?

Diane M. Juffras

Few personnel policies are as eagerly embraced by employers as drug-testing policies, but for public employers, few are as fraught with constitutional issues. Imagine that you are a human resources director. Your manager tells you that the governing board wants him to draft a drug-testing policy and he needs your help. Can the board require all employees to undergo random drug testing, he asks? If not, what is the standard for determining who may be required to do so? Can the board test for off-duty drug use? And shouldn't the policy include alcohol as well? This article reviews the law governing the random testing of public employees for the use of drugs and alcohol, discusses current law regarding other bases for substance-abuse testing, and suggests ways for public employers to develop policies that will withstand legal challenges.

Basic Rules

Three basic rules govern drug testing of public employees. First, a public employer may engage in random drug testing only of employees in safety-sensitive positions. It may not require employees whose primary duties are not likely to endanger the public or other employees to submit to random drug testing. Second, a public employer may ask *any* employee—in a safety-sensitive position or not—to take a drug test if it has a reasonable, individualized suspicion that the employee is using illegal drugs. Third, a public employer may, the law seems to say, require applicants for employment to submit to drug testing as part of the application process.

The rules regarding drug testing are not nearly as strict for private employers. They may test whenever they want unless a contract or a collective bargaining agreement restricts them. Why the distinction? Because the Fourth Amendment to the U.S. Constitution, which protects people from unreasonable searches and seizures, applies to public employers but not private employers.[1] The Supreme Court has held that urinalysis (the most commonly used method of drug testing)—or any other forced collection of bodily fluids or breath samples—is a search within the meaning of the Fourth Amendment.[2] And what the government may not do in the context of its police power, it may not do as an employer.[3]

The Supreme Court has held that urinalysis (the most commonly used method of drug testing)—or any other forced collection of bodily fluids or breath samples—is a search within the meaning of the Fourth Amendment.

Special Needs of Public Employers

This means that a public employer's drug-testing policy must meet the Fourth Amendment's requirement that it be reasonable. In most criminal cases, police searches must be authorized by a warrant issued on probable cause to be considered reasonable and thus legal. The Supreme Court has recognized, however, that governments have special needs or interests that arise outside the context of regular law enforcement—for example, governmental employment. In such a context, warrant and probable cause requirements are simply not practical.[4] Rather, the test of the reasonableness of a practice, or search, is whether the intrusion on the individual's Fourth Amendment privacy interests is outweighed by the legitimate government interests that the practice furthers.[5] When the special interest is compelling and the intrusion minimal, a public employer may engage in random drug testing not only without a warrant or probable cause but also without any individualized suspicion.[6]

The Supreme Court has analyzed the special needs exception for drug testing of public employees in three cases: *Skinner v. Railway Labor Executives' Association*, *National Treasury Employees Union v. Von Raab*, and *Chandler v. Miller*.

In *Skinner* the Court held that Federal Railroad Administration regula-

The author is a School of Government faculty member specializing in public personnel law. Contact her at juffras@iogmail.iog.unc.edu.

tions requiring blood and urine tests for railway workers following certain types of train accidents, whether or not reasonable suspicion was present, were constitutional because their value in promoting public safety outweighed their intrusion into employees' privacy.[7]

In *Von Raab* the Court upheld as constitutional a U.S. Customs Service requirement that employees seeking promotion to certain positions involved in halting the flow of illegal drugs undergo drug testing, even in the absence of individualized suspicion. The Court found three compelling government interests: maintaining the integrity of the Customs Service workforce, protecting the public from public employees carrying firearms, and regulating the types of people with access to classified information.[8] Indeed, the government's interest in ensuring that personnel working on the front lines of the drug war were of unimpeachable integrity was by itself sufficiently compelling to outweigh the privacy interests of the employees involved. Employees engaged in drug control efforts are routinely exposed to organized crime and illegal drug use, have access to contraband, and are the targets of bribery by drug smugglers and dealers to a far greater extent than other employees.[9]

Finally, in *Chandler* the Court held that a Georgia law requiring all candidates for state office to pass a drug test was unconstitutional. The state presented no evidence that drug use among public officials was widespread, and made no showing that public safety was in jeopardy. The Court found that, in contrast to the needs of the Customs Service in *Von Raab*, Georgia's interest in ensuring that its public officials were not drug users was merely symbolic of its commitment to ending drug abuse, rather than special within the meaning of the exception to the warrant requirement of the Fourth Amendment.[10]

Development of a Drug-Testing Policy

Neither *Skinner*, *Von Raab*, nor *Chandler* sets forth a rule by which constitutional drug-testing policies can be easily distinguished from unconstitutional policies. So how can a public employer develop a legal but workable drug-testing policy? By keeping in mind the general principles that emerge from *Skinner*, *Von Raab*, *Chandler*, and the lower court decisions that have followed them.

First and most important, each decision to require an employee to undergo drug testing (random or otherwise) is subject to the Fourth Amendment balancing test. That test asks: what government interest is served by requiring drug testing under these circumstances, and is that interest so compelling as to outweigh the intrusion that drug testing imposes on the privacy interests of the employee holding the position?

Second, the courts have generally found that urine and blood tests pose a minimal invasion of employees' privacy interests, given the widespread use of such tests in regular medical examinations. This is especially true when a urine sample is collected in conditions approximating those people routinely encounter at a doctor's office: in an enclosed bathroom where others can neither see nor hear the act of urination. When employees must urinate in the presence of a monitor, the intrusion is more substantial but generally still not enough to tip the balance in favor of privacy when the government's interest is otherwise compelling.[11]

In addition, because certain industries and professions already are extensively regulated for safety purposes, some employees start with a diminished expectation of privacy. For example, as a condition of employment, law enforcement officers typically agree to take medical examinations, consent to criminal background and credit checks, and authorize the employing agency to see otherwise confidential information. The courts have therefore held, without exception, that such employees have a diminished expectation of privacy.[12]

Because certain industries and professions already are extensively regulated for safety purposes, some employees start with a diminished expectation of privacy. For example, as a condition of employment, law enforcement officers typically agree to take medical examinations, consent to criminal background and credit checks, and authorize the employing agency to see otherwise confidential information.

Third, and on the other side of the balancing test, courts almost always find that protection of the public from immediate threats to its safety is a compelling government interest that outweighs any intrusion on employees' privacy, whatever the type of drug testing involved. In fact, for most public employers, the potential threat to either public safety or the safety of other employees is likely the *only* interest that will justify a random drug-testing program. The cases make clear that a government's general interest in maintaining the integrity of its workforce is not a sufficiently compelling interest to justify random drug testing of its entire workforce. Only when employees are actually involved in enforcement of drug laws is the government's interest in workforce integrity compelling enough to outweigh privacy interests.[13]

Finally, no matter how compelling a government's interest, random drug testing is permissible only if the employer gives employees general notice, preferably at the start of their employment, that they are subject to the testing requirement.[14] A newly adopted drug-testing

The courts have generally found that urine and blood tests pose a minimal invasion of employees' privacy interests, given the widespread use of such tests in regular medical examinations. This is especially true when a urine sample is collected in conditions approximating those people routinely encounter at a doctor's office.

policy may apply to old and new employees alike. The employer must simply give affected employees—current and incoming—notice and an explanation of the random drug-testing policy before the first employee is called in for a test.

Random Drug Testing

Testing of Employees in Safety-Sensitive Positions

Given that random drug testing of public employees is illegal in the absence of an immediate threat to public safety, for most public employers, identifying positions that may legitimately be deemed safety-sensitive is one of the most critical parts of developing a drug-testing policy. What makes a position safety-sensitive? In short, the specific job duties assigned to that position.

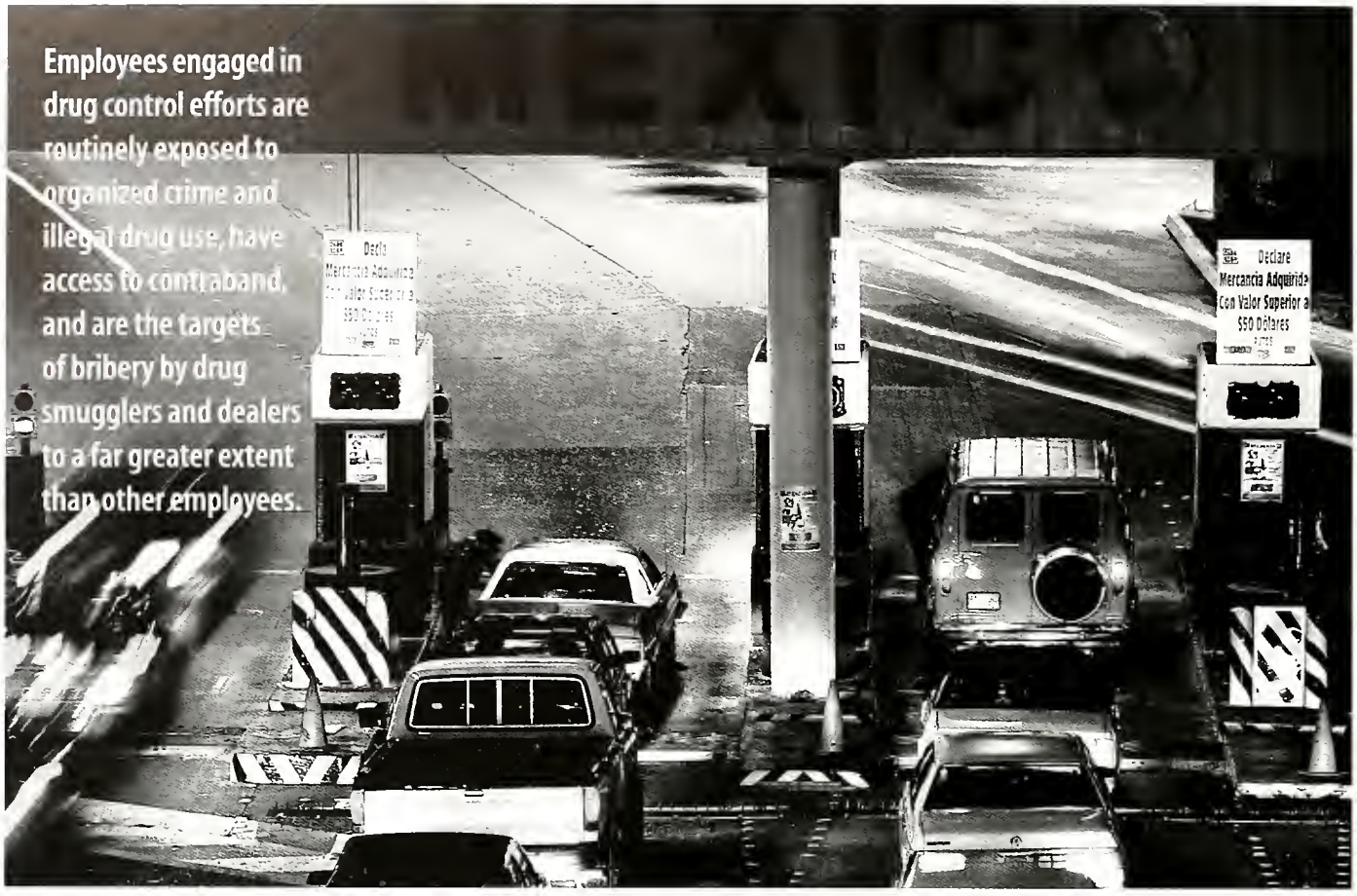
When asked to decide whether a particular position is safety-sensitive, the courts focus on the immediacy of the threat posed by a potential drug-induced mistake or failure in the performance of specific job duties. As the Supreme Court expressed it, a safety-sensitive position is one in which the duties involve "such a great risk of injury to others that even a momentary lapse of attention can have disastrous consequences."[15] Or, as a lower court said, "The point . . . [is] that a single slip-up by a gun-carrying agent or a train engineer may have irremediable consequences; the employee himself will have no chance to recognize and rectify his mistake, nor will other government personnel have an opportunity to intervene before harm occurs."[16]

There is no dispute about whether an error by an armed officer could result in the death or the injury of another. Hence the courts have considered armed law enforcement officers safety-sensitive positions,[17] as they have firefighters;[18] emergency medical technicians;[19] other health care professionals responsible for direct patient care;[20] people who operate, repair, and maintain passenger-carrying motor vehicles;[21] drivers of sanitation trucks;[22] and employees with access to chemical weapons and their components.[23]

Identifying a position's implications for public safety is not always so easy, however. What about a 911 dispatcher, for example? If this position is responsible for relaying directions and other preparatory information to first responders, a mistake could result in a delay that costs people their lives. So the position would likely be considered safety-sensitive.

A bus dispatcher, then? A police department receptionist? A police department desk sergeant? Although a bus dispatcher whose performance is impaired might give incorrect information to a driver, possibly leading to a delay, in the ordinary course of events, an immediate threat to public safety is unlikely. Each position in each jurisdiction is unique, however. The decision not to classify the position of bus dispatcher as safety-sensitive might well change if the duties included, for example, emergency management and evacuation responsibilities.[24]

As for the police department receptionist and desk sergeant, the mere fact that an employer is a law enforcement



Employees engaged in drug control efforts are routinely exposed to organized crime and illegal drug use, have access to contraband, and are the targets of bribery by drug smugglers and dealers to a far greater extent than other employees.

agency does not render all its positions safety-sensitive. A law enforcement agency could not legitimately include in a random drug-testing program a receptionist who simply greeted visitors and transferred telephone calls or a law enforcement officer whose duties were all administrative, unless the officer was expected to carry a gun.

The threat posed by an employee's drug-impaired performance does not have to be a threat to individual safety for the government's interest to be compelling. A threat to public health generally or to the environment can justify random drug testing. Employees of sewage and wastewater treatment plants also may occupy safety-sensitive positions. Sewage disposal is heavily regulated by both state and federal environmental protection agencies, precisely because of the harm that sewage spills can cause. In addition, depending on the position, wastewater treatment plant employees may regularly use hazardous chemicals and equipment that pose great danger, and may have responsibility for responding to emergency situations.[25]

Driving as a Safety-Sensitive Activity

For many public employees, driving is a regular part of the workday. For some it is a primary duty, as with bus, sanitation truck, or ambulance drivers. For others it is a means of carrying out their primary duties, as with a visiting nurse employed by a health department or a traveling caseworker for the department of social services. Still others drive on an occasional basis—for example, when a deadline makes dropping something off more efficient than mailing it, or when employees cannot wait to reorder a needed supply that runs low.

May all these categories of "driving employees" be required to undergo random drug testing? The courts have said no.

In determining whether an employee who drives on the job is in a safety-sensitive position, the test is not merely whether the employee's primary job duty is to drive, but whether performance of the employee's job duties requires driving on a regular basis, as compared with a position in which an employee might on occasion decide or be asked to drive.[26]

A comparison of two cases helps illustrate the difference. In the first case (one of the few reported North Carolina cases to consider safety-sensitive positions), the court held that a ventilation system mechanic employed by an airport authority held a safety-sensitive position because to access the terminals' heating and cooling equipment, he regularly had to drive a vehicle on the flight area apron near jetliners.[27]

In contrast, in the second case, the court found that secretary to the Leavenworth County, Kansas Commission on Aging was not a safety-sensitive position. The secretary's duties were primarily clerical, but occasionally she drove a car to deliver meals-on-wheels to senior citizens when regularly scheduled volunteers did not show up. Because of this occasional on-duty driving, the county classified her position as safety-sensitive and required her to submit to random drug testing. The court, however, held that "when the employee's duties require driving, such as the duties of one who patrols or makes pick-ups, that employee's position is safety-sensitive. When driving

is only incidental to other duties that engage no safety concern, the employee's position is not safety-sensitive."[28]

To return to the examples set forth earlier, because of the role that driving plays in the performance of their duties, bus driver, sanitation truck driver, and ambulance driver may be considered safety-sensitive positions and included in a random drug-testing program. So may the human services employees who drive vehicles to reach their clients. But the employee who drives occasionally, whether to fill in, in a pinch, or to pick up something urgently needed, may not be required to submit to random drug testing in the absence of individualized, reasonable suspicion that he or she has been using illegal drugs.

Custodians, Technicians, and Repairmen

The law is much less clear when it comes to employees who use and service equipment and systems. Consider a transportation system custodian, whose regular job duties include cleaning transit-stop locations, facilities, and equipment; painting facilities and equipment; cleaning vehicles; and removing trash and debris. One court found that the position was not safety-sensitive because it did not involve an unusual degree of danger to the employee or others.[29] Another court, however, found that elementary school janitor was a safety-sensitive position because (1) the janitor handled potentially dangerous machinery such as lawn mowers and tree-trimming equipment, and hazardous substances like cleaning fluids, in an environment that included a large number of children between the ages of three and eleven, and (2) the presence of someone using illegal drugs could increase the likelihood that the children might obtain access to drugs.[30] The distinguishing factor in the second example was the presence of young children, which some courts see as transforming jobs that are otherwise not fraught with risk and danger into bona fide safety-sensitive positions.[31]

Some positions whose duties do pose safety risks may nonetheless be deemed *not* to be safety-sensitive because the personal conduct of the employees and their job performance are subject to day-to-day scrutiny by supervisors and co-workers, who are likely to notice any impairment. In one case a federal district court found that elevator mechanics working for a transit authority were in safety-sensitive positions, not simply because elevators might fail, but also because the mechanics were subject to little supervision on the job. On the other hand, carpenters, masons, ironworkers, plumbers, and painters working for the transit authority were not in safety-sensitive positions because they either worked in pairs or were subject to direct supervision.[32]

Drug Testing Based on Reasonable Suspicion

Drug testing based on a suspicion that a particular public employee is using illegal drugs also is considered a Fourth Amendment search. Like random drug testing, drug testing based on reasonable suspicion is subject to the Fourth Amendment balancing test that weighs the government's interest against the employee's. Testing based on reasonable suspicion is considered less intrusive than random testing because the employee's own action or conduct triggers it.[33]

Reasonable suspicion is determined case by case. The courts agree that it takes less for an employer to meet the standard of reasonable suspicion than it does for police to show probable cause for a criminal search warrant. Yet reasonable suspicion must amount to more than a hunch. Supervisors must point to specific, objective facts and be able to articulate rational inferences drawn from those facts in light of their experience.[34]

An employer does not need a formal policy defining reasonable suspicion before it can test employees on that basis, but a written policy can be useful. By making known its criteria for finding reasonable suspicion, an employer gives employees fair notice of the circumstances in which they will be required to submit to a drug test. It also provides guidance to supervisors who are confronted with the possibility that an employee is using drugs and are uncertain whether they should require the employee to submit to a drug test. Giving guidance to supervisors, in turn, helps ensure uniform administration of the drug-testing program.

A parent called the school system to complain that her child's school bus had arrived late and that when the bus doors opened, she smelled marijuana. The mother identified both herself and her child. The school system reported the mother's complaint to the driver and asked him to take a drug test. Not once did the driver suggest that there was any reason to doubt the mother's reliability. The court ultimately held that the drug test did not violate the Fourth Amendment, given the nature of the driver's job, but noted that it was a close case.

For all these reasons, a policy that sets forth the circumstances under which supervisors can require drug testing also increases the chances that a court will uphold a drug test as reasonable if the employee challenges it. Criteria that the courts have found constitutional include the following:

- Direct observation of drug use or possession.
- Direct observation of the physical symptoms of being under the influence of a drug, such as impairment of motor functions or speech.
- A pattern of abnormal conduct or erratic behavior.
- Arrest or conviction for a drug-related offense, or the identification

of an employee as the focus of a criminal investigation into illegal drug possession, use, or distribution.

- Information that is provided by reliable and credible sources or that can be independently corroborated.
- Newly discovered evidence that the employee tampered with a previous drug test.[35]

Some courts have found the third criterion just listed to be too broadly worded and to invest too much discretion in an individual supervisor's judgment to make drug testing reasonable.[36] But drawing up a comprehensive list of abnormal behavior that would justify drug testing is not practical. What is "abnormal" or "erratic" in one individual or one situation may be quite normal in another. Some employers have dealt with this problem by requiring that any observation of erratic or unusual behavior be made by a supervisor (or sometimes by two supervisors) trained to recognize the signs of drug use.[37]

Federal Railroad Administration regulations requiring blood and urine tests for railway workers following certain types of train accidents, whether or not reasonable suspicion was present, are constitutional because their value in promoting public safety outweighs their intrusion into employees' privacy.

The Problem of the Tip

A difficult situation arises when someone other than a trained supervisor reports possible drug use. Three cases illustrate the difficulty of evaluating such reports and the importance of corroborating evidence. In the first case, a public hospital employee, R., noticed a cut straw with some white powdery residue at the tip in the chart room. Two coworkers, A. and B., also were in the room. When R. returned to the room a short time later, the straw was gone. R. could not identify the powdery residue, had no training in identifying drug use or even in identifying medicines, and later admitted that she could not tell the difference between cocaine and powdered milk. R. nevertheless reported to her supervisor that she suspected A. and B. of using illegal drugs. No other employee had reported that he or she suspected drug use by A. and B., and no one had observed any erratic behavior or performance problems on their part. The chart room was an all-purpose room in which food was sometimes stored and employees sometimes used straws to mix patients' medications. Nevertheless, the hospital asked A. and B. to submit to a strip search. The search turned up no evidence of drug use. R., however, had a reputation for honesty, so hospital management told A. and B. that pursuant to its drug-free workplace policy, they would have to submit to a drug test. When they refused, they were dismissed.

The North Carolina Court of Appeals overturned the dismissal. There was nothing wrong with the hospital's drug-free workplace policy on its face, the court said, but the hospital had not satisfied any of the criteria set forth in the policy for finding reasonable suspicion. The hospital had demanded that A. and B. take a drug test solely on the basis of another employee's hunch, not on the basis of specific facts.[38]

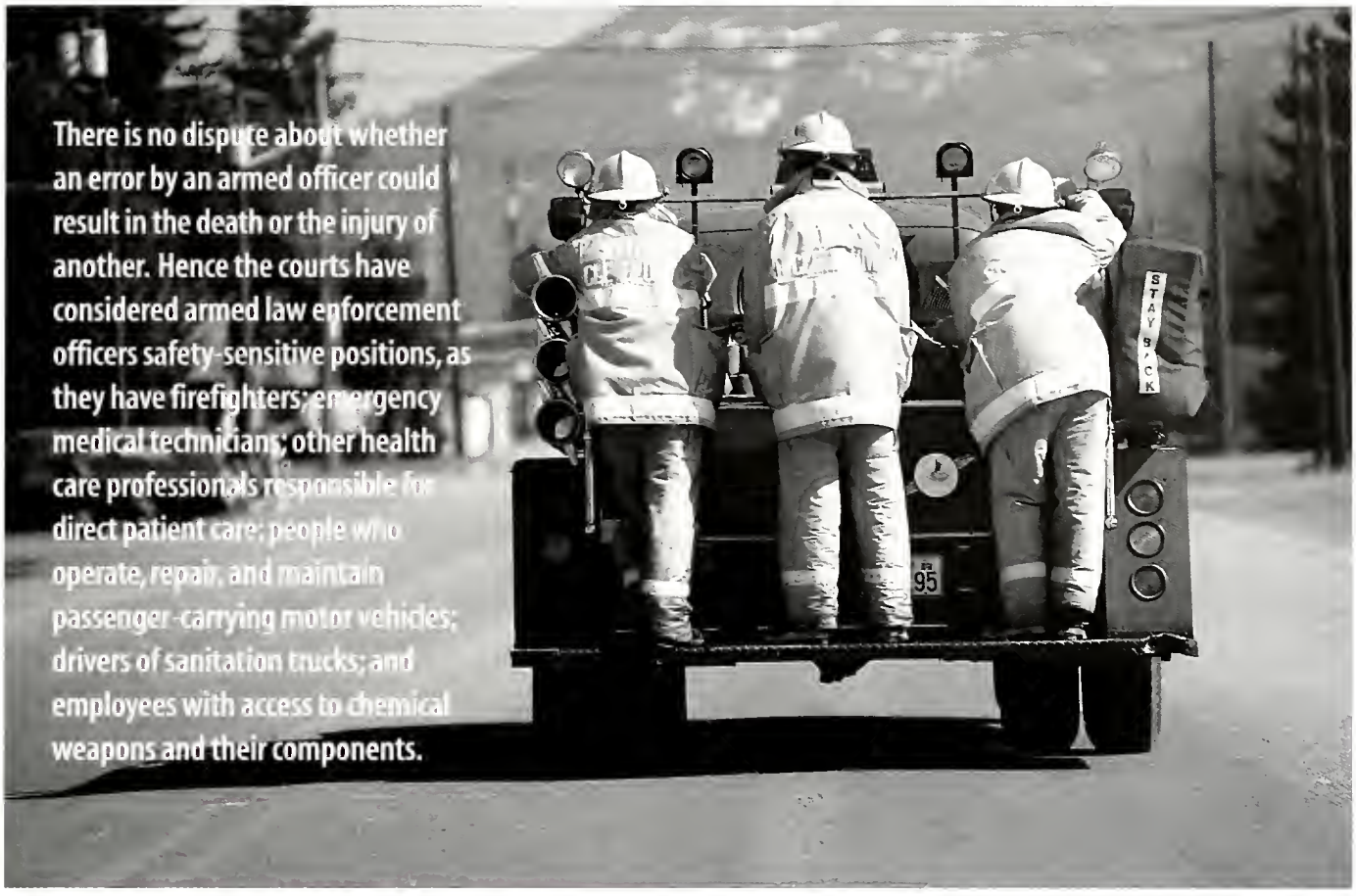
In the second case, a chief of police received a phone call from a man who claimed that he had known C., one of the city's police officers, for twelve years and had seen him coming off a heroin high the previous day. The caller said that was why C. had called in sick that day (and indeed he had). This was not an anonymous tip: the caller gave his name and phone number. The chief had previously received an anonymous tip that C. had been seen at a known drug bazaar, but had decided not to investigate the allegation without more evidence. This time the city administered a drug test to C., which he failed. The city terminated C. The court held that the city had reasonable suspicion, so the drug test was legal, as was C.'s termination for illegal drug use.[39]

In the third case, a parent called the school system to complain that her child's school bus had arrived late and that when the bus doors opened, she smelled marijuana. The mother identified both herself and her child. The school system reported the mother's complaint to the driver and asked him to take a drug test. Not once did the driver suggest that there was any reason to doubt the mother's reliability. The court ultimately held that the drug test did not violate the Fourth Amendment, given the nature of the driver's job, but noted that it was a close case.[40]

As these three cases show, an employer must evaluate both the nature of a report of drug use or suspicious behavior, and the reliability of the informant. Is the report based on personal observation or on inference? Does the informant have any training in recognizing the signs of drug use? In general, the more detailed the tip, the greater its credibility for Fourth Amendment purposes. When the information is less detailed, corroboration can give it greater credibility.

In the first case, R.'s information was not very detailed: she saw an unidentified white powder in a hospital setting, but she did not see A. or B. handle the powder or otherwise engage in questionable activity. No one else reported anything out of the ordinary about A.'s and B.'s behavior. R. had a reputation for honesty, but the problem was not that what she reported was untrue. Rather, R. and hospital management made unwarranted inferences from facts that could lend themselves to a variety of interpretations. For example, the straw may have been used to mix a medication or to stir creamer into coffee.

In the second case, in contrast, the tipster said he had seen C. take heroin and



knew things about C. that tended to corroborate his claim. In addition, an earlier report had attributed drug use to C.

As for the reliability of the informants, in both the second and the third case, the informants said who they were and where they could be reached for further questioning. In neither case was there any evidence suggesting that the informant had an ulterior motive in making the report or was otherwise not likely to be credible.

On-Duty versus Off-Duty Use of Drugs

A public employer always may require its employees to submit to a drug test when it reasonably suspects drug use on duty. When an employee's duties involve public safety or welfare, the courts usually will find that the government has a compelling interest in having that employee refrain from narcotics use while off duty, because the impairment caused by earlier drug use may continue even after the employee has returned to work and may not be noticed until after an accident or an injury occurs. Therefore an employer is not required to demonstrate that the job performance of an employee in a safety-sensitive position is impaired in order to require a drug test based on reasonable suspicion of off-duty drug use.

Testing other employees based on a suspicion of off-duty drug use is another matter. Employees who do not hold safety-sensitive positions may be tested for use of illegal drugs only if there is reasonable suspicion of on-duty use or impairment. Why the different standard? Because outside a law enforcement context, the government's legitimate interest in whether its employees are using drugs extends no further than its interest in their workplace conduct and their performance of job duties.[41]

This limitation on a public employer's ability to require drug testing applies equally to "at-will employees" (those who can be fired for any reason or no reason) and to "employees with property rights in their employment" (those who are protected by a statute or an ordinance limiting their termination to circumstances in which there is just cause).

Testing after an Accident or an Unsafe Practice

Many jurisdictions make drug testing mandatory after an on-the-job accident or an "unsafe practice"(a practice that endangers the employee or others). Others include accidents among the criteria on which reasonable suspicion may be based. This certainly seems reasonable in the ordinary sense of the word, but is it legal? As with most other aspects of drug testing, the answer is that it depends on whether the personnel involved are in safety-sensitive positions.

The reasons for requiring post-accident or unsafe-practice testing for employees in safety-sensitive positions are several. First, such a requirement has a great deterrent effect. As the Supreme Court put it in *Skinner*,

> *[B]y ensuring that employees in safety-sensitive positions know they will be tested upon the occurrence of a triggering event, the timing of which no employee can predict with certainty, the regulations significantly*

increase the deterrent effect of the administrative penalties associated with the prohibited conduct, . . . [while] increasing the likelihood that employees will forgo using drugs or alcohol while subject to being called for duty.[42]

Second, *positive* test results may suggest to investigators that drug impairment caused the accident, contributed to the severity of the injuries, or caused a delay in obtaining help for the injured.

Conversely, *negative* test results may allow investigators to rule out drug use as a cause. In most cases, discovering whether drug impairment may have been a cause is only possible by conducting a drug test soon after the accident.[43]

The government argued that because studies had shown drug users to have higher rates of absenteeism and dismissal than other employees, its mandatory pre-employment drug-screening program served a compelling government need.

In *Skinner*, where the specific issue before the Supreme Court was the constitutionality of post-accident testing of railway employees, the Court concluded that the government's interest in preventing train accidents and identifying their causes was compelling and would be hindered by a requirement that the railroad have individualized reasonable suspicion with respect to the employees involved.[44] Train accidents pose the threat of injury and damage on a large scale. Drafting a post-accident testing policy for a railroad is therefore easier than drafting one for a local government employer or a state agency, because state and local government employees may be involved not only in serious accidents but in minor fender-benders that do not result in personal injury or in major property damage. In the case of other types of public employees, the lower courts have generally found post-accident testing reasonable when immediate and significant threats to public safety are involved. But they have not found policies requiring testing of all employees after an accident or an unsafe practice to be constitutional because not all employees have a diminished expectation of privacy—an employee whose driving is incidental to his or her primary duties, for example—and because such policies are not responsive to an identified problem in drug use.[45] The policies are both underinclusive (because only people involved in accidents in the course of employment are to be tested) and overinclusive (because all people involved in accidents are tested, not just people injured under circumstances suggesting their fault).[46]

Suppose that a drug-testing policy provides for testing employees after every accident in which there is property damage of more than $1,000. A car driven by a county driver (a safety-sensitive position) is hit from behind at a red light, and repair obviously will cost more than $1,000. The police are called to make an accident report. The county driver clearly was not at fault. The other driver acknowledges that it was his mistake. Under these circumstances a court would be unlikely to find a compelling government interest in drug-testing the county employee that outweighs the employee's privacy interest.

Post-accident and unsafe-practice testing is subject to the Fourth Amendment balancing test. A good policy of this kind therefore should indicate the magnitude of personal injury or property damage that is sufficient to trigger a drug test. In general, for post-accident and unsafe-practice testing to be reasonable, the lower the threshold for triggering a test, the more safety-sensitive the position covered by the policy must be.[47] Courts have found, for example, that a policy calling for the testing of *any* employee in any accident involving $1,000 of damage is too broad.

The policy also should define its terms: Do "accidents" include dropping computers or other valuable items on the employer's premises, or are they limited to incidents involving motor vehicles? Are accidents in which fault lies with the other party included? Does the term "personal injury" mean any personal injury? Courts have generally found that policies providing for testing whenever an accident has caused a personal injury are too broad to be reasonable. On the other hand, they have found reasonable a policy calling for testing when there is "an injury demanding medical treatment away from the scene of an accident,"[48] and a policy requiring testing when there has been a personal injury requiring immediate medical attention.[49]

Likewise, it is advisable to put a dollar value on the amount of property damage that will trigger the need for a drug test. Using terms like "major" or "minor" accident leaves too much discretion to individual supervisors in deciding whether testing is reasonable.[50]

Testing of Job Applicants

May a North Carolina public employer require pre-employment drug testing of all applicants? The answer is unclear. Neither the U.S. Court of Appeals for the Fourth Circuit (the federal appeals court whose jurisdiction includes North Carolina) nor the North Carolina appellate courts have addressed this issue. Like every aspect of drug testing, the question is subject to the Fourth Amendment balancing test with respect to each position: is the government's need to conduct drug testing of a person in this position, under these circumstances, so compelling that it outweighs the individual's privacy interests?

It can be argued that mandatory drug testing of all applicants for government positions does not violate the Fourth Amendment. First, the privacy interests of applicants are not as great as those of current employees. Applicants have

Health care workers in public hospitals are subject to drug testing on the basis of reasonable suspicion that they are using drugs.

control over whether or not they will be subject to drug testing in that nothing compels them to apply for a job in the public sector. Instead, the obligation to undergo a drug test is triggered by the applicant's desire for a government job. This, several courts have noted, is very different from the position in which current government employees find themselves when a drug-testing policy is first adopted or an existing policy is newly applied to them: they must submit to the drug test or lose their jobs.[51]

Second, many state and local public employers require applicants to authorize a criminal or general background check before they can be considered for a position. This also diminishes applicants' expectations of privacy.[52]

Third, at the applicant stage, drug testing almost always is conducted under conditions similar to those found at the doctor's office.[53] Courts acknowledge that even under such conditions, mandatory urinalysis is an invasion of privacy, but they consider the intrusion to be minimal.

The privacy interests of applicants are not as great as those of current employees. Applicants have control over whether or not they will be subject to drug testing in that nothing compels them to apply for a job in the public sector.

Public employers should keep in mind, however, that many of the cases in which courts have approved of mandatory drug testing of *all* applicants for government positions have been ones in which the named plaintiffs have been applicants for safety-sensitive positions (or for positions relating to national security, not relevant here).[54] In a case involving an attorney applicant for a non-safety-sensitive position in the U.S. Department of Justice's Antitrust Division, the government argued that because studies had shown drug users to have higher rates of absenteeism and dismissal than other employees, its mandatory pre-employment drug-screening program served a compelling government need. The federal appeals court for the District of Columbia agreed.[55]

However, the court's conclusion is not uniformly shared. Other courts have focused more narrowly on the relationship between the duties of individual positions and the potential harm that could result from drug use by a person in a given position. A federal court found Georgia's Applicant Drug Screening Act to be unconstitutional. The act required *all* applicants for state employment to submit to a drug test. When challenged, the state cited as its compelling interest its general desire to maintain a drug-free workplace. This interest, the court held,

was not enough to tip the balance in favor of drug testing.[56]

Another federal court rejected a Florida city's claim that the need for public confidence in municipal government justified a mandatory pre-employment drug-testing policy that applied to all applicants for all positions without regard to the particular job duties involved and without distinguishing between positions that were safety-sensitive and those that were not.[57] Both the Georgia court and the Florida court noted that the intrusions on applicants' privacy were minimal but found the employees' privacy interests to be stronger than the government's concern with the public perception of its workforce.

The U.S. Supreme Court has never directly addressed this issue. *Von Raab* and *Chandler*, however, imply that mandatory pre-employment drug testing of all applicants would be unconstitutional. In *Von Raab* the Supreme Court pointedly distinguished between employees involved in drug control—who should expect an inquiry into personal information—and "government employees in general." In *Chandler*, in overturning the Georgia law that required all candidates for public office to undergo a drug test, the Court again stressed the unique circumstances of front-line drug interdiction that made the mandatory drug testing in *Von Raab* reasonable for Fourth Amendment purposes: "customs workers, *more than any other Federal workers*, are routinely exposed to the vast network of organized crime that is inextricably tied to illegal drug use."[58] But these are only observations that the Court made in explaining its holdings and are not considered "law."

In the absence of controlling law from the Supreme Court, the Fourth Circuit Court of Appeals, or North Carolina state courts, it is unclear whether North Carolina public employers may require all applicants to undergo pre-employment drug testing. The constitutionality of such a practice is an open question, and North Carolina public employers should periodically review their drug-testing policies with their attorneys to make sure that the policies remain within the bounds of any changes in the law.

Alcohol Testing

Drug and alcohol testing have identical purposes: to prevent, to the extent possible, the accidents, injuries, mistakes, and general poor performance attributable to impaired employees. But drug and alcohol testing differ in one important respect: alcohol testing is significantly limited by the Americans with Disabilities Act (ADA), whereas drug testing is not. The ADA prohibits discrimination in employment based on disability.[59] Under the ADA, alcoholism is considered a disability, but current illegal drug addiction is not.[60] The ADA does not allow employers either to ask applicants any questions designed to uncover a disability or to require applicants to undergo any sort of medical examination (such as a blood test) before a conditional offer of employment has been extended.[61] For that reason an employer may ask an applicant to take a pre-employment drug test without violating the ADA but may not require a pre-employment alcohol test.

Drug and alcohol testing differ in one important respect: alcohol testing is significantly limited by the Americans with Disabilities Act (ADA), whereas drug testing is not. The ADA prohibits discrimination in employment based on disability. Under the ADA, alcoholism is considered a disability, but current illegal drug addiction is not.

Once a conditional offer of employment has been made, an employer may require the successful applicant to have a medical examination, which may include a blood test for the presence of alcohol. However, any decision to withdraw an offer on the basis of the results of the medical examination must be job related and consistent with business necessity.[62] An employer may withdraw a conditional offer because of conduct-based reasons, such as the applicant's showing up for a pre-employment physical examination under the influence of alcohol, but not because it suspects that the applicant is an alcoholic.[63]

Once an applicant becomes an employee, an alcohol test may be required only if the employer has reasonable suspicion that the employee has reported to work while under the influence of alcohol, in violation of established workplace policy.[64] An employer may require holders of a commercial driver's license and certain mass transit employees to undergo random alcohol testing in accordance with federal requirements (see the next section).[65] Under any other circumstances, though, random alcohol testing—even of employees in safety-sensitive positions—is probably illegal under the ADA in the absence of individualized suspicion of alcohol use by a particular employee.[66]

Testing of Employees with a Commercial Driver's License and Mass Transit Employees

The federal Omnibus Transportation Employee Testing Act of 1991 requires employers to conduct drug and alcohol testing on employees who drive a vehicle requiring a commercial driver's license and on certain mass transit employees in accordance with the U.S. Department of Transportation's testing procedures.[67]

The Federal Motor Carrier Safety Administration (FMCSA), a division of the Department of Transportation, issues the rules governing substance-abuse testing of employees driving a commercial vehicle.[68] The FMCSA defines "commercial motor vehicle" as a vehicle that is used in commerce to transport passengers *or* property, when the vehicle (1) weighs more than 26,001 pounds, (2) is designed to transport sixteen or more passengers, or (3) is

used in the transportation of hazardous materials. "Commerce" is broadly defined as "(1) any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State . . . and (2) [t]rade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition."[69]

The Federal Transit Administration (FTA), another division of the Department of Transportation, issues the rules governing the substance-abuse testing of employees in safety-sensitive positions in agencies receiving federal transit funds.[70] The FTA's regulations contain a definition of "safety-sensitive" that is specific to mass transit.

Both sets of regulations are comprehensive. They require pre-employment, post-accident, random, reasonable-suspicion, and return-to-duty testing, as well as follow-up testing after a previous positive drug test. They also require education programs for covered employees and supervisors alike. The regulations specify how tests results are to be reported and maintained, and what actions employers should take in the event of a positive result.

Most public employers will have at least some employees who drive commercial vehicles and are covered by the FMCSA regulations. Larger employers and regional mass transit authorities also will have employees covered by the FTA's mass transit rules. Such employees may be made subject to both the federal rules requiring testing and the individual employer's drug-testing policy, provided that the policy is reasonable within the meaning of the Fourth Amendment. For ease of administration, public employers may incorporate into their own policies as many of the rules and procedures of the Department of Transportation, the FMCSA, and the FTA as are appropriate, again subject to the requirement that they be reasonable within the meaning of the Fourth Amendment as they are applied to employees not otherwise subject to the federal standards.

Most public employers will have at least some employees who drive commercial vehicles and are covered by the FMCSA regulations. Larger employers and regional mass transit authorities also will have employees covered by the FTA's mass transit rules. Such employees may be made subject to both the federal rules requiring testing and the individual employer's drug-testing policy, provided that the policy is reasonable within the meaning of the Fourth Amendment.

Procedural Requirements

Regardless of how often and under what circumstances a North Carolina public employer decides to drug-test its workforce, the North Carolina General Statutes require that employers comply with the requirements set forth in Section 95-232 for the collection and retention of samples, chain of custody, use of approved laboratories, and retesting of positive samples. In accordance with Section 95-234(e), the secretary of labor has adopted additional rules governing drug-testing procedures. They may be found at Rules 20.0101–20.0602 of the North Carolina Administrative Code (volume 13).

Notes

1. The Fourth Amendment is applicable to state and local governments through the Fourteenth Amendment.

2. *See* Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 616–17 (1989).

3. *See* O'Connor v. Ortega, 480 U.S. 709, 717 (1987).

4. New Jersey v. T.L.O., 469 U.S. 325, 337 (1985); *Skinner*, 489 U.S. at 619.

5. *Skinner*, 489 U.S. at 619, *citing* Delaware v. Prouse, 440 U.S. 648, 654 (1979); United States v. Martinez-Fuerte, 428 U.S. 543 (1976).

6. National Treasury Employees Union v. Von Raab, 489 U.S. 656, 670 (1989).

7. *Skinner*, 489 U.S. at 628–29, 633–34.

8. *See Von Raab*, 489 U.S. at 669–71, 677.

9. *Id.* at 670, 674.

10. *See* Chandler v. Miller, 520 U.S. 305, 321–22 (1977).

11. *Skinner*, 489 U.S. at 625; Willner v. Thornburgh, 928 F.2d 1185, 1190–91 (D.C. Cir. 1991).

12. *See, e.g., Von Raab*, 489 U.S. at 667, 671–72; Carroll v. City of Westminster, 233 F.3d 208, 212 (4th Cir. 2000); Guiney v. Roache, 873 F.2d 1557, 1558 (1st Cir. 1989); National Fed'n of Federal Employees v. Cheney, 884 F.2d 603, 612 (D.C. Cir. 1989); Policemen's Benevolent Ass'n Local 318 v. Township of Washington, 850 F.2d 133 (3d Cir. 1988). *See also* Thomson v. Marsh, 884 F.2d 113, 115 (4th Cir. 1989) (holding that chemical weapons plant employees have reduced expectation of privacy due to job's special demands, requirement of extensive testing and probing, and need for security clearance).

13. *See Von Raab*, 489 U.S. at 670, 674; *Chandler*, 520 U.S. at 321; *Carroll*, 233 F.3d at 211. *See also* Harmon v. Thornburgh, 878 F.2d 484 (1989) (holding that federal government's interest in integrity of its workforce and in public safety did not justify random drug testing of all prosecutors and all employees with access to grand jury proceedings; only if there were separate category of drug prosecutors would random testing be justified under *Von Raab*).

14. *See Von Raab*, 489 U.S. at 672; *Carroll*, 233 F.3d at 211–12; Rutherford v. City of Albuquerque, 77 F.3d 1258, 1262 (10th Cir. 1996).

15. *See Skinner*, 489 U.S. at 628; *Von Raab*, 489 U.S. at 670.

16. *See Harmon*, 878 F.2d at 491.

17. *See Von Raab*, 489 U.S. at 667, 671–72; *Carroll*, 233 F.3d at 212; *Guiney*, 873 F.2d at 1558; *Cheney*, 884 F.2d at 612; *Policemen's Benevolent Ass'n*, 850 F.2d at 130.

18. *See, e.g.*, Wilcher v. City of Wilmington, 139 F.3d 366 (3d Cir. 1998).

19. *See, e.g.*, Saavedra v. City of Albuquerque, 917 F. Supp. 760, 762 (D.N.M. 1994), *aff'd*, 73 F.3d 1525 (10th Cir. 1996).

20. *See, e.g.*, American Fed'n of Gov't Employees, L-2110 v. Derwinski, 777 F. Supp. 1493, 1498, 1500 (N.D. Calif. 1991).

21. *See, e.g., id.*

22. *See, e.g.*, Solid Waste Drivers' Ass'n v. City of Albuquerque, 1997 WL 280761 *3 (D.N.M. 1997).

23. *See, e.g.*, Thomson v. Marsh, 884 F.2d 113, 115 (4th Cir. 1989).

24. On the difficulty of evaluating the safety-sensitive nature of a bus dispatcher position in the absence of a detailed job description, *see*

Gonzalez v. Metropolitan Transp. Auth., 174 F.3d 1016, 1022–23 (9th Cir. 1999).

25. *See* Kerns v. Chalfont–New Britain Township Joint Sewage Auth., 2000 WL 433983 *2 (E.D. Pa. 2000), *aff'd*, 263 F.3d 61 (2001). *See also* Geffre v. Metropolitan Council, 174 F. Supp. 2d 962, 967 (D. Minn. 2001); Bailey v. City of Baytown, 781 F. Supp. 1210 (S.D. Tex. 1991) (all holding that wastewater and sewage treatment plant operators are safety-sensitive positions).

26. Bannister v. Board of County Comm'rs of Leavenworth County, Kans., 829 F. Supp. 1249, 1253 (D. Kansas 1993).

27. *See* Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App., 149, 154, 432 S.E. 2d 137, 141 (1993).

28. *Bannister*, 829 F. Supp. at 1253, *quoting* Watson v. Sexton, 755 F. Supp. 583, 589 (S.D.N.Y. 1991) (holding that sanitation department enforcement agent, whose primary job duties were inspection of commercial and residential establishments for violations of sanitation codes, did not hold safety-sensitive position simply because she occasionally drove car to and from her rounds). *See also* American Fed'n of Gov't Employees, AFL-CIO v. Sullivan, 787 F. Supp. 255, 257 (D.D.C. 1992), and American Fed'n of Gov't Employees, AFL-CIO v. Sullivan, 744 F. Supp. 294, 301 (D.D.C. 1990) (holding that random drug testing of employees classified as motor vehicle operators who drove infrequently was unconstitutional).

29. *See* Bolden v. Southeastern Pa. Transp. Auth., 953 F.2d 807, 823 (3d Cir. 1991).

30. *See* Aubrey v. School Bd. of Lafayette Parish, 148 F.3d 559, 561, 564–65 (5th Cir. 1998).

31. The last example demonstrates the difficulties that both public employers and the courts have in deciding whether public school employees whose duties do not create a risk of danger to other adults should be deemed to be in safety-sensitive positions merely because they work in the presence of young children. A Tennessee court has held that school teachers occupy safety-sensitive positions, because even momentary inattention or a delay in dealing with a potentially dangerous or emergency situation poses a high risk of harm when children are involved. *See* Knox County Educ. Ass'n v. Knox County Bd. of Educ., 158 F.3d 361, 368–69 (6th Cir. 1998). In contrast, courts in New York, Georgia, and the District of Columbia have held that, although drug use can impair a teacher's ability to supervise children, that fact alone does not turn the position of teacher into a safety-sensitive one. *See* Patchogue-Medford Congress of Teachers v. Board of Educ. of Patchogue-Medford Union Free Sch. Dist., 505 N.Y.S. 2d 888, 891 (1986); Georgia Ass'n of Educators v. Harris, 749 F. Supp. 1110, 1114 (N.D. Ga. 1990); Bangert v. Hodel, 705 F. Supp. 643, 649 (D.D.C. 1989).

32. *See* Burka v. New York City Transit Auth., 751 F. Supp. 441, 443–44 (S.D.N.Y. 1990).

33. International Bhd. of Elec. Workers, Local 1245 v. Skinner, 913 F.2d 1454, 1464 (9th Cir. 1990); American Fed'n of Gov't Employees, L-2110 v. Derwinski, 777 F. Supp. 1493, 1501 (N.D. Calif. 1991).

34. Best v. Department of Health and Human Services, 149 N.C. App. 882, 893–95, *aff'd*, 356 N.C. 430 (2002); Nocera v. New York City Fire Com'r, 921 F. Supp. 192, 199 (S.D.N.Y. 1996).

35. *See, e.g., Best*, 149 N.C. App. at 893–94; *Knox County Educ. Ass'n*, 158 F.3d at 384–85; American Fed'n of Gov't Employees v. Martin, 969 F.2d 788 (9th Cir. 1992); *Derwinski*, 777 F. Supp. at 1501.

36. *See, e.g.,* National Treasury Employees Union v. Yeutter, 918 F.2d 968 (D.D.C. 1990); *Derwinski*, 777 F. Supp. at 1501.

37. *See, e.g., Martin*, 969 F.2d at 793.

38. *Best*, 149 N.C. App. at 884–88, 895–99.

39. *See* Carroll v. City of Westminster, 233 F.3d 208, 211–12 (4th Cir. 2000).

40. Armington v. School Dist. of Philadelphia, 767 F. Supp. 661, 667 (E.D. Pa. 1991), *aff'd*, 941 F.2d 1200 (3d Cir. 1991).

41. *See* Saavedra v. City of Albuquerque, 917 F. Supp. 760, 763 (D.N.M. 1994), *aff'd*, 73 F.3d 1525 (10th Cir. 1996); *Yeutter*, 918 F.2d at 974. *See also Martin*, 969 F.2d at 790–92.

42. *See* Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 630 (1989).

43. *See* Burka v. New York City Transit Auth., 739 F. Supp. 814, 829 (S.D.N.Y. 1990).

44. *See Skinner*, 489 U.S. at 633. *See also* International Bhd. of Teamsters, Chauffeurs, Western Conference of Teamsters v. Department of Transp., 932 F.2d 1292, 1308 (9th Cir. 1991).

45. *See* United Teachers of New Orleans v. Orleans Parish Sch. Bd. through Holmes, 142 F.3d 853, 856–57 (5th Cir. 1988); Stanziale v. County of Monmouth, 884 F. Supp. 140, 146–47 (D.N.J. 1995) (holding that mistake by sanitary inspector does not immediately jeopardize public health and safety).

46. *See United Teachers of New Orleans*, 142 F.3d at 856–57.

47. *See* Plane v. U.S., 750 F. Supp. 1358 (W.D. Michigan 1990); American Fed'n of Gov't Employees, AFL-CIO v. Sullivan, 744 F. Supp. 294 (D.D.C. 1990). *See also* American Fed'n of Gov't Employees, L-2110 v. Derwinski, 777 F. Supp. 1493, 1502 (N.D. Calif. 1991), *citing International Bhd. of Teamsters*, 932 F.2d at 1292.

48. *See Derwinski*, 777 F. Supp. at 1502.

49. *See* American Fed'n of Gov't Employees, AFL-CIO v. Roberts, 9 F.3d 1464, 1466 (9th Cir. 1993).

50. *See Derwinski*, 777 F. Supp. at 1502.

51. Harmon v. Thornburgh, 878 F.2d 484, 489 (1989) (comparing choice to apply for job requiring security clearance to choice to travel by air rather than by land and thus to subject oneself to FAA security inspections); Willner v. Thornburgh, 928 F.2d 1185, 1190 (D.C. Cir. 1991). Note that in *Von Raab*, one of the factors that lessened the privacy interest of the plaintiff-employees was that they were required to submit to a drug test only if they chose to apply for a promotion to a position involving drug interdiction.

52. *Willner*, 928 F.2d at 1190–91; National Treasury Employees Union v. Hallett, 756 F. Supp. 947, 948 (E.D. La. 1991).

53. *Willner*, 928 F.2d at 1189.

54. *See, e.g.*, National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989); *Harmon*, 878 F.2d 454; *Hallett*, 756 F. Supp. 947.

55. *Willner*, 928 F.2d 1185.

56. *See* Georgia Ass'n of Educators v. Harris, 749 F. Supp. 1110, 1114 (N.D. Ga. 1990).

57. *See* Baron v. City of Hollywood, 93 F. Supp.2d 1337, 1341–42 (S.D. Fl. 2000).

58. *See Von Raab*, 489 U.S. at 1394; Chandler v. Miller, 520 U.S. 305, 321 (1977) (emphasis added).

59. *See* 42 U.S.C. § 12112(a).

60. *See* 42 U.S.C. § 12114(a); 29 C.F.R. § 1630.3(a).

61. *See* 42 U.S.C. 12112(d)(2); 29 C.F.R. §§ 1630.13(a), 1630.14(a), (b).

62. *See* 42 U.S.C. § 12112(b); 29 C.F.R. § 1630.10.

63. Employers should consult with their attorneys before making any decision to withdraw an employment offer on the basis of the results of an alcohol screen. Even though the applicant has the burden of proving that the real reason for the failure to hire was the employer's perception that the applicant was an alcoholic, many juries would have little trouble making that inference.

64. *See* EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act, No. 915.002 (July 27, 2000), available online at www/eeoc.gov/docs/guidance-inquiries.html.

65. 29 C.F.R. § 1630.15(e) provides that "it may be a defense to a charge of discrimination . . . that a challenged action is required or necessitated by another Federal law or regulation."

66. The author has been unable to find a single case directly addressing this issue.

67. *See* 49 U.S.C. § 5331; 49 C.F.R. pt. 40.

68. *See* 49 C.F.R. pt. 382.

69. *See* 49 C.F.R. §§ 382.103, 382.107.

70. *See* 49 C.F.R. pt. 655.

Paying Up Front for Disposal of Special Wastes

Jeff Hughes

COURTESY OF THE NORTH CAROLINA DIVISION OF WASTE MANAGEMENT

How will we pay for it?" has become a common question asked by local governments across North Carolina. Finding funds for services has become particularly difficult in the last few years as many revenue streams of local governments have decreased or leveled off while service requirements and costs have continued to climb.

The effect of falling revenues on waste management and recycling services has received attention in both North Carolina and the nation. Many local governments that have traditionally relied on general fund revenues to finance their programs have begun imposing special fees or reducing services. For example, within a few months of taking office in New York, the mayor made national news by suspending some of the city's household recycling services.

For disposal of some goods—namely, large appliances and tires—North Carolina has introduced an innovative funding method. This article reports the state's reasons for introducing the method and discusses its features. The method also may work with electronic goods, which present similar environmental risks and costs.

For disposal of some goods—namely, large appliances and tires—North Carolina has introduced an innovative funding method.

Background

As part of the 1989 Solid Waste Management Act, North Carolina set ambitious goals for waste reduction.[1] The act authorizes the use of "reasonable fees" for waste disposal at government facilities. The act does not specify what types of fees to charge.

Properly disposing of special wastes such as large appliances, computers, fluorescent lights, and scrap tires costs money, sometimes a lot. Deciding how to pay for disposal raises fundamental policy concerns: Should the individuals and the groups that generate the waste pay the full cost, or should the cost be spread across society? What if the people who create the need cannot afford to pay the cost? What role should manufacturers, retailers, consumers, and local and state governments play in ensuring that funds are available to pay for waste management and recycling?

In North Carolina, most recycling and solid waste management programs are managed and funded entirely at the local level (by counties and municipalities). However, North Carolina has established two special programs in which the state plays a key role by collecting special taxes and distributing the revenues directly to local governments. The programs cover scrap tires and "white goods"—"refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances."[2]

The author is associate director of the Environmental Finance Center, a joint program of the School of Government and the Office of Economic Development (part of the Kenan Institute for Private Enterprise). Contact him at jhughes@unc.edu.

In 2000–01, counties reported spending about $8.85 million managing scrap tires and $5.59 million managing white goods.[3] Most of these expenditures were covered by proceeds from "advance disposal taxes," taxes paid on certain items by consumers at the time of purchase.[4]

COURTESY OF THE NORTH CAROLINA DIVISION OF WASTE MANAGEMENT

Uncovered tires became breeding grounds for mosquitoes, including the aggressive Asian Tiger mosquito, a carrier of the West Nile virus.

Problems Managing Special Waste

Illegal and inappropriate disposal of waste often leads to public health and environmental problems that cut across local government boundaries. In the 1980s, discarded refrigerators were a common sight alongside highways or at rural, unstaffed solid-waste collection centers. Publicized cases of children becoming trapped and suffocating in refrigerators highlighted how dangerous ill-managed waste could be. This knowledge, coupled with the realization that Freon gas and other chlorofluorocarbons contained in refrigeration and air conditioning units could endanger the atmosphere, contributed to making the disposal of white goods a public health issue as much as an aesthetic concern.

Illegal or unmanaged disposal of scrap tires led to similar problems. Uncovered tires became breeding grounds for mosquitoes, including the aggressive Asian Tiger mosquito, a carrier of the West Nile virus. A 1993 study identified the Asian Tiger mosquito at 29 of 38 illegal tire sites sampled.[5] Piles of tires have been known to burn uncontrollably for more than a year. In addition, whole tires buried in landfills tend to migrate to the top, leading to water infiltration and increased toxic seepage ("leachate"). The state began cataloging illegal tire sites in the mid-1990s and soon documented more than 350 such nuisances containing about 7 million tires.

Advance Disposal Fees

North Carolina began addressing the problems posed by these materials in the late 1980s through a series of regulations and programs, including bans on putting certain items in landfills and advance disposal fee programs (for a timeline, see Figure 1). North Carolina was one of the first states in the country to institute advance disposal fees. Their use for scrap tire and white goods programs now is common.

A significant difference between the North Carolina programs and programs in other states is that the North Carolina programs focus responsibility for dealing with these materials at the county level. In most states, funds generated by advance disposal fees finance statewide or commercial initiatives for processing materials, rather than locally incurred management costs. From the beginning, the North Carolina programs were designed to be pass-through programs, in which the state collected funds and distributed them directly to local governments. In the case of the scrap tire program, an advance disposal tax that passed revenues through to local governments was implemented at the same time that the ban on disposing of whole tires in landfills was put into effect. The ban

Figure 1. **Timeline of Advance Disposal Tax Programs in North Carolina**

1989

Solid Waste Management Act of 1989. (S.L. 1989-784). Banned white goods and batteries from landfills, effective 1/1/91.

Scrap Tire Disposal Act. (S.L.1989-784). Established 1% scrap tire tax, effective 1/1/90. Assigned responsibility for proper disposal of scrap tires to counties.

1990

Effective date of **scrap tire tax**, 1/1.

Effective date of **landfill ban on whole scrap tires**, 3/1.

1991

Effective date of **landfill ban on white goods**, 1/1.

1993

S.L. 1993-471. **Created white goods tax** of $10 per item with chlorofluorocarbon refrigerants, $5 per item without, to be effective 1/1/94 , to expire 7/1/98. Required counties to provide at least one collection site for discarded white goods.

S.L. 1993-548. **Increased tax for tires less than 20 inches in diameter** from 1% to 2%, to be effective 10/1/93, to expire 6/30/97.

1994

Several hundred illegal tire sites documented in North Carolina.

Effective date of **white goods tax**, 1/1.

COURTESY OF ORANGE COUNTY DEPARTMENT OF SOLID WASTE MANAGEMENT

1997	1998	2001	2002	
S.L. 1997-209. **Changed expiration date for 2% scrap tire tax** from 6/30/97 to 6/30/02.	S.L. 1998-24. **Reduced white goods tax** to $3 for all major appliances; set tax to expire 7/1/01.	**Known number of illegal tire sites reduced to 31.** S.L. 2001-265. **Eliminated sunset clause on white goods tax,** thereby making tax permanent.	S.L. 2002-10. **Eliminated sunset clause on scrap tire tax,** thereby making tax permanent.	*Source:* NORTH CAROLINA LEGISLATION SUMMARIES (Chapel Hill: Inst. of Gov't, Univ. of N.C. at Chapel Hill, 1989, 1993, 1997, 1998, 2001).

Contacts for More Information about Advance Disposal Taxes

Jeff Hughes, Environmental Finance Center (a joint program of the School of Government and the Office of Economic Development, Kenan Institute for Private Enterprise), telephone (919) 843-4956, e-mail *jhughes@unc.edu*

Division of Waste Management, (919) 733-4996

Division of Pollution Prevention and Assistance, (919) 715-6500

Figure 2. **Flow of Funds from Scrap Tire Tax**

Consumer pays tax to retailer.

Retailer transfers money to Department of Revenue (which takes small amount for administering program).

68% goes to county programs on per capita basis.

27% goes to Scrap Tire Disposal Account, of which 50% goes as supplemental grants to counties for overruns, 40% goes to stimulate markets, and 10% goes to cleanup of illegal tire sites.

5% goes to waste management trust fund for broader recycling grants.

The state began cataloging illegal tire sites in the mid-1990s and soon documented more than 350 such nuisances containing about 7 million tires.

COURTESY OF THE NORTH CAROLINA DIVISION OF WASTE MANAGEMENT

on putting white goods in landfills was put into effect in 1990, but at the time it was not linked to any revenue source dedicated to disposal of white goods. In 1993, though, partially because of the higher costs associated with the state-mandated recovery of chlorofluorocarbons, an advance disposal tax on white goods was instituted. It provided counties with funds for managing white goods, at the same time prohibiting them from charging separate disposal fees. In effect, this action made the disposal of white goods appear to be free to consumers, thus eliminating one of the reasons for the rampant illegal dumping of white goods across the rural North Carolina landscape.

Since the programs' inception, the funds have been distributed quarterly to eligible counties, without interruption. These distributions have led to a continuous, stable funding source. Many local governments complain about so-called unfunded environmental mandates. The scrap tire and white goods programs are "funded mandates."

In 2000–01, consumers paid an extra $15.5 million in advance disposal taxes as they purchased large appliances and tires.[6] A flat $3 tax is collected when appliances are purchased, and a 2 percent tax (1 percent for heavy truck and off-road tires) is levied on the price of new tires. In both cases, retailers add the cost of the taxes to the purchase price and submit the proceeds to the State Department of Revenue.

The rationale for assessing these taxes at the time of purchase is that it creates a link between the purchase of the product and the ultimate cost of its disposal. There is considerable public policy debate about whether an advance disposal fee is the most effective or fair system of paying for waste management programs. Some believe that manufacturers should become better stewards, ensuring that their products are appropriately disposed of by developing a disposal system or a mandatory take-back system and incorporating the cost of the system into the product price. Others believe that consumers should pay for disposal at the time of disposal rather that at the time of purchase. Opponents of this approach argue that payment at the time of disposal provides an incentive for illegal dumping (to avoid the fees).

Figure 3. **Flow of Funds from White Goods Tax**

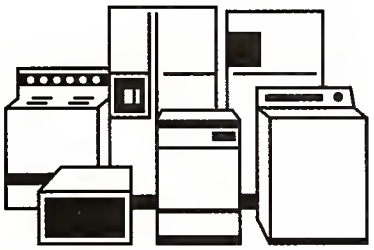
Consumer pays $3 per appliance to retailer.

Retailer transfers money to Department of Revenue (which takes small amount for administering program).

72% goes to eligible county programs on per capita basis.

20% goes to white goods management account for supplemental grants to counties for overruns.

8% goes to waste management trust fund for broader recycling grants.



A flat $3 tax is collected when appliances are purchased, and a 2 percent tax (1 percent for heavy truck and off-road tires) is levied on the price of new tires. In both cases, retailers add the cost of the taxes to the purchase price and submit the proceeds to the State Department of Revenue.

Courtesy of the North Carolina Division of Waste Management

Flow of Funds

The proceeds from the special taxes for the scrap tires and white goods programs are sent to the Department of Revenue for distribution. The department retains a portion (approximately 2.5 percent in 2001–02) to cover collection costs. About 70 percent of the net proceeds are distributed directly to counties on the basis of population. Both programs include separate funds managed by the North Carolina Department of Environment and Natural Resources to provide additional money to counties for costs that exceed their allocation. A portion of the scrap tire proceeds also funds grants to promote and stimulate markets for tire recycling. (For a graphic illustration of the flow of funds, see Figures 2 and 3.)

Counties may work with other counties or with municipalities to manage scrap tires or white goods. They also may choose to transfer a portion of the funds they receive to municipalities that participate in the management of scrap tires or appliances.

High Cost of Recycling

Although the sale of some recycled materials generates moderate amounts of revenues for a few counties, the revenues from the vast majority of these materials do not begin to cover the overall cost of collection and processing. Under the advance disposal tax programs, local governments must use any revenues from the sale of recycled materials to offset the cost of their processing. The markets for these materials vary across the state.

Depending on recycling-market conditions, some local governments can collect revenues from the sale of discarded appliances, especially if they process the appliances by separating out different types of material (metal, plastics, etc.).

Most counties send their scrap tires to certified tire-processing facilities or companies throughout the state. Several ship to out-of-state facilities. Many tires can be reused or recycled (approximately 44 percent were in 2000–01). However, they are not yet valuable enough to generate revenues, and local governments must pay fees for their disposal. In 2000–01, tire processors reported charging counties between $60 and $70

per ton for their services. Since 1997 a portion of the proceeds of the scrap tire tax has been used for grants to commercial companies to stimulate recycling markets by finding productive new uses for scrap tires.

The advance disposal tax program has created a "cascading" revenue stream. That is, the program has supported local government programs, which in turn have supported commercial tire processors.

Methods of Distributing Revenues from Advance Disposal Fees

Whenever one level of government collects funds and distributes them to another level of government, questions of equity arise. North Carolina uses several methods to distribute revenues to local governments. In the case of the sales tax, it distributes some proceeds to counties on the basis of population, and some on the basis of how much revenue is collected in each county. Also, it divides sales tax revenues between county and municipal units of government.

For the advance disposal tax programs, the state uses a two-step method linked to county population data and reported costs. First, counties receive a quarterly distribution based on overall state receipts and their populations. They then may apply for grants if they can demonstrate that their costs have exceeded what they received in distributions.

The distributed funds are to be used for management of scrap tires and white goods. Counties must account for their white goods management costs in annual reports to remain eligible for white goods quarterly distributions. The state keeps track of the funds that have been distributed to counties and compares them with actual expenses. A county that has not spent all the funds it has received for white goods develops a surplus. If the surplus becomes greater than 25 percent of the county's annual distribution, the county becomes ineligible to receive additional funds until it reduces the balance below the threshold. On the basis of FY 2000–01 reporting, 26 counties had balances above the 25 percent threshold and were not receiving funds. Ineligible counties forfeited $1.38 million in funds during FY 2000–01.[7]

Counties also must keep track of their scrap tire management costs. However, the laws do not require the same reconciling of those costs as of white goods management costs, partially because the costs of scrap tire processing are so high that there is much less of a problem with surpluses.

The supplemental grants for which counties are eligible are distributed from the White Goods Management Account and the Scrap Tire Management Account. During FY 2000–01, approximately one-third of North Carolina counties received supplemental funds totaling $1.3 million for white management costs, and slightly more than half received supplemental funds totaling $1.5 million for scrap tire costs.[8]

Per capita annual expenditures vary significantly for at least three reasons. First, counties provide different levels of service, ranging from a single collection point to multiple collection points and sophisticated in-house processing facilities. Second, the amounts of waste the counties process do not correspond to population figures. Third, the cost of managing materials varies significantly in different parts of the state, depending on the availability and the prices of commercial processors. In 2001–02 the per capita expenditure ranged from a few cents per person for very basic programs to several dollars per person for counties that process a relatively small amount of material or have invested heavily in new equipment to improve processing.[9]

The first generation of computers has become outdated, and consumers are reluctantly realizing that they do not have a use for the old computers and monitors stored in their attics. An estimated 1.3 million computers and televisions need to be managed as waste each year in North Carolina.

The Touch-it Rule

Section 130A-309.82 of the North Carolina General Statutes states that "a county may not use the tax proceeds from white goods for a capital improvement or operating expense that does not directly relate to the management of discarded white goods." Determining which costs are "direct" costs and which are "indirect" can sometimes be difficult. As the law has been implemented, the advance disposal tax funds may not be used to fund indirect administrative costs, such as a percentage of the time of managers not involved with solid waste operations (for example, finance department personnel or the county manager). In reviewing costs for eligibility, the state uses the "touch-it rule": if a person or a piece of equipment touches the material, it probably can be considered a direct cost. In other words, people involved in actually moving material, processing material, and the like constitute direct costs, and those who perform planning or administrative functions are generally considered to be indirect costs.

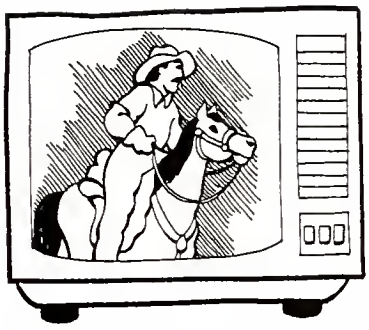
The Cost of Not Keeping Track of Costs

The establishment of the advance disposal tax programs for scrap tires and white goods has had a major effect on local and state government accounting for solid waste costs. Counties now are required to keep track of their costs in annual reports. Indeed, preparation of reports is a requirement to be eligible for funds. In some cases,

local governments have forfeited their funds because they did not submit the proper reports.

Responsibility for completing scrap tire and white goods reports varies from county to county. In some counties, reports may be prepared by finance department staff who have little direct involvement in waste management activities, or by technical department staff who have little financial accounting experience.

Although differences in costs are expected, some of the discrepancies in the annual reports are so extreme that they probably are due to reporting errors or poor recordkeeping. For example, counties reported an average cost of $74 per ton to process tires, with individual county costs ranging from $45 to $279 per ton.



The typical item with a cathode ray tube (CRT), such as a television or a monitor, contains 3–12 pounds of lead.

Electronic Waste: The Next Great Problem

Disposing of electronic waste, such as televisions, computers, and computer monitors has become a major issue in the United States and in many parts of North Carolina over the last few years. The first generation of computers has become outdated, and consumers are reluctantly realizing that they do not have a use for the old computers and monitors stored in their attics. An estimated 1.3 million computers and televisions need to be managed as waste each year in North Carolina.[10]

Items like monitors and televisions contain potentially toxic materials, such as lead, cadmium, and beryllium, that require special handling procedures. The typical item with a cathode ray tube (CRT), such as a television or a monitor, contains 3–12 pounds of lead. All CRTs are classified as hazardous waste. Like other types of hazardous waste, CRTs from nonresidential sources may not be disposed of in landfills. CRTs from residential sources, however, are statutorily exempt from federal and state landfill bans. (In North Carolina, counties may pass ordinances banning these materials from their landfills.)

Clearly, managing electronic items over the next few years will add a significant cost to what North Carolinians pay for waste management. Processors now charge $5–$25 to process a monitor or a television, depending on the size of the machine. Such charges could lead to additional waste management costs of $6 million or more by 2005, for processing only.

As with white goods and scrap tires, the key policy question that must be addressed is where this additional money will come from. The few local governments that have electronic waste programs now use a variety of funding mechanisms, including charging a disposal fee at the time of collection of the waste or offering the service without a fee and using general revenues to cover the costs. These programs, though very popular with residents, come at a significant cost: $300–$350 per ton for handling and disposal. By comparison the average landfill in North Carolina charges $25–$50 per ton to dispose of domestic waste. A few local governments may be able to absorb cost differences like this and sponsor occasional events, but the vast majority will be unable to afford electronic waste programs using their existing solid-waste funding system.

A bill that was introduced in the 2002 legislative session but did not reach the floor of the General Assembly would have created an advance disposal fee system for items with CRTs. The problem with disposal of electronic waste is only going to increase, so it is likely that this bill or a similar bill will be reintroduced. The bill has some similarities to the white goods and scrap tire advance disposal tax programs. The amount of the advance disposal fee and the method of distributing funds still are being debated, but the fundamental concept is the same: Consumers who buy items that will need to be disposed of using special measures, will contribute toward the disposal costs at the time of purchase. Funds then will be distributed to local governments to help offset the costs of implementing programs to manage these wastes.

If this bill or something similar is not passed, local governments will have to find other methods of paying for waste management programs or decide not to offer the programs and potentially endanger the health of residents.

Notes

1. Charles Coe & James Hickman, *Best Practices in Reducing Waste*, Popular Government, Winter 2002, 19.

2. North Carolina Gen. Stat. § 130A-290(a)(44).

3. North Carolina Dep't of Env't and Natural Resources, Div. of Waste Management, North Carolina Scrap Tire Management Annual Report FY 2000–2001 (Raleigh: DENR, April 1, 2002); North Carolina Dep't of Env't and Natural Resources, Div. of Waste Management, North Carolina White Goods Management Annual Report FY 2000–2001 (Raleigh: DENR, Jan. 15, 2002).

4. The legislation refers to these sources of revenue as "taxes," but they have many attributes of fees in that the revenues from them are used for a particular program and the amount collected is strongly linked to the cost of the service provided to the person paying the tax/fee. This article uses "tax" when referring to the program because the enabling legislation uses that term. The article uses "fee" when referring generally to the types of programs.

5. North Carolina State Univ., Dep't of Entomology, Survey of Mosquito-Transmitted Viruses Associated with Tire Disposal Sites in North Carolina (Raleigh: NCSU, Dep't of Entomology, 1994).

6. Scrap Tire and White Goods Management Annual Reports FY 2000–2001.

7. White Goods Management Annual Report FY 2000–2001.

8. Scrap Tire and White Goods Management Annual Reports FY 2000–2001.

9. Annual Financial Information Reports for 2001–02 (N.C. Local Gov't Comm'n comp., Raleigh: NCLGC, 2002).

10. Estimates prepared by staff of North Carolina Dep't of Env't and Natural Resources, Div. of Pollution Prevention and Envtl. Assistance, July 2002.

Achieving More Independence in Government Audits

Charles K. Coe and Martha K. Rodgers

The recent demise of Arthur Anderson, Enron, WorldCom, and other firms painfully attests to what can happen when auditors' independence is compromised and they guild or overlook poor corporate performance. Auditors should be independent of management in organizations whose financial dealings they evaluate. Independence permits auditors to give their candid opinion about the financial health of a business or a government.

A method of ensuring more independence in audits of government is to form an independent committee to oversee the audit process. Both the Government Finance Officers Association (GFOA) and the North Carolina Local Government Commission (LGC) recommend that local governments establish audit committees.[1] Such committees serve five purposes:

- They solicit proposals from prospective auditors, analyze them, and recommend a firm to the governing board, which makes the final selection.
- They monitor the performance of the auditor, ensuring that the work is conducted according to the audit contract.
- They serve as a check on management for the governing board, reporting accounting failures and differences of opinion between the auditor and management.

Coe is professor of public administration at North Carolina State University, specializing in public budgeting and financial management. Rodgers is internal audit director in Guilford County, North Carolina, and a Ph.D. candidate in public administration at North Carolina State University. Contact them at coe@social.chass.ncsu.edu and mrogers@co.guilford.ncl.us.

- They review financial statements, noting areas for improvement.
- They monitor the work of internal auditors.[2]

By fulfilling these purposes, audit committees enhance the credibility of both external and internal auditors, facilitate the implementation of established standards, and improve the quality of audits.[3] They are little used in North Carolina, however. This article explains why and specifies conditions under which local units should consider creating an audit committee.

History of Audit Committees

Audit committees have been a long-standing topic among private corporations. In 1940 the Securities and Exchange Commission endorsed the concept of an audit committee as a standing committee of a board of directors. In 1967 the American Institute of Certified Public Accountants recommended that corporations establish audit committees composed entirely of people from outside the corporation. In 1977 the New York Stock Exchange, the American Stock Exchange, and the National Association of Security Dealers (now called Nasdaq) likewise recommended that corporations create audit committees. In 1985 the National Commission on Fraudulent Financial Reporting (the Treadway Commission) recommended that corporations establish a formal audit committee responsible for oversight of internal auditing, internal control, financial reporting, compliance with the company's code of conduct, and engagement of the external auditor. Despite these recommendations, many firms have failed to form audit committees.

Audit committees also are advisable in the governmental sector. In 1991 the Institute of Internal Auditors recommended that governments establish a standing audit committee, knowledgeable about finances but independent of daily operations.[4] In 1997, GFOA further recommended that

- governments establish an audit committee by charter, enabling resolution, or some other appropriate legal means.
- committee members have expertise and experience in accounting, auditing, and financial reporting to resolve audit issues.
- the majority of committee members be from outside management, with at least one member from the executive and legislative branches.
- the committee generally number between five and seven.
- the committee primarily oversee the independent audit of financial statements, including selection of an auditor and resolution of the audit findings.
- the committee have access to internal audit reports and work plans.
- the committee annually and publicly report its work to the governing board and management.[5]

Table 1. **Audit Committee Activities**

Activity	% of Committees Engaged in Activity
External Auditing	
Reviews auditor's report	97
Reviews auditor's assessment of reasonableness of management estimates	74
Examines level of auditor's assumed responsibility [approves scope of audit]	48
Examines auditor's audit plan and procedures	31
Ethics	
Informed of material misstatements	94
Informed of significant unusual transactions	73
Examines illegal activities	65
Examines instances of fraud	60
Management/Other	
Reviews engagement letter	92
Discusses with management the application of accounting principles	91
Reviews management letter	60
Informed of disagreements with management	59
Informed of management judgments and accounting estimates	44
Informed of significant matters regarding consultations with other accountants	42
Internal Auditing	
Informed of irregularities related to internal control	99
Reviews internal auditing results	84
Informed of significant audit adjustments	80
Reviews internal audit program	68
Examines significant accounting policy changes	68
Meets privately with Internal Audit Director	63

Source: Adapted, with permission, from Jonathan West & Evan Berman, *Audit Committees and Accountability in Local Government: A National Survey*, forthcoming in 26 International Journal of Public Administration, July 2003.

Use of Audit Committees

Nationally the use of audit committees seems to be increasing, varying with the size of the unit of government. A recent study found that 28 percent of cities and counties of more than 50,000 in population had a committee.[6] Another study found that 48 percent of cities of more than 65,000 in population had a committee.[7]

Audit committees in North Carolina are considerably less common. In 2001 we conducted an informal telephone survey of the 14 cities with more than 50,000 people and the 23 counties with more than 100,000 people.[8] The respondents were finance directors, assistant finance directors, and internal auditors. Only six of the thirty-seven jurisdictions (16%) had audit committees. Four—Buncombe County, Orange County, Gastonia, and Wilmington—indicated that their objective in establishing a committee was to improve the reliability of the audit process. The governing board in Mecklenburg County created a committee as a result of certain improprieties.

Nationally the use of audit committees seems to be increasing, varying with the size of the unit of government. A recent study found that 28 percent of cities and counties of more than 50,000 in population had a committee.

Respondents' reasons for not creating an audit committee varied. Eighteen (58%) were satisfied with the status quo; 8 (27%) felt that their governing board was too small to establish a subcommittee; 2 (6%) believed that the decision making would be more complex; 2 (6%) thought that such a committee would be too political; and 1 (3%) thought that management was not interested.

The North Carolina jurisdictions with audit committees use three structures: (1) the GFOA model, discussed earlier; (2) a subgroup of the governing board; or (3) a subgroup of the management team. Buncombe and Mecklenburg counties follow GFOA guidelines regarding size (five to seven) and makeup (a majority from outside the government, with at least one representative each from the executive and legislative branches). The Buncombe County audit committee consists of one governing board member, one member of the management team, one member from another governing board in the county, one member of the banking community, and one member of the business community in general. The Mecklenburg County audit committee is made up of the county manager, the deputy county manager, two members of the governing board (one from each party), and one citizen who is a CPA.

Using the governing board structure, Cumberland County's audit committee is the board's Finance Committee. Gastonia and Wilmington each have a three-member subcommittee of their governing board.

Finally, using the management team structure, Orange County's committee consists of the finance director, the purchasing director, the budget director, the revenue director, and the assistant county manager.

Whether or not they use an audit committee, local governments and public authorities in North Carolina must conduct their audits in accordance with the Local Government Budget and Fiscal Control Act (hereinafter "the Act"). The Act specifies how often units will be audited, what auditing standards will be followed, and to whom and how the auditor will report. It also provides for state oversight of the audit process. According to T. Vance Holloman, director of the Fiscal Management Section of the LGC (which oversees North Carolina local government auditing), the Act's requirements probably explain the low use of audit committees.[9] The Act fulfills some of GFOA's five reasons for having an audit committee. However, there are circumstances in which an audit committee makes sense.

Selecting an Auditor

A primary purpose of an audit committee is to assist the governing board in selecting an auditor. Nationally, 92 percent of audit committees review the audit engagement letter; 48 percent examine the level of the auditor's assumed responsibility, approving the scope of the audit; and 31 percent examine the audit plan and procedures (see Table 1, page 25). However, North Carolina's Act largely defines the scope of the audit, specifying that

- the audit indicate compliance with federal and state grants, if required.
- the audit be conducted according to generally accepted auditing standards.
- certain assistance be provided to the auditor by the local unit.
- the contract be approved by the LGC.

The LGC further requires that

- separate fees be broken out for obtaining year-end bookkeeping assistance, performing the audit, and preparing financial statements.
- a certain time schedule be followed in awarding the contract.
- the auditor issue a "management letter" to the government (a letter highlighting areas for improvement), and a signed statement be sent to the LGC if a management letter is not needed.

Audit committees also recommend an audit firm to the governing board. Because North Carolina law is silent on the selection process, audit committees may be useful in screening audit firms and evaluating audit proposals with regard to both price and experience of the firm. Price should not be the only, or even the primary, consideration. More important is the auditor's experience conducting local government audits. The LGC recommends that the experience and the competence of the firm be established before the price of the work is evaluated.

An audit committee can serve as a traffic cop, expediting the supply of records to the auditor.

Monitoring the Auditor's Performance
Audit committees monitor the auditor's performance to ensure that the work is done according to the contract. North Carolina's Act and the LGC fulfill this responsibility by requiring that

- the auditor inform the governing board in writing of the need for any additional investigations and fees.
- the auditor immediately notify the LGC of any circumstances that will prevent the issuance of an unqualified opinion.
- the LGC preapprove payment of 75 percent of the fees and approve the remaining 25 percent contingent on its approval of the audit report.
- the auditor submit financial statements to the LGC at least four months after the end of the fiscal year, and the governing board amend the contract if financial statements are submitted after the December 1 completion date.

Serving as a Check on Management
Audit committees are a check on management, reporting accounting failures to the governing board. Nationally, 94 percent of audit committees are informed about material misstatements that affect the auditor's ability to give a clean opinion about the accounting practices; 73 percent about significant unusual transactions; 65 percent about illegal activities; 60 percent about fraud; and 59 percent about disagreements with management (see Table 1). The audit committee also apprises both the governing board and management of any significant problems, weaknesses in internal control, illegal acts, or violations of compliance with general statutes or federal and state grant requirements that are found as the audit progresses.

This role is minimized in North Carolina because the Act requires the auditor to inform the governing body if an unqualified opinion cannot be given. This alerts the governing board to significant internal control failures.

Internal auditors are employees of the local government who evaluate the quality of work performance. They assess whether program objectives have been met and at what cost, and they recommend ways to improve organizational performance.

Reviewing the Auditor's Report
Nationally, 97 percent of audit committees review the auditor's report, and 60 percent review the management letter (see Table 1). However, in North Carolina, the LGC performs these functions, extensively reviewing financial statements and the annual management letter, and recommending improvements to the governing board.

Monitoring the Work of Internal Auditors
Internal auditors are employees of the local government who evaluate the quality of work performance. They

assess whether program objectives have been met and at what cost, and they recommend ways to improve organizational performance. Nationally, 68 percent of audit committees review the internal audit program, 99 percent are apprised of internal control weaknesses, and 84 percent review internal auditing results (see Table 1). Such monitoring is an appropriate function for an audit committee in North Carolina. According to an informal survey we conducted in 2002, 22 of the 37 largest city and county governments (59%) have internal auditors.[10]

When the government is slack in providing files, records, and invoices, the audit process slows down.

Performing as a Traffic Cop

Audit committees can, and should, play a role not indicated by GFOA, namely that of audit traffic cop.[11] In the course of an audit, questions inevitably arise about the availability of records, invoices, and other documents. The inability to promptly clear up such questions leads to overdue financial reports. The LGC recommends that governments with perennially late financial reports prepare a schedule for completing the audit. A useful function of an audit committee is to monitor compliance with the schedule. Although the LGC plays an important audit oversight function, the ultimate responsibility is with the local units themselves. An audit committee can facilitate the performance of this responsibility.

Recommendations

Relatively few local governments in North Carolina have audit committees, principally because the Act fulfills many of the responsibilities that audit committees perform in other states, including designing the audit contract, monitoring the auditor's performance, serving as a check on management, and reviewing the audit report. Still, North Carolina governments should consider establishing an audit committee to perform several important responsibilities.

To eliminate tardy audits. According to the LGC's standard audit contract (which local governments must use), the local government should supply the auditor with the necessary records. When the government is slack in providing files, records, and invoices, the audit process slows down. Some governments regularly send their audits to the LGC after the deadline. The audit committee can serve as a traffic cop, helping to resolve questions between the auditor and management, expediting the supply of information, and ensuring timely financial reports.

To follow up on the management letter. LGC staff annually compare the two most recent management letters to determine whether the local unit has made progress in correcting internal control failures. Most governments promptly correct weaknesses. However, some lack the ability or will to do so. The audit committee can assist management in improving financial management practices.

To evaluate a unit's fiscal condition. The LGC reports the financial condition of each town and county on its website (www.nctreasurer.com). It compares each local unit with units of comparable size regarding such indicators as property tax rate, revenues and expenditures per capita, general obligation debt per capita, and financial performance of water and sewer operations. Although it reports useful data, the LGC does not evaluate financial performance. An audit committee *can* perform this responsibility, however.

To ensure the independence of internal auditors. External auditors can only sample transactions to see if accounting principles and the law are being followed. Accordingly, they make a disclaimer that they cannot detect all illegal activities while performing their audit. Internal auditors, in contrast, exhaustively examine operations that involve considerable exposure to the risk of theft. To be effective, internal auditors should be able to set their own work program, independent of management. In practice, however, internal auditors typically report to the finance director, whose operation is foremost among those that internal auditors should scrutinize. Hence there is a potential conflict of interest. Even if internal auditors report to the city or county manager, a potential conflict of interest exists. An audit committee consisting of governing board members, management representatives, and citizens can ensure independence.

Notes

1. Government Finance Officers Ass'n, Establishment of Audit Committees (Chicago: GFOA, 1997), available at www.gfoa.org (last visited Dec. 19, 2001); North Carolina Local Gov't Comm'n, Memorandum #878 (Raleigh: N.C. State Treasurer, 1999).

2. Stephen J. Gauthier, Evaluating Internal Controls (Chicago: Government Finance Officers Ass'n, 1996).

3. Jonathan P. West & Evan M. Berman, *Audit Committees and Accountability in Local Government: A National Survey*, forthcoming in 26 International Journal of Public Administration, July 2003.

4. Institute of Internal Auditors, The Audit Committee in the Public Sector. Position Statement (Altamonte Springs, Fla.: IIA, 1991).

5. GFOA, Establishment of Audit Committees.

6. Katherine S. Eckhart et al., *Governance and Local Government*, Internal Auditor, no. 3, at 51 (2001).

7. West & Berman, Audit Committees.

8. Charles K. Coe & Martha Rodgers, Informal Telephone Survey of Large North Carolina Counties and Cities re Use of Audit Committees (Raleigh: Dep't of Political Science and Public Admin., N.C. State Univ., 2001).

9. Letter from T. Vance Holloman, Director, Fiscal Management Section, North Carolina Local Gov't Comm'n, to Charles K. Coe (Dec. 10, 2001).

10. Charles K. Coe & Martha Rodgers, Informal Telephone Survey of Large North Carolina Counties and Cities re Use of Internal Auditors (Raleigh: Dep't of Political Science and Public Admin., N.C. State Univ., 2002).

11. Letter from Holloman.

Program Evaluation in Local Governments: Building Consensus through Collaboration

Maureen Berner and Matt Bronson

Local governments are continually faced with accountability demands from their governing boards and citizens, especially in times of financial stress. To help meet these demands, many have given their budget offices responsibilities for oversight and evaluation of programs. Traditionally this responsibility is carried out in top-down fashion just before or during the formation of the manager's budget request. The evaluator requests certain information, program personnel produce it, and there is little additional communication between the two offices until judgment is rendered in the form of budget increases or cuts.

This article suggests an alternative approach used extensively in Greensboro and recently tried in Charlotte. Based on collaboration between the evaluator and program personnel, it changes the nature of evaluation from a process with potential conflict to an opportunity for program improvement and partnership. In the end, judgment still is rendered but in such a way that all parties participate in determining the outcome and, ideally, accept it.

Traditional Program Evaluation

Generally, program evaluation is a means of providing valid findings about the effectiveness of programs to the

Berner is a School of Government faculty member specializing in budgeting and program evaluation. Bronson, a 1999 graduate of the Master of Public Administration Program at the School of Government, is a budget and evaluation analyst for Charlotte. Contact Berner at berner@iogmail.iog.unc.edu, Bronson at mbronson@ci.charlotte.nc.us.

people responsible for or interested in the programs' creation, continuation, or improvement. More simply, a program evaluation tries to answer at least one of three main questions:

1. Is the program operating or functioning as intended?
2. Is there any way to improve the program?
3. Has the program succeeded?

The first question focuses on process, and evaluations limited to that focus often are called "process evaluations." The question reflects a desire to know whether the steps outlined in a program's creation were taken. Did the program serve the targeted clients? Did it actually deliver the promised services?

The second question goes a step farther, looking for ways to improve a program to which an organization already is committed. The evaluator is looking for preliminary results and for recommendations on how to improve the program's likelihood of success. This type is called a "formative evaluation" because it usually is done in the formative years of a program.

The third question is the most common one that arises in relation to program evaluation. It is addressed by the "impact" or "summative evaluation." Usually conducted after a program is well established, this kind examines the basic worth of a program, demanding valid, tangible evidence of results.

Evaluations typically occur in five main steps. Although presented in simple fashion here, each step has many additional layers within it.

1. Agree on and articulate the program goals and objectives.
2. Agree on and declare the program theory, or theory of change. That is, why do people expect that program *X* will result in outcome *Y*?
3. Specify and agree on the criteria that will be used to measure success and the standards that must be met.
4. Gather data according to the criteria to see if the standards have been met.
5. Interpret the data and present the results in a meaningful and useful way.

The traditional approach to evaluation in a local government is top-down for each of the steps just outlined, primarily involving just the requesting agency and the evaluator. For example, the manager's office may be interested in understanding the value of a program or a project, either for its own purposes or to satisfy a request of the governing board. Staff from the office—an evaluator—contacts a representative of the program in question and asks for information on the success of the program—a quarterly or end-of-the-year report, for instance.

Anecdotal evidence suggests that the atmosphere surrounding local government evaluations can be tense, creating anxiety among program staff about the motive behind the request for detailed information (Is my budget going to be cut? Is this program targeted for downsizing?) and fostering companion suspicions by management staff (Is the program providing valid information? Are staff hiding something that might make them look bad?).

Anecdotal evidence suggests that the atmosphere surrounding local government evaluations can be tense, creating anxiety among program staff about the motive behind the request for detailed information (Is my budget going to be cut? Is this program targeted for downsizing?) and fostering companion suspicions by management staff (Is the program providing valid information? Are staff hiding something that might make them look bad?). The tension may intensify if the expectations for a program's evaluation have not been explicit from the beginning of the program, if the criteria for program evaluation have changed during the year, or if the evaluators do not communicate fully with program staff.

The adversarial atmosphere can extend to evaluations of community or nonprofit organizations receiving funding from local governments. City or county staff may have standard reporting requirements for such organizations but at times may require more substantive evaluations. These evaluations may consist of either city staff or outside consultants conducting in-depth research and analysis and then presenting a list of findings and recommendations to manager's offices or governing boards. Such evaluations also are top-down: beyond providing data, the organizations under review generally are not substantially involved. Further, it is not clear whether such evaluations accurately reflect the value of external programs. An expert on nonprofit-government relations who reviewed this article before publication commented, "My nonprofit has been evaluated jillions of times, and generally the evaluation was once-over-lightly and I ended up educating the evaluators, or else it was politically motivated. Frequently it would have been pretty easy to get away with telling them what I wanted them to know."

The lack of involvement on the nonprofit's or the community organization's part can be perceived as appropriate, presumably ensuring an objective analysis. However, it also can lead to a lack of ownership of the resulting recommendations, which can ultimately impede implementation. Further, it does not encourage a sense of partnership in solving community problems. The expert just mentioned felt that the value of traditional evaluations was low, stating, "At best the hierarchy might reward; at worst it will punish."

A Collaborative Approach

The main difference between traditional and collaborative approaches is who is responsible for, or involved in, each of the steps outlined earlier. Collaborative evaluations include more stakeholders in their various steps.

Evaluations done in Greensboro are good examples. The importance of evaluation to Greensboro is clear by the title of the responsible office: the Budget and Evaluation Department. It conducts several management studies each year.[1]

Fundamental Features of Participatory Evaluations

In the late 1960s, some researchers increasingly criticized what they saw as mechanistic and detached evaluations. Numbers and reports lacked a human element, they said, especially in evaluations of education and human service organizations. They called for more direct participation by the evaluator, greater use of qualitative research methods, and, eventually, significant involvement of those being evaluated. As a result, a participatory evaluation has these positive features:

- The evaluator plays the role of teacher, collaborator, and participant in the process, rather than outside expert.
- The process is more flexible because the participants can negotiate most aspects of the evaluation.
- The staff, clients, and board members of the organization being evaluated, and sometimes even interested community members, are involved in deciding whether to evaluate, what to evaluate, how to draw conclusions, how and when to disseminate findings, and how and when to implement recommendations.
- Information is more likely to be useful to, and used by, the organization under scrutiny.
- The organization being evaluated, the evaluating organization, and the relationship between the two are likely to change. Changes include increased communication among staff, positive effects on program development, and higher-quality evaluations.

Participatory evaluations have drawbacks, though:

- They are much more time-consuming, and probably more costly, for both the evaluator and the organization being evaluated.
- The process is unpredictable since it is in the hands of the participants.
- They are open to the criticism that the evaluation is overly subjective—that it has been "captured" by the organization under scrutiny and is no longer an objective assessment supported by solid evidence.

Source: Based on discussions of participatory evaluations in Blaine Worthen et al., Program Evaluation: Alternative Approaches and Practical Guidelines (2d ed., New York: Longman Press, 1997) and Carole Upshaw and Esterla Barreto-Cortez, *What Is Participatory Evaluation and What Are Its Roots?* Evaluation Exchange (newsletter of the Harvard Family Research Project), Fall 1995, available at http://gseweb.harvard.edu/~hfrp/eval/issue2/upshur.html (visited Nov. 22, 2002).

According to Vicki Craft, budget and management analyst, Greensboro's approach has been one of working with departments as partners in evaluations. Although the Manager's Office or the City Council may request that an evaluation be done, the Budget and Evaluation Department also takes requests for evaluations from departments themselves. These departments see the Budget and Evaluation Department as a valuable resource for helping them identify ways to solve problems or improve operations. Staff of the Budget and Evaluation Department and representatives of the department or program being evaluated make up evaluation teams. Together they define and agree on a detailed plan of action, or "contract." They also identify their objectives. Doing so helps them define what information to gather and how to use it. Although such a partnership does not always protect the process from politics, it does appear to have turned the view of evaluation staff from potential adversaries to valuable resources, according to Craft.

This type of collaborative approach is still somewhat controversial. Traditionally, one of the key characteristics of a quality evaluation is objectivity. To achieve it, governments often rely on outside evaluators or consultants. However, outside evaluators may not develop a good understanding of the basic philosophy, goals, objectives, or data used by a program, and the result may be a low-quality evaluation. An adversarial relationship can develop, despite the evaluator's initial neutrality.

Another shortcoming of using outside evaluators is that much of the learning about the program and the process leaves the organization when the consultants do. This approach builds little capacity for self-evaluation.

The controversial alternative is to involve the agency or program being evaluated in the evaluation itself—much in the same vein as the partnering approach used by Greensboro. This approach often is referred to as "participatory evaluation." Representatives of a majority of stakeholders or all stakeholders—program staff, affected citizens, politicians, and interest groups—are involved in the five evaluation steps mentioned earlier. Responsibility for completing the task is shared, in various degrees.

There is not a single, formal model for participatory evaluations, but the various types have some common characteristics (see the sidebar on this page). Participation can range from having evaluators work closely with program staff to incorporating program staff as equal members in the process. Greensboro and other units of government have adopted or are exploring the latter model. Anecdotal evidence from these units is positive. In participatory evaluations it takes more time to establish trust, to build effective communications, and to plan. However, Greensboro and other units report a higher degree of confidence in the results, improved interpersonal and interdepartmental relationships, and greater satisfaction with the process from involved parties.

A case study from Charlotte provides an example of how this approach can work when applied to an evaluation of a major community initiative.

The South End Evaluation in Charlotte

Like most cities, Charlotte works closely with many nonprofit organizations to improve its citizens' quality of life. These organizations range from small neighborhood-improvement groups to the Convention and Visitors Bureau. They play an important role in providing vital services throughout the community, and together they receive millions of dollars annually in city funding. In Charlotte, as in other localities, demonstrating fiscal responsibility to the taxpayers requires careful review of nonprofit funding and related outcomes.

Once the review team collected all the data, it spent several meetings reviewing the findings and developing recommendations. This was the true test of the collaborative evaluation model: eight people representing the city and a nonprofit service agency reaching consensus on the final report.

Like Greensboro, Charlotte has used a collaborative approach in conducting some internal evaluations, such as evaluations of street maintenance operations and the implementation of certain capital projects. The city recently took this approach one step farther by conducting a collaborative evaluation of the performance of an external nonprofit agency called Historic South End (HSE). HSE promotes the economic development and the physical improvement of Charlotte's South End.

Background on Historic South End

The South End, a historic industrial district adjacent to downtown Charlotte, has experienced dramatic urban revitalization in the past ten years. In response, in 1995, business leaders in the area formed the South End Development Corporation to promote economic development further. In early 2000 the corporation petitioned the Charlotte City Council to establish a special tax assessment of $.09 cents per $100 valuation on all properties in the district. To be levied in addition to city and county taxes, the assessment was expected to generate $185,000 per year initially. The funds were to support initiatives in four areas: physical improvements, public safety, marketing and commerce, and a vintage trolley service. The request was approved by the City Council in May 2000, along with a formal contract to ensure that these dedicated tax revenues funded a defined list of services. The corporation reorganized as HSE and hired an executive director to begin implementation of the initiatives.

At the same time, the City Council charged city staff to conduct a review of HSE services within two years to ensure that the dedicated funds were appropriately spent. This charge was in response to concerns from some council members and affected property owners that HSE could not adequately provide the services supported by the special tax. Some property owners in the district hoped that the two-year review would provide the justification to change the special assessment significantly or even discontinue it.

The review was thus a pivotal point in the future of the South End tax district and HSE as an organization. On the basis of conversations with Greensboro evaluation staff about their partnership approach, and with Charlotte staff about their willingness to experiment, the city's Budget Office initiated a collaborative approach to evaluation. Staff started by carefully selecting an eight-person review team consisting of both city staff and HSE representatives. City staff (representing the Economic Development Office, the Planning Commission, and the Budget Office) were selected for their knowledge of the South End community and their experience with projects there. HSE representatives included the executive director, the board president, and three members of the board. To ensure a variety of viewpoints, two of the three members from the board either were property owners openly skeptical of this district or represented such property owners. Such involvement increased the real and perceived legitimacy of the process.

The Evaluation Process

The review team was convened in September 2001. To conduct the evaluation fairly, the team first had to agree on goals, methodology, and a timeline. The three broad goals on which members agreed were as follows:

- To evaluate the overall effectiveness of the tax district and to determine if any changes were needed in the specific services or programs provided.
- To evaluate the role and the structure of the nonprofit organization providing these services (HSE).
- To review the boundaries of the tax district and the appropriateness of the corresponding tax rate.

The review team decided to evaluate services and gather information through a variety of methods. For example:

- Surveys of property owners, merchants, and HSE board members.
- Personal interviews with key stakeholders inside and outside the district, including business and civic leaders and City Council members.
- Focus groups with residents, business owners, and merchants in the South End.
- Gathering of key financial and performance information about HSE.
- Gathering of data on nationwide trends and best practices regarding organizations operating in special tax districts.

As indicated by the first three methods just listed, the evaluation was heavily based on stakeholders' perceptions of the district's effectiveness. It was primarily concerned with what the community wanted from the creation of the special tax district and the accompanying nonprofit organization, and whether the community felt that those goals had been achieved. For example, the survey questions were to be answered on a scale of

Courtesy of Historic South End

A mandated review of the services being delivered by the nonprofit development agency "Historic South End" provided the opportunity for a collaborative evaluation by agency representatives and Charlotte staff.

South End effort demands unified 'voice,' panel says

Courtesy of City of Charlotte

South End, city weigh next use of tax funds

importance/satisfaction, 1 being the lowest possible score, 10 the highest. This allowed the evaluation team to measure perceptions of matters such as "overall quality of life in the South End area" and "level of services provided by the Municipal Service District tax revenue." The average scores on these two items were 6.39 and 4.71, respectively. These values, plus the high number of survey and focus group comments indicating a general lack of awareness of the services supported by the special tax, led the review team to conclude that lack of communication was one of the major issues HSE needed to address. Collecting this information was time-consuming, but it enabled the review team to obtain a high level of feedback on the district. In addition, the focus groups and interviews represented a prime opportunity to raise awareness of the district with selected stakeholders.

The review team also sought financial and performance information. For example, the team learned that the assessed value of property in the district had increased 20 percent since 2000, compared with about 4 percent growth citywide. However, HSE had achieved only seven of the twelve initiatives that it had outlined in the original plan for implementation of services. Although some of the failures were due to outside factors, such results pointed to a need for improvement in tangible services delivered.

Once the review team collected all the data, it spent several meetings reviewing the findings and developing recommendations. This was the true test of the collaborative evaluation model: eight people representing the city and a nonprofit service agency reaching consensus on the final report. The team first spent time developing a common definition of "consensus" and affirming that the goal was to develop a consensus report. The rapport developed earlier in the process was beneficial in keeping the team together through several challenging conversations on a variety of potential findings and recommendations. Ultimately the team agreed on twenty findings and recommendations to present to the HSE board and the City Council.

Having the review team in complete support of all the recommendations for strengthening HSE's role was critical in gaining political support. The first step was to present the report to the HSE board for review. The presentation was made by the board president (who was a review team member), and this helped gain unanimous support from the board.

The report was next presented to the City Council's Budget Committee and eventually to the entire council. Council members asked several questions about the tax rate and the composition of the HSE board but were generally supportive of the report and recommendations. As a result of the support for the recommendations, as well as healthy revenue estimates, the City Council approved an increase in HSE's FY 2003 budget from $190,000 to $280,000 to begin implementation of the recommendations.

A final test of the collaborative process came a few days before the presentation to the City Council. One of the

largest and most influential property owners in the district had several concerns about the final report and requested a meeting with city staff before voicing opposition to the City Council. After the meeting, in which staff explained the rationale behind the recommendations and the collaborative process used, the property owner was satisfied with the review and the accountability structure for the recommendations and consequently did not oppose the report. This outcome spoke to the strength of the collaborative process, which allowed differing opinions to be discussed but a mutually agreeable outcome to be achieved.

Pluses and Minuses of Collaborative Evaluation in Charlotte

Undeniably this collaborative evaluation focused on perceptions as well as objective data, and the process was labor-intensive and time-consuming. On the negative side, one reviewer of this case wondered if the city, by committing its resources so fully to the evaluation, was invested in a positive outcome. Such concern about subjectivity makes collaborative evaluations controversial, as mentioned earlier.

On the other hand, the resources committed (a staff member's time) were less than the city would have paid for an outside consultant. Also, as the evaluation evolved, it became more formative in nature, emphasizing ways to improve the district rather than seeking a summary declaration of the district's success or failure.

This view of the value of collaborative evaluations is reflected in comments from Greensboro analyst Vicki Craft:

> *I have long struggled with the objectivity aspect of budget analysts leading an evaluation instead of using outside consultants. I agree with the collaborative approach—no matter who is involved, internal or outside evaluators—because I have seen the results in our organization. The old approach of an outsider calling the shots without any regard for implementation capability, etc., just leads to a lot of wasted time and money in program evaluation. The key is for the analyst to be completely objective while seeking collaboration in improvement. This approach does not waste time and usually results in an action plan that can be implemented and effective.*

The collaborative process allowed representatives of both the city and HSE actively to engage in the entire review by setting the initial goals and criteria, gathering feedback from a variety of stakeholders, and deciding together on findings and recommendations. The process seemed to generate a complete and accurate picture of the perceived effect of the district and HSE.

The process ran from September 2001 to March 2002 and required approximately one-third of a city staff person's time. A typical evaluation using an outside consultant likely would have been conducted in a shorter timeframe, though at a substantially higher cost, and would not have been concerned with gaining consensus on the recommendations. Further, previous outside evaluations of the city's nonprofit agencies have produced mixed results in implementation of recommendations and in gaining of support from the agencies evaluated, bringing into question the overall value of the evaluations. The participants in the South End evaluation felt that the strong, ongoing support of the recommendations by both the city and leaders of HSE indicated the long-term benefits of the collaborative process.

This evaluation has not suffered the stereotypical fate of evaluations, gathering dust on a shelf. In fact, at recent planning retreats, the HSE board focused on how to build the recommendations into its long-range planning. HSE's executive director perhaps summed it up best: "The review was one of the best things that we ever did."

Conclusion

Charlotte's review of the South End special tax district is just one example of a collaborative evaluation and may not reflect all the possible negative aspects of this approach. It offers some clear lessons, however. A collaborative evaluation can take more time and resources than the traditional, top-down approach, particularly in time spent on communication. Also, it is subject to criticism that it is biased. However, in the view of participants on all sides, the effort produced stronger results than a traditional evaluation would have, a stronger relationship between local government and the organization, and a wider commitment to the program in question.

Collaborative evaluations can be taken a step further. They tend to increase the capacity of the program stakeholders to evaluate themselves. The unit being reviewed can become engaged in the process and, ideally, will see value in evaluation. The Independent Sector, a nonprofit coalition of more than one hundred organizations with an interest in philanthropy and volunteerism, recently sponsored a book calling for "co-evaluation." This kind of evaluation not only involves all stakeholders in an in-depth evaluation but also encourages the stakeholders to evaluate their own programs and organizations on an ongoing basis.[2]

The collaborative approach may hold particular promise for local governments evaluating programs being administered by nonprofit organizations with local government support. Most of the literature on evaluation focuses on methodologies for use within organizations, not on partnerships between two types of organizations. The increase in communication between governments and nonprofits in a collaborative evaluation could be a positive side effect of what is normally an adversarial process. There is growing interest in how these two community actors can work together more effectively for community-wide improvement. Evaluation may be an unexpected way to strengthen this relationship.

Notes

1. Recent ones include evaluations of the Park and Recreation Department's drama program, the city's stormwater services, and its loose-leaf collections program. For texts of the completed evaluations, *see* www.ci.greensboro.nc.us/budget/mgmtstud/mgmtstud.htm (visited Nov. 15, 2002).

2. *See* SANDRA TRICE GRAY AND ASSOCIATES, EVALUATION WITH POWER: A NEW APPROACH TO ORGANIZATIONAL EFFECTIVENESS, EMPOWERMENT AND EXCELLENCE (San Francisco: Jossey-Bass Publishers, 1998).

Ensuring Communication: Providing Translation and Interpretation Services

Catherine Dyksterhouse Foca

OWASA (the Orange Water and Sewer Authority) keeps its Latino customers informed about the water supply through bulletins in Spanish.

Over the past decade, North Carolina has attracted a large number of immigrants.[1] The state's cities and towns now must serve many people with limited English proficiency, especially Latinos. At the same time, municipalities face tighter budgets. How can they meet residents' needs while not stretching limited resources too far?

This article discusses five strategies for North Carolina cities to use in providing translation and interpretation services, and outlines the strengths and the weaknesses of each. In addition, it considers appropriate uses of the different strategies. Then it looks at options for translation and interpretation services in two municipal services, solid waste and water, documenting what is happening in cities across the state as evidenced by a survey conducted in fall 2001. Municipal governments need to know their options in providing translation and interpretation services. Among other things, recent federal mandates specify that organizations spending federal grant money provide services in any language a client needs.[2]

Methodology

I employed two methodologies to complete this research: an extensive literature review and a survey of the thirty-three North Carolina cities with populations of more than 20,000. For the survey I made initial contact via e-mail, obtaining a 36 percent return rate. Responses came from Asheville, Charlotte, Concord, Fayetteville, Greensboro, Havelock, Kannapolis, Kinston, Monroe, Rocky Mount, Salisbury, and Winston-Salem. The responding cities represented a wide range of ethnic groups, populations, and geographical areas. In each responding city, I contacted the department head responsible for solid waste or water and asked him or her to refer me to the employee who could best answer questions for the department about translation and interpretation services.

Solid waste and water were the focus of the survey because they are two of the main services provided by a majority of cities in North Carolina. Further, residents need access to them soon after moving to a city. Cities with populations of more than 20,000 constituted the sample for two reasons. First, although there is not a direct correlation between tax base and population, in general, the larger the population, the larger the possibility of a tax base that might support translation and interpretation services. Second, larger populations generally ensure a Latino presence. Although the survey was meant

The author, a 2002 graduate of the Master of Public Administration Program at UNC Chapel Hill, is director of local evaluation for America's Promise—The Alliance for Youth, in Alexandria, Virginia. Contact her at c2foca@hotmail.com.

to capture different percentages of Latinos living in the state,having Latinos present in the cities surveyed also was important (for data on the Latino populations in the responding cities, see Table 1).

Options for Translation and Interpretation Services

"Translation" refers to written communication, "interpretation" to oral communication. The distinction is important for several reasons. Providing translation is easier than providing interpretation because a third party can do translations in its own time frame. Translations also last longer, in the sense that they can be duplicated and used again. Interpretation is usually specific to a case and a time and cannot be reused. However, interpretation gives the person who does not speak English greater flexibility because two-way conversations can occur.

Five strategies for providing translation and interpretation services were researched: using electronic translation, using the AT&T Language Line, contracting for services, building institutional capability, and hiring people with fluency in a second language.[3] To determine the strengths and the weaknesses of each strategy, as well as its appropriateness for a given organization, I considered it in light of the following criteria:[4]

- Does it provide translation services?
- Does it provide interpretation services?
- Does it produce accurate services?
- Does it maximize city resources?
- Does it increase institutional capability to deal with language barriers?
- Does it reduce cultural barriers between city and Latino residents?

This section describes the five strategies and provides some insight into the usefulness and the effectiveness of each one according to the six criteria just given (see Table 2 for a summary).

Using Electronic Translation

The cheapest and simplest option for translation—provided that a city has Internet access—is translation via an Internet website.[5] Such a website has a cut-and-paste component from Microsoft Office Documents that allows easy maneuvering from site to document and offers instant translation services.

The problem with this type of service is that it translates by word, rather than by sentence. Moreover, the sites do not translate in context. Therefore the translations are inadequate and piecemeal.[6] Thus, although this is the least expensive approach, the result does not meet the high quality of customer service required by local governments. In reality these services provide little information to the non-English-speaking public.[7] None of the departments surveyed used this service.

Using the AT&T Language Line

Many emergency management facilities use the language line.[8] Provided by AT&T, it allows an operator to add a third-party interpreter to a telephone conversation, enabling a non-English-speaking person and a city employee to understand each other. The service is convenient, is available all hours of the day, and covers a multitude of languages.

Unfortunately the service can be expensive.[9] Also, it does not build capability in the cities. They must continue the system, and at the end of their contracts, they are no more able to deal with Latinos or other people who do not speak English than they were before.

A productive use of this strategy is as an interim measure, while implementing other systems. This type of system works best when conversations are being conducted by telephone rather than in person.

None of the Solid Waste or Water departments surveyed indicated that they used the AT&T Language Line.

Contracting for Services

Contracting with an external organization, usually for a fee, provides high-quality translation but at some cost. The average translator charges $25–$35 per page plus a setup fee, and higher fees for rush work.

Asheville contracts for translation services in its solid waste operations,

Table 1. **Demographic Information on Cities Surveyed**

City	Total Population	Latino Population	Percentage Latino
Asheville	68,889	2,590	3.76
Charlotte	540,826	39,805	7.36
Concord	55,977	4,366	7.80
Fayetteville	121,015	6,862	5.67
Greensboro	223,891	9,739	4.35
Havelock	22,442	2,022	9.01
Kannapolis	36,910	2,336	6.33
Kinston	23,688	270	1.14
Monroe	26,228	5,610	21.39
Rocky Mount	55,893	1,034	1.85
Salisbury	26,462	1,138	4.30
Winston-Salem	185,776	16,051	8.64

Source: U.S. Census Bureau, Census 2000 Redistricting Data (Public Law 94-171) Summary File, North Carolina, available at http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_PL_U_GCTPL_ST7_geo_id=04000US37.html.

Table 2. **Pros and Cons of Strategies for Providing Translation and Interpretation Services**

	Using Electronic Translation	Using AT&T Language Line	Contracting for Services	Building Institutional Capability	Hiring People with Fluency
Does strategy provide translation services?	Yes.	No.	Yes.	Yes, but probably not more than capability to translate very basic documents.	Yes.
Does strategy provide interpretation services?	No.	Yes.	Maybe.	Yes.	Yes.
Does strategy produce accurate services?	No.	Yes.	More likely.	Depends on amount of training.	More likely.
Does strategy maximize city resources?	No. It is cheap, but results are inaccurate.	Depends on use.	In general, no, though in some instances it would be most cost-effective option.	Depends on use.	Usually.
Does strategy increase institutional capability to deal with language barriers?	No.	No.	No.	Yes.	Yes.
Does strategy reduce cultural barriers between city and Latino residents?	No. It may exacerbate them because of inaccurate translation.	Minimally.	Minimally.	Yes, to some extent. City employees may be more exposed to Latino culture as they learn language.	Yes. It is more likely to involve Latino community members in government.

specifically in the recycling department. The department sent a solid waste directory (containing such information as what can be recycled, what is considered a "large item," and where and how to dispose of chemicals) and two brochures on recycling to a private company in Indianapolis for translation after it received about ten requests for these documents in Spanish.[10]

Contracting for interpretation services is more difficult than contracting for translation services. As mentioned earlier, interpretation is case-specific. Therefore a city has to contract for a specified length of time, such as for a meeting or an event, or pay to have an interpreter on call whenever the services may be needed. Contracting for interpretation also may mean that the person providing the services has little or no knowledge of the subject area for which he or she is interpreting. Although the interpreter may be fluent in Spanish, there may be technical terms or ideas that will be difficult to convey without a clear grasp of the topic.

The AT&T Language Line allows an operator to add a third-party interpreter to a telephone conversation, enabling a non-English-speaking person and a city employee to understand each other.

Building Institutional Capability

A fourth strategy is to train current employees in a second language, or at least to teach them minimal comprehension of basic sentences. This strategy, which can be accomplished through a number of media, is primarily useful for interpretation services.

One way to use this strategy is to enroll employees in Spanish for Gringos, a basic Spanish class offered at many community colleges throughout the state.[11]

Another method is to send employees to immersion programs. These programs are usually month-long experiences during which an employee goes to a Spanish-speaking country, lives with a Spanish-speaking family, and takes intensive language courses. On return he or she has the equivalent of two years of conversational-level Spanish at the college level. The cost of these programs is often in the same price range as a week-long out-of-state conference.[12]

On the one hand, this strategy gives employees who already have technical or managerial expertise a chance to learn the language and to communicate directly with residents who have limited English proficiency. In this way a city can be assured that the information being

given is more accurate and credible, assuming proper translation. This strategy also increases institutional capability.

A potential problem with this strategy is that if employees do not constantly use their skills, the skills will deteriorate quickly. Also, employees may not have enough skill to translate other than the most rudimentary documents. Further, precautions have to be in place to ensure that translations and interpretations are accurate and not misleading.

Charlotte uses this strategy. A personnel policy directly links an increase in pay to proficiency in a second language.[13] To ensure proficiency, people who receive compensation for language capabilities must pass a test. If they cease serving in a position that requires bilingual abilities, the premium pay is eliminated.[14]

Hiring People with Fluency in a Second Language

The fifth option builds institutional capability by specifying language requirements in job descriptions, or by building language requirements into hiring situations in some other way.[15] In this manner a city can use skills already in existence rather than trying to create them in its current workforce. Also, this option makes it more likely that members of the Latino community will become a part of city government, thus providing an access point for all Latinos in the area. Further, a newly hired bilingual person is likely to be able to provide both translation and interpretation services. There still would need to be adequate safeguards to ensure accuracy in content and concept.

A drawback to this strategy is that if only one or two people are brought into the organization with these skills, they may be overwhelmed with requests from other departments.

Salisbury has hired a person in its human resources department to provide translation and interpretation services. She has translated community service announcements and public awareness campaigns for the Solid Waste Department and is on call during normal business hours for residents with limited English proficiency who need to set up their solid waste services. Further, she provides interpretation services at town meetings.[16]

Current Status of Services

Of the twelve cities responding to the survey, three provided no translation or interpretation services for their Solid Waste and Water departments. Six provided interpreters internally, some through their Solid Waste and Water departments, others through other departments. The interpreters mostly helped new residents access city services, were available at town meetings for interpretation services, and were available at the help desk or to answer incoming calls regarding solid waste or water service. Six of the responding cities also indicated that they used written translation provided by staff, either within the Solid Waste or Water Department or in another department. They used these staff in public awareness campaigns (to translate items like fliers distributed to residents) and for community service announcements. One city indicated that it used translation services for bill payment.

Building language requirements into hiring situations makes it more likely that members of the Latino community will become a part of city government, thus providing an access point for all Latinos in the area.

Recommendations

Cities can take a number of steps to begin to address the needs of the residents in their communities with limited English proficiency.

1. Begin with an internal assessment.
Many cities across the nation that have implemented systematic policy in this area have begun with interdepartmental work groups on the issue.[17] These groups perform an internal assessment of where their city stands. Creating such groups allows for systemwide analysis and change, instead of a piecemeal approach.

The assessment should lead to a written outline of what is currently being done and what needs to be done throughout the city. The outline should report current spending levels for translation and interpretation services.

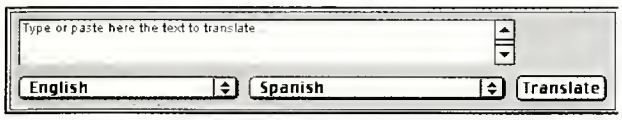
2. Involve community members.
After a city has done a thorough assessment and understands what its goals for translation and interpretation services are, it should involve the local community, especially the Latino community, in planning. Some cities, like Fremont, California, and Arlington, Virginia, have used a volunteer language bank, through which community members who speak a variety of languages are available to provide interpretation services when needed. Other cities, like Sterling Heights, Michigan, have created advisory councils to help the city implement plans and address unmet needs.[18]

3. Match the strategy to institutional capability.
No one strategy will work for every situation. City managers and administrators should match a strategy to the needs, as well as the strengths, of their community.

Consideration of a couple of variables may help decision makers choose the appropriate strategy:

- *Funds available:* The amount of money available is key to determining what type of service to use. Although city staff may be creative in obtaining funds (using resources like nonprofits, for example), they first must ascertain the level of funding they will need to provide the service effectively. If a city has adequate funds available, hiring people with fluency in a second language may be a wise choice. If funds are extremely limited, contracting for the most essential services may be more appropriate.

- *Composition of staff and community:* The demographics of both the community and city staff are important



The cheapest and simplest option for translation—provided that a city has Internet access—is translation via an Internet website. But the translations are inadequate and piecemeal.

to consider in determining which strategy to implement. If a city has employees who are fluent or near-fluent in a second language, investment of money and resources in them may be the wisest choice. The best type of employee to invest resources in is one who interacts in a second language on a daily basis.

4. Ensure the quality of translation. A mechanism must be in place to ensure the quality of translation. Without one, the most well-intentioned city may not provide effective service. One city in North Carolina went to considerable lengths and expense to translate a twenty-page color booklet outlining city services and many attractive features in the area. Subsequently an editor of a Spanish newspaper informed city staff that the booklet contained sixty-one errors.

The city had relied on internal translators, who had unverified Spanish-speaking and -writing skills. Especially for translation services, which produce documents for the long term, verifying the accuracy and the legitimacy of translators is important. When planning to rely on internal employees, cities first should give them a standardized test like the one used by Charlotte. When using external firms, cities should check the credentials of the firms to ensure that personnel demonstrate accuracy in meaning and context.

Conclusion

With planning and foresight, North Carolina's cities can address the complex challenges and opportunities that changing demographics present. By addressing translation and interpretation services across departments, cities can use their resources better and set a comprehensive strategy.

Notes

1. According to the Census, in 1990 the Latino population was 76,726, or 1.2 percent of the total population. By 2000 it had grown to 378,963, or 4.7 percent of the population—a fourfold increase. See http://factfinder.census.gov/servlet/BasicFactsTable?_lang=en&_vt_name=DEC_1990_STF1_DP1&_geo_id=04000US37 for 1990 Census data; http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_PL_U_GCTPL_ST5_geo_id=04000US37.html for 2000 Census data.

2. Executive Order 13166, dated August 11, 2000, stated that, on the basis of Title VI of the Civil Rights Act of 1964, "the Department of Justice has today issued a general guidance document, which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP [limited-English-proficiency] persons."

3. City of Minneapolis, Interdepartmental New Arrivals Work Group, Welcoming New Arrivals to Minneapolis: Issues and Recommendations 2–3 (Minneapolis: Aug. 2000).

4. These criteria were derived from information in the following sources: City of Winston-Salem's Hispanic Task Force Report (Dec. 2001); Proposal for the City of Greensboro to Improve Multi-Cultural Relations with the Hispanic Community during Human Relations Month (Mar. 2001); City of Minneapolis, Welcoming New Arrivals; and Policy Guidelines on the Prohibition against National Origin Discrimination as It Affects Persons with Limited English Proficiency, 67 Fed. Reg. 4968 (Feb. 1, 2002).

5. Examples include www.freetranslation.com, www.syntax.com, and bablefish.altavista.com.

6. Using Altavista, I typed "You need to bring appropriate identification in order to sign up for service." The translation was "Usted tiene que traer la identificación apropiada para firmar para arriba para el servicio." Translated back into English by Altavista, the sentence read, "You must bring identificaciÃ_n [sic] appropriate to sign for above for the service."

7. Proposal for the City of Greensboro to Improve Multicultural Relations, at 14.

8. For more information, visit www.languageline.com.

9. The rates are categorized by both language and time of call. During the day (from 8 A.M. to 8 P.M.), the range is from $2.20 per minute for Spanish translation to $2.60 per minute for less-used languages. For nights and weekends, though, the prices are higher, those for Spanish rising to $2.50 per minute and those for certain other languages becoming as expensive as $4.50 per minute. There also is a $50 monthly fee, which is applied against usage.

10. Telephone Interview with Audren Stevens, Recycling Coordinator, City of Asheville (Dec. 10, 2001).

11. For a nominal fee (usually about $60 per student), a Spanish instructor teaches basic language and cultural norms, hands out note cards or some other quick reference guide that the employee can use when responding to residents with limited English proficiency, and helps employees practice basic language skills. These can be specific to an area of service, like fire and rescue, or general.

12. The cost can be as low as $2,500, airfare and meals included.

13. The relevant policy reads, "Employees in positions requiring proficiency in a second language including Spanish, Vietnamese, Cambodian, Thai and American Sign Language are eligible for a 5% increase in base pay not to exceed the maximum rate of pay identified for the job." Available at www.co.mecklenburg.nc.us/cohr/policy/section3.htm (visited Feb. 1, 2002).

14. The relevant policy reads,

> To function in this capacity employees will be required to pass a proficiency test arranged by the department through the University of North Carolina at Charlotte or an appropriate alternate site. The acceptable proficiency level for the County is advanced or superior as defined by the American Council on the Teaching of Foreign Languages (ACTFL). All employees, including native speakers, are required to be tested. The County pays for testing . . . Premium pay increases are effective the pay period following the results of the proficiency test and are not retroactive . . . Premium pay increases will be removed from an employee's salary if they cease to use this skill or move to a position that does not require bilingual skills.

Available at www.co.mecklenburg.nc.us/cohr/policy/section3.htm (visited Feb. 1, 2002).

15. City of Minneapolis, Welcoming New Arrivals, at 11.

16. Telephone Interview with Lynn Hillard, Sanitation Manager, City of Salisbury (Dec. 11, 2001).

17. *See* City of Minneapolis, Welcoming New Arrivals, and City of Winston-Salem's Hispanic Task Force Report.

18. *See* City of Minneapolis, Welcoming New Arrivals.

Zoller Hired to Head Business and Finance

Ted D. Zoller recently joined the School of Government at UNC Chapel Hill in the new post of associate dean for business and finance. As associate dean, he is responsible for business management and financial operations, seeking the means to improve and expand service and instructional offerings.

Before his appointment, Zoller was director of academic development at the Kenan-Flagler Business School, UNC Chapel Hill. In this capacity he developed new academic initiatives and oversaw the technology and operational infrastructure of the school. Still holding an adjunct appointment at Kenan-Flagler, Zoller continues to teach courses in technology commercialization and venturing.

Zoller previously served as director of economic development at the College of William and Mary in Williamsburg, Virginia, where he was responsible for technology transfer and real property management. He also has worked as a principal consultant in the private sector with American Management Systems, Inc., a large systems-integration consulting firm in Fairfax, Virginia. There he specialized in the application of technology in the public sector, serving as a founding member of a new corporate division working with local, state, and federal government.

Zoller holds a master's degree in public administration from the Maxwell School, Syracuse University, and a bachelor's degree in government from the College of William and Mary. He is completing his doctorate this year in city and regional planning at UNC Chapel Hill, specializing in economic development.

Professional Associations and Businesses Join Challenge for Building Renovation and Expansion

Exceptional contributions to the School of Government's Knapp Building renovation and expansion project from forty-three professional associations and businesses, and gifts and pledges from hundreds of individuals, municipalities, counties, foundations, and others across the state, have raised more than $700,000 toward helping the School match an important $1,000,000 capital challenge grant before its June 2003 deadline. The challenge grant and all contributions to the building fund will help the School meet its overall capital fundraising goal of $4,000,000 in new private and public funds for the Knapp Building. The School and the Institute of Government Foundation thank all contributors and offer special recognition to the forty-three professional associations and businesses that have joined the campaign:

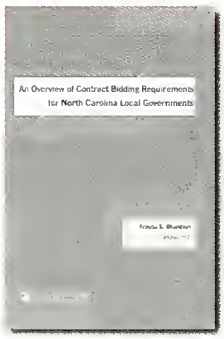
American Public Works Association—NC Chapter
American Society for Public Administration—Central Piedmont Chapter
American Society for Public Administration—Research Triangle Chapter
Carolinas Association of General Contractors
Carolinas Association of Governmental Purchasing
NC Assessing Officers Association
NC Association of Local Health Directors
NC Association of County Attorneys
NC Association of County Clerks to County Boards of Commissioners
NC Association of County Commissioners
NC Association of Municipal Attorneys
NC Association of Municipal Clerks
NC Association of Registers of Deeds
NC City and County Management Association
NC County Government Finance Officers Association
NC Government Finance Officers Association
NC—International Personnel Management Association
NC League of Municipalities
NC Local Government Budget Association
NC Local Government Information Systems Association
NC Local Government Investment Association
NC Tax Collectors Association
Retired Faculty Association of UNC–Chapel Hill
C. T. Wilson Construction Company
Capital Management of the Carolinas, LLC
Coleman Law Firm
Greenville Utilities Commission
Holiday Inn Burlington
Horton & Crutchfield, PA
Imperial Hotel Group, Inc.
LEI Services
Leslie Anderson Consulting, Inc.
McCarroll Construction, Inc.
The Murphy Group
Myrick Construction, Inc.
NC Local Government Employees Federal Credit Union
Prudential Retirement Services
Rogers Builders General Contractors
Sanford Holshouser Law Firm, PLLC
Shelco, Inc.
Sumrell Sugg Carmichael Hicks & Hart, PA
Warlick Milsted Dotson & Carter
Woodson Sayers Lawther Short Parrott Hudson & Walker, LLP

To help meet the challenge by June 2003, send your pledge or gift today to the Institute of Government Foundation, UNC Chapel Hill, CB# 3330 Knapp Building, Chapel Hill, NC 27599-3330. All gifts are tax-deductible. Inscribed bricks and room-naming opportunities are available for gifts of $250 and up. Information can be obtained from the School of Government Development Office, telephone (919) 966-9780 or (919) 962-8477, or online at www.sog.unc.edu. Click on "Giving to the School."

Off the Press

An Overview of Contract Bidding Requirements for North Carolina Local Governments

Frayda S. Bluestein
October 2002 • $15.00*

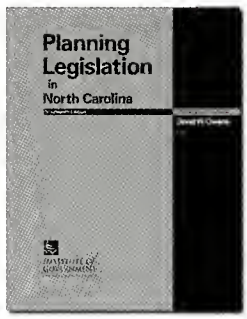


Formerly published under the title *An Outline of Statutory Provisions Controlling Purchasing by Local Governments in North Carolina*, this publication is a quick and easy reference for purchasing officials and others interested in the public contracting process. It gives readers a general introduction to the statutory procedures that govern contracting by local government agencies and serves as a basic roadmap through these procedures. The information is current through the 2002 session of the General Assembly. An online version is available on the Institute's website, at https://iogpubs.iog.unc.edu. Follow the links to "Electronic publications."

Planning Legislation in North Carolina

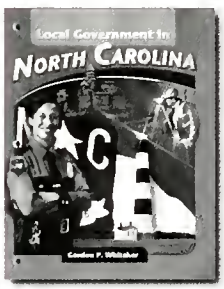
Compiled by David W. Owens
Nineteenth edition, 2002 • $45.00*

A single-volume collection of the planning-related statutes most frequently referred to by planners, elected officials, citizen board members, and others interested in land use, building, transportation, community and economic development, and natural resource protection. Statutes included are current through the 2002 session of the General Assembly.



Local Government in North Carolina

Gordon P. Whitaker
Second edition, 2002 • $15.00*



Published by the North Carolina City and County Management Association, this general introduction to North Carolina government is designed to be useful to a wide audience, including public school students, newly elected officials, public employees, and other interested citizens. It explains the basic structure of North Carolina county and municipal governments, describes their most important functions, and discusses the role that public citizens play in fostering good government.

Recent Publications

North Carolina Child Support Statutes
Compiled by John L. Saxon
2002 • $35.00*
Available on the Institute's website

Performance Measures and Benchmarks in Local Government Facilities Maintenance
David N. Ammons, Erin S. Norfleet, and Brian T. Coble
2002 • $40.00*
A joint venture of the Institute of Government and the International City and County Management Association

North Carolina Marriage Laws and Procedures
Janet Mason
Fourth edition, 2002 • $10.50*

ORDERING INFORMATION

Subscribe to *Popular Government* and receive the next three issues for $20.00*

Write to the Publications Sales Office, Institute of Government, CB# 3330, UNC Chapel Hill, Chapel Hill, NC 27599-3330

Telephone (919) 966-4119

Fax (919) 962-2707

E-mail sales@iogmail.iog.unc.edu

Website shopping cart https://iogpubs.iog.unc.edu/

Free catalogs are available on request. Selected articles are available online at the Institute's website.

To receive an automatic e-mail announcement when new titles are published, join the New Publications Bulletin Board Listserv by visiting https://iogpubs.iog.unc.edu/ and scrolling to the bottom of the page, or view all School of Government listservs at www.iog.unc.edu/listservs.htm.

***N.C. residents add 7% sales tax.**
Prices include shipping and handling.

INSTITUTE of GOVERNMENT

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

www.iog.unc.edu

Nonprofit Org.
US Postage
PAID
Permit #216
Chapel Hill, NC